

CHERRY CREEK SCHOOL DISTRICT

Resolution #240-08 Approval of Action, Cherry Creek Academy Bond Issue Application

Date: August 11, 2008

To: Board of Education

From: Superintendent

WHEREAS, by resolution 174 - 08 the Board of Education of the Cherry Creek School District (the "Board") and (the "District") approved the submission of a question of contracting bonded indebtedness to the eligible electors of the District; and

WHEREAS, prior to the Board's action to approve a bond election question, the District's administration and the District's Long Range Facility Planning Committee ("LRFPC") provided substantial public notice and a report of their recommendations for District wide capital improvements and a bond election question to fund the same; and

WHEREAS, not having heard from the Cherry Creek Academy ("CCA") about its capital construction need at any time prior to the Board's adoption of Resolution 174 - 08, by letter dated April 22, 2008 the District invited CCA to participate in discussions regarding the submission of such a ballot question; and

WHEREAS, by its Bond Issue Application (the "Application") dated June 4, 2008 submitted to the Board at a special meeting on June 6, 2008, CCA presented to the District its capital construction plan seeking approximately \$14,220,000.00 for capital construction needs and requesting the same be funded by and included in the 2008 bonded indebtedness ballot question, and

WHEREAS, the District through its administration, including its Executive Director of Educational Support Services, the District's LRFPC, and members of the Board have reviewed the Application, inspected CCA's property and facilities, considered the priority of CCA's requested capital construction need in relation to the capital construction needs of the entire district, and considered the need to incur bonded indebtedness or obtain revenues from a special mill levy to finance the requested capital construction need.

After due consideration and review, the Board finds:

1. The District invited CCA to participate in discussions regarding the submission of the question of contracting bonded indebtedness to the eligible electors of the District in sufficient time to allow for consideration of the capital needs of CCA. The District has reviewed the Application of CCA to include funding for its requested capital construction need in the District's bonded indebtedness question or to submit a special mill levy ballot question to the voters of the District and has determined the priority of CCA's requested

capital construction need in relation to the capital construction needs of the entire district, all prior to the last date for the submittal of ballot issues for the November 2008.

2. From its inception, pursuant to its charter contract and the charter school law, CCA has requested independence from the District in connection with its operations, educational programs, facilities, and budgeting and has consistently requested that it be allowed to operate with substantial autonomy, free from detailed supervision and oversight by the District. The District has recognized CCA's requested independence and granted CCA's request for a thirty-year charter extension to enhance CCA's credit terms to accommodate its independent current long-term debt for its facilities.
3. CCA has not made any effort to keep the District informed on a regular basis of its facility needs, requested District review or evaluation of its facility needs, or sought involvement on the District's LRFPC.
4. At the time CCA occupied, purchased, and financed its existing property and facilities, CCA was advised by the District that the District had several reservations concerning the suitability of the site and facilities for use as a school and as such the District and CCA agreed by their Restated and Amended Charter School Contract dated February 14, 2000, as amended by that First Amendment to Restated and Amended Charter School Contract dated February 12, 2001, and that Second Amendment to Amended Restated Charter School Contract dated August 1, 2007 (collectively the "Charter Contract") that "Under no circumstances shall the District have any obligation or liability for any cost associated with the lease, repair, purchase, renovation, or maintenance of CCA's facilities." This provision remains in effect.
5. Based on best estimates, the property and facilities owned by CCA and/or the Cherry Creek Academy Facility, Inc., are valued at approximately \$4,653,000.00 and are encumbered in an amount of approximately \$3,720,000.00. The investment of the requested \$14,220,000.00 for major capital improvements as requested by CCA will not, in the opinion of the Board, increase the market value of the property and improvements in an amount sufficient to anticipate a return of the investment of such substantial funds in the event of a sale thereof.
6. There is no assurance that the major facility reconstruction requested by CCA will meet the requirements of Arapahoe County building and zoning regulations including but not limited to adequate and sufficient parking.
7. None of the District schools will receive funding for capital improvements in an amount equal to what they requested upon successful passage of the bonded indebtedness issue. Many of the District schools, including but not limited to Cottonwood Creek Elementary School, will receive substantially less in capital funding from the proposed bonded indebtedness than that requested by CCA and only District schools with a justified increase in enrollment are anticipating any additions or expansions of their facilities.

8. The District anticipates that its 2008-2009 funded student population will reach 48,687 including the students at CCA. CCA has a funded student population of 430 or nine tenths of one percent (.9%) of the total funded student population of the District. A prorate distribution of the proceeds of the pending bond election would result in a distribution of not more than \$1,797,740.00 to CCA.
9. The cost of capital construction needs of the entire District as initially evaluated by the LRFPC and the individual schools and facilities is in excess of \$400,000,000.00. After substantial review and careful consideration of financial realities, the amount requested in the bonded indebtedness for the entire district has been set at \$203,550,000.00. CCA has not, prior to its submitted Application, advised the District that it has determined that its needs are so substantial as to require \$14,220,000.00 in improvements and remodeling costs. CCA advised the District by its letter of April 25, 2008 that the total cost of requested capital construction needs would be close to \$3,500,000.00.
10. Based on the report of the LRFPC and the inspection of CCA's facilities by District personnel, the requested capital construction is excessive and unnecessary to meet the needs of the CCA students and programs.
11. Including the funding of capital construction needs of CCA in a bonded indebtedness or special mill levy is not the exclusive method of obtaining financing by CCA. Section 22-30.5-404 (1) C.R.S., specifically provides that the provisions thereof are not to be construed to limit in any way the existing ability of a school district to assist a charter school in financing its capital construction needs in any legal manner mutually agreed upon by the school district and the charter school.

NOW THEREFORE, for the reasons herein above set forth and based on the Board's consideration of the priority of the capital construction need requested by CCA in relation to the capital construction needs of the entire District, the Board's and administration's review of the Application, and considering the request to include the capital construction need of CCA in the District's bonded indebtedness or the submission of a special mill levy,

IT IS HEREBY RESOLVED, that the Board determines that CCA has not established capital construction needs for the substantial major renovations to CCA's facility to the extent requested in the Application and therefore there is no established need to include CCA's requested \$14,220,000.00 in the District's bonded indebtedness question or to submit a special mill levy question to the electors in the November 2008 election, nor is such action deemed to be in the best interest of either the District or CCA. However, the Board believes that CCA and its students can and will benefit from some of the requested capital improvements to the CCA facility,

THEREFORE, IT IS FURTHER RESOLVED, that subject to the successful passage of the District's bonded indebtedness and budget election questions at the November 2008 election, the passage of which is a material condition precedent to the District's obligations thereunder, the District will provide CCA up to \$2,800,000.00 for capital improvements ("CCA Capital Funds") subject, however, to the following conditions and requirements:

1. CCA shall be entitled to determine the capital improvements projects ("Capital Projects") that it will perform and construct with the CCA Capital Funds, subject to the prior approval of the Board which shall not be unreasonably withheld, conditioned, or delayed but which will require consideration be given to health and safety issues. CCA shall submit its proposed plans for Capital Projects to the District's Executive Director of Facility Planning and Construction ("District Representative") for review and discussion. The parties shall use good faith efforts to reach agreement regarding CCA's Capital Projects utilizing the CCA Capital Funds. The District's Representative shall make a final recommendation regarding such Capital Projects to the Board. In the event the District and CCA are unable to agree on the Capital Projects, the parties agree that such dispute may be resolved pursuant to the terms of Section 14.e. of the Restated and Amended Charter Contract dated February 14, 2000, which provision is incorporated herein (except that any arbitrator selected shall additionally have experience with school facility construction and operation). Provided, however, the amount of funding provided by the District pursuant to this resolution shall in no event be subject to further review or any dispute resolution process.

2. The District will review and approve all plans, specifications, and contracts for the Capital Projects, which approval shall not be unreasonably withheld, conditioned, or delayed, and construction thereof will, if required by the District, be monitored by an independent construction management team through established construction management practices; provided however, that the construction management fee, if any, shall not exceed that which is normal and customary in the industry, in the Denver, Colorado area market. Further, CCA and District shall in good faith attempt to reasonably agree upon the process for contracting and construction of the Capital Projects, which may include but not be limited to the following:
 - (a) Agreement of the standards for construction to be used for the Capital Projects, which need not meet District standards but which shall meet District standards for safety and be reasonably agreeable to both parties as to quality, and which shall conform to all applicable building codes and requirements.
 - (b) Agreement as to the selection or bidding process for the architect and/or general contractor, which may include a design/build contract, if agreed by the parties.
 - (c) Agreement by District and CCA as to timing of disbursement of funds and the construction of the Capital Projects, provided however, the District will make the disbursement of all funds for the Capital Projects.

In the event the parties cannot agree on the foregoing process the parties agree that such dispute may be resolved pursuant to the terms of Section 14.e. of the Restated and Amended Charter Contract dated February 14, 2000, which provision is incorporated herein (provided that any arbitrator selected shall additionally have experience with school facility construction and operation).

In the event the actual cost of the approved Capital Projects is less than \$2,800,000 plus the contribution of CCA as herein below required, any unused monies shall be retained by the District.

3. CCA will contribute and deposit with the District the sum of \$500,000.00 toward the cost of the Capital Projects which funds shall be the first funds disbursed for the architectural, engineering and construction costs. The District will make all disbursements for construction related costs, including architectural, engineering, construction management and contractor fees and costs pursuant to procedures as are typical for the disbursement of construction loans in the Denver, Colorado area. CCA will be responsible for all cost overruns and change order increases in the construction costs and will deposit such funds with the District as needed.
4. CCA will meet and comply with all applicable state, federal and local laws, ordinances and regulations pertaining to the proposed Capital Projects. CCA shall comply with the notification and approval process for any improvements as set forth in C.R.S. 22-32-124, and shall obtain all permits through the State Department of Labor and Employment, Oil and Public Safety Division, Public Schools Section the Division.
5. The CCA Charter Contract will be amended to provide:
 - a. Subject to the terms and conditions of CCA's existing bond indebtedness and the liens securing the same that encumber the land and improvements utilized by CCA and the rights of the trustee and bondholders thereunder, a provision that at the District's option, ownership of the land and improvements utilized by CCA shall automatically revert to the District if: (i) CCA loses its charter, (ii) becomes insolvent and can no longer operate as a charter school, or (iii) CCA should cease, for any reason to operate as a charter school, whether voluntarily or involuntarily.
 - b. A provision that CCA shall not attempt on its own behalf or assist in any effort to further encumber all or any of the property and improvements for which the funding is provided without the written consent of the District, which consent shall not be unreasonably withheld, conditioned or delayed and which consent may not be withheld if future proposed financing or encumbrance is fiscally and economically responsible and sound.
 - c. CCA and its facilities will be subject to periodic inspections and reviews by District personnel and the District's Long Range Facility Planning Committee.
 - d. Except as expressly stated in the proposed amended provisions to the Charter Contract, all of the terms, covenants, and conditions of the existing Charter Contract as amended shall remain in full force and effect.
 - e. By providing funds for capital construction needs as herein authorized, the District does not assume any additional obligation or liability for any cost for the lease, repair, purchase, renovation or maintenance of CCA's facilities.

6. Should CCA accept the proposal outlined above, CCA shall, within 14 days from the date hereof, by action of the governing board of CCA at a duly noticed and called public meeting, for which the District will be given notice, formally approve the provisions hereof.
7. In the event CCA elects to proceed with a separate mill levy ballot question to the voters of the District, such action shall be deemed a rejection of the District's proposal herein contained and considered CCA's effort for funding in lieu of the foregoing provisions. In the event of CCA's rejection of the provisions hereof or in the event CCA fails to meet any of the forgoing conditions and requirements, all provisions herein pertaining to the District's funding proposal will be deemed withdrawn and considered null and void without further action by the Board.
8. In addition to the forgoing funding, the District will provide CCA with up to \$30,000 for improvements to CCA's technology programs, subject, however, to the District's prior reasonable approval of the specific technology projects and equipment to be acquired by CCA, if any.