

Agenda Item #:

50

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 11/21/2006

☐ Consent

☐ Regular

☒ Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: (a) conduct a TEFRA public hearing concerning the issuance of \$12,000,000 revenue bonds for the benefit of Palm Beach Day Academy, Inc. and PBDA-Flagler Campus, Inc. (the "Bonds") and (b) adopt a bond resolution authorizing the issuance of the Bonds.

Summary: On October 17, 2004 the County approved the application of Palm Beach Day School, Inc. and PBDA-Flagler Campus, Inc. (jointly, the "Company") for the issuance of the Bonds. Bond proceeds will be used to (i) refund the County's Industrial Development Revenue Bonds (The Palm Beach Day School Project) Series 1999 (the "Refunded Bonds") issued in November, 1999 and outstanding in the principal amount of \$8,000,000, (ii) refinance existing debt of the Company in the amount of approximately \$2,000,000, (iii) pay the costs of various capital expenditures at the Palm Beach and West Palm Beach campuses of the Company (the "Project") and (iv) pay the costs of issuance of the Bonds. Under the Internal Revenue Code, prior to the issuance of the Bonds, the Board is required to conduct a TEFRA public hearing. In order to authorize the Bonds the County is being requested to adopt a bond resolution. **Neither the taxing power nor the faith and credit of the County, nor any County funds, shall be pledged to pay principal or redemption premiums, if any, or interest on the Bonds.**

District 1 (PFK)

Background and Policy Issues: The Bonds will be credit-enhanced by a letter of credit issued by Wachovia Bank and will be rated "Aa2/VMIG-1."

Attachments:

1. Resolution (The exhibits are voluminous and are available for review in the Office of the County Attorney).

Recommended by:

County Attorney

Date

11/13/06

Approved by:

N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	<u>0</u>	—	—	—	—
Operating Costs	<u>0</u>	—	—	—	—
External Revenues	<u>0</u>	—	—	—	—
Program Income (County)	<u>0</u>	—	—	—	—
In-Kind Match (County)	<u>0</u>	—	—	—	—
NET FISCAL IMPACT	<u>0</u>	—	—	—	—
# ADDITIONAL FTE POSITIONS (Cumulative)	—	—	—	—	—

Is Item Included in Current Budget? Yes ___ No X

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___


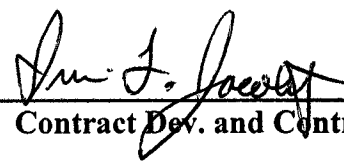
Reporting Category ___

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. **Departmental Fiscal Review:** All costs to be borne by Applicant. No fiscal impact to Palm Beach County. Palm Beach County will receive \$10,000 in industrial development revenue bond fees as well as legal fees for services rendered in reviewing this project

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 11/7/06
 11/8/06
 OFMB Contract Dev. and Control
 Legal Sufficiency: 11/7/06 PM 11-6-06
 11/8/06

B. Legal Sufficiency:

 11/9/06
 Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

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RESOLUTION NO. R-2006-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA AUTHORIZING THE ISSUANCE OF ITS \$12,000,000 TAX EXEMPT ADJUSTABLE MODE REVENUE BONDS, SERIES 2006 (PALM BEACH DAY ACADEMY, INC. PROJECT) FOR THE PURPOSES OF FINANCING A PORTION OF THE COST OF CONSTRUCTING IMPROVEMENTS TO EDUCATIONAL FACILITIES OWNED AND OPERATED BY PALM BEACH DAY ACADEMY, INC. AND PBDA-FLAGLER CAMPUS, INC., REFINANCING DEBT OF PBDA-FLAGLER CAMPUS, INC. AND PROVIDING FUNDS TO REFUND THE COUNTY'S INDUSTRIAL DEVELOPMENT REVENUE BONDS (PALM BEACH DAY SCHOOL PROJECT) SERIES 1999; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT, INDENTURE OF TRUST AND BOND PURCHASE AGREEMENT; AWARDING THE SALE OF THE BONDS BY A NEGOTIATED SALE; APPROVING A TRUSTEE FOR THE BONDS; APPROVING THE FORM OF AND AUTHORIZING THE PREPARATION, EXECUTION AND DELIVERY OF A FINAL OFFICIAL STATEMENT; AUTHORIZING CERTAIN OFFICIALS AND EMPLOYEES OF THE COUNTY TO TAKE ALL ACTIONS REQUIRED IN CONNECTION WITH THE ISSUANCE OF THE BONDS; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Palm Beach County, Florida (the "Issuer") is a political subdivision of the State of Florida and is empowered by the provisions of the Florida Constitution and Chapter 159, Part II, Florida Statutes (the "Act"), to issue obligations for the purpose of financing and refinancing educational facilities; and

WHEREAS, the Issuer has previously issued its Industrial Development Revenue Bonds (Palm Beach Day School Project) Series 1999 (the "Refunded Bonds") in order to make a loan to Palm Beach Day School, Inc. (now known as Palm Beach Day Academy, Inc.) and PBDA-Flagler Campus, Inc. (jointly and severally, the "Borrower") for the purpose of assisting the Borrower in financing a portion of the cost of acquiring, constructing and equipping educational facilities to be owned and operated by the Borrower; and

WHEREAS, on October 17, 2006 the Board of County Commissioners (the "Governing Body") of the Issuer approved the application of the Borrower for the issuance of industrial development revenue bonds to finance the cost of constructing improvements to educational facilities owned by the Borrower, including reimbursing the Borrower for expenditures previously

incurred by it for such purpose, and provide funds to refund the Refunded Bonds and to refinance debt of the Borrower, conditioned upon the adoption of this resolution and certain other conditions; and

WHEREAS, the Issuer has determined to issue its Tax Exempt Adjustable Mode Revenue Bonds, Series 2006 (Palm Beach Day Academy, Inc. Project) in the principal amount of not exceeding \$12,000,000 (the "Bonds") as further provided herein; and

WHEREAS, of even date herewith the Issuer has conducted a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986, as amended, with respect to the issuance of the Bonds; and

WHEREAS, the Issuer and the Borrower have received a proposed form of Bond Purchase Agreement (the "Bond Purchase Agreement") from Wachovia Bank, National Association (the "Underwriter") to purchase the Bonds on the basis of the terms and provisions therein; and

WHEREAS, the Issuer agrees to such terms and provisions; and

WHEREAS, it is necessary and desirable to approve the form of an Indenture of Trust, a Loan Agreement and an Official Statement in connection with the issuance of the Bonds, and to provide a method to specify the interest rate(s), maturity date(s), redemption provisions and other details for the Bonds; and

WHEREAS, the issuance of the Bonds and the sale thereof to the Underwriter will, in the judgment of the Issuer, serve the intended public purpose and in all respects conform to the provisions and requirements of the Act;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY THAT:

Section 1. Definitions. Unless the context otherwise requires, terms used herein in capitalized form and not otherwise defined herein shall have the meanings specified therefor in the Indenture of Trust attached hereto as Exhibit "A" (the "Indenture"). Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

Section 2. Authority for this Resolution. This resolution, herein called the "Resolution," is adopted pursuant to the Act.

Section 3. Findings. It is hereby ascertained, determined and declared as follows:

A. The Project is appropriate to the needs and circumstances of, and will make a significant contribution to the economic growth of the Issuer, will provide and preserve gainful employment, and will serve a public purpose, consistent with Article VII, Section 10(c) of the Florida Constitution, by advancing the economic prosperity and the general welfare of the Issuer, the State, and the people thereof, and in particular, the issuance of the Bonds is in the common interest of the people of Palm Beach County, Florida. The Borrower is financially responsible and

fully capable of and willing to fulfill any obligations which it may incur in connection with the financing of the Project as contemplated by this Resolution. The Issuer will be able to cope satisfactorily with the impact of the Project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair and maintenance of the Project and on account of any increases in population or other circumstances resulting therefrom.

B. The Issuer hereby finds that the Agreement makes adequate provision for the operation, repair and maintenance of the Project at the expense of the Borrower and for the payment of the principal and interest on the Bonds and all other costs incurred by the Issuer in connection with the Bonds and the Project.

Section 4. Authorization of Bonds. The Issuer hereby approves the Bonds for purposes of Section 147(f) of the Code. Subject and pursuant to the provisions hereof and of the Indenture, for the purpose of financing the Project, the issuance of revenue bonds of the Issuer under the authority of the Act in the principal amount of not to exceed \$12,000,000 is hereby approved. The Chairperson is hereby authorized to award the sale of the Bonds in an aggregate principal amount sufficient, together with other available funds, to refund the Refunded Bonds, and to finance the Project and the costs associated with issuance of the Bonds, as requested by the Borrower, provided that the aggregate principal amount of the Bonds shall not exceed \$12,000,000, the interest rate on the Bonds shall not exceed the lesser of the maximum rate permitted by law and the purchase price shall not be less than ninety-eight percent (98%) of the principal amount of the Bonds (reduced by any original issue discount and increased by any premium reflected in the initial offering price to the public), all as approved by the Borrower and set forth in the Bond Purchase Agreement.

Subject to the foregoing, the Bonds shall be dated, shall bear interest at such rates, mature on such dates, be subject to redemption on such dates and in such amounts and at such price and have such other details, terms and conditions all as set forth in the Indenture.

Section 5. Authorization of Execution and Delivery of the Indenture. As security for the payment of the principal of and interest on the Bonds, the Indenture, in substantially the form thereof attached hereto as Exhibit "A," with such changes, alterations and corrections as may be approved by the Chairperson, such approval to be presumed by the execution thereof by the Chairperson, is hereby approved by the Issuer, and the Issuer hereby authorizes and directs the Chairperson to execute the Indenture and the Clerk to attest thereto under the official seal of the Issuer, and to deliver the Indenture to the Trustee all of the provisions of which, when executed and delivered by the Issuer as authorized herein, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

Section 6. Authorization of Execution and Delivery of the Loan Agreement. The Loan Agreement, in substantially the form thereof attached hereto as Exhibit "B," with such changes, alterations and corrections thereto as may be approved by the Chairperson, such approval to be presumed by the execution thereof by the Chairperson, is hereby approved by the Issuer, and the Issuer authorizes and directs the Chairperson to execute the Loan Agreement and the Clerk to attest thereto under the official seal of the Issuer, and to deliver the Loan Agreement to the Borrower, all of the provisions of which, when executed and delivered by the Issuer as authorized herein shall be

deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

Section 7. Sale of Bonds: Execution and Delivery of the Bond Purchase Agreement. The Bonds are hereby awarded to the Underwriter upon the terms and conditions set forth in the Bond Purchase Agreement. The Bond Purchase Agreement, in substantially the form thereof attached hereto as Exhibit "C," with such changes, alterations and corrections thereto as may be approved by the Chairperson, such approval to be presumed by the execution thereof by the Chairperson, is hereby approved by the Issuer, and, upon execution thereof by the Borrower, the Issuer authorizes and directs the Chairperson to execute the Bond Purchase Agreement and the Clerk to attest thereto under the official seal of the Issuer, and to deliver the Bond Purchase Agreement to the Underwriter, all of the provisions of which, when executed and delivered by the Issuer as authorized herein shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein. The Issuer hereby determines that a negotiated sale of the Bonds is in the best interest of the Issuer, the Borrower and the citizens and inhabitants of Palm Beach County by reason of the limited market for bonds such as the Bonds (due, among other reasons, to the fact that the Bonds are limited obligations of the Issuer payable only from the sources provided therefor in the Indenture) and because revenue bonds such as the Bonds are typically sold by negotiated sale. The Underwriter has filed with the Issuer the disclosure required by Section 218.385, Florida Statutes, and competitive bidding for the Bonds is hereby waived.

Section 8. Appointment of Trustee. U. S. Bank National Association is hereby appointed Trustee to act under the Indenture.

Section 9. Official Statement. The Issuer hereby approves the form and content of the Official Statement relating to the Bonds attached hereto as Exhibit "D," with such changes, alterations and corrections thereto as may be approved by the Chairperson, and ratifies the use thereof in connection with the sale of the Bonds, and the Chairperson is authorized and directed to execute the Official Statement, such execution to be conclusive evidence of such approval.

Section 10. No Personal Liability. No covenant, stipulation, obligation or agreement herein contained or contained in the Loan Agreement, the Indenture, the Bond Purchase Agreement, the Bonds, or any instrument contemplated thereby shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, member, agent or employee of the Issuer in his or her individual capacity, and no member of the Governing Body of the Issuer executing the Bonds or other documents herein mentioned shall be liable personally thereon or be subject to any personal accountability by reason of the issuance or execution thereof.

Section 11. No Third Party Beneficiaries. Except as herein or in the documents herein mentioned otherwise expressly provided, nothing in this Resolution or in such documents, express or implied, is intended or shall be construed to confer upon any Person other than the Issuer, the Borrower, the Owners of the Bonds, the Underwriter, the issuer of the Credit Facility and the Trustee any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof or of such documents; this Resolution and such documents being intended to be and being for the sole and exclusive benefit of such parties.

Section 12. Prerequisites Performed. All acts, conditions and things relating to the passage of this Resolution and required by the Constitution or laws of the State of Florida to happen, exist and be performed precedent to and in the passage hereof have happened, exist and have been performed as so required.

Section 13. General Authority. The Clerk and the members of the Governing Body of the Issuer are hereby authorized to do all acts and things required of them by this Resolution, the Agreement, the Bond Purchase Agreement, or the Indenture, or desirable or consistent with the requirements hereof or thereof, for the full punctual and complete performance of all terms, covenants and agreements contained in the Bonds, the Loan Agreement, the Bond Purchase Agreement, the Indenture and this Resolution.

Section 14. General Authorizations. The Chairperson, and any other member of the Governing Body of the Issuer, the Clerk, the County Attorney, and any other appropriate employee of the Issuer, are hereby each authorized to execute, publish, file and record such other documents, instruments, notices, and records and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution, and to comply with and perform the obligations of the Issuer under the Indenture, the Loan Agreement, and the Bond Purchase Agreement.

Section 15. Resolution Constitutes a Contract. The Issuer covenants and agrees that this Resolution shall constitute a contract between the Issuer and the Owners from time to time of the Bonds and that all covenants and agreements set forth herein and in the Loan Agreement and the Indenture to be performed by the Issuer shall be for the equal and ratable benefit and security of all Owners of the Bonds.

Section 16. Severability. If any one or more of the covenants, agreements, or provisions contained herein or in the Bonds shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements, or provisions hereof and thereof and shall in no way affect the validity of any of the other provisions of this Resolution or of the Bonds.

Section 17. Repealer. All resolutions or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of any such conflict, hereby superseded and repealed.

Section 18. Effective Date. This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the motion passed as follows:

District 1: Karen T. Marcus	_____
District 2: John F. Koons	_____
District 3: Warren H. Newell	_____
District 4: Mary McCarty	_____
District 5: Burt Aaronson	_____
District 6: Jess R. Santamaria	_____
District 7: Addie L. Greene	_____

The Chairperson thereupon declared the Resolution duly passed and adopted this 21st day of November, 2006.

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF
COUNTY COMMISSIONERS
Sharon R. Bock, Clerk and Comptroller

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By Paul F. [Signature]
County Attorney

EXHIBIT "A"

INDENTURE OF TRUST

EXHIBIT "B"

LOAN AGREEMENT

EXHIBIT "C"

BOND PURCHASE AGREEMENT

EXHIBIT "D"

PRELIMINARY OFFICIAL STATEMENT