

Agenda Item #: 5D

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: 7/22/08 [ ] Consent [ ] Regular  
[X] Public Hearing  
Department  
Submitted By: COUNTY ATTORNEY'S OFFICE  
Submitted For:

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to: (a) conduct a TEFRA public hearing concerning the issuance of not to exceed \$75,000,000 of Revenue and Refunding Revenue Bonds (Pine Crest Preparatory School, Inc. Project), Series 2008 (the "Bonds") in order to fund a loan to Pine Crest Preparatory School, Inc. (the "School"), a Florida non-profit corporation which is exempt for taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and (b) adopt a resolution authorizing the issuance of the Bonds.

**Summary:** On July 8, 2008, the Board approved the application of the School for the issuance of Bonds by the County in an amount not to exceed \$75,000,000. Proceeds of the Bonds will be used to finance the costs of (i) the acquisition, construction, reconstruction and equipping of educational facilities of Pine Crest School at (a) its Boca Raton campus located at 2700 St. Andrews Boulevard, Boca Raton, Florida 33434 and (b) its Fort Lauderdale campus located at 1501 N. E. 62nd Street, Fort Lauderdale, Florida 33334 and (ii) current refunding the \$25,500,000 principal amount of outstanding City of Fort Lauderdale, Florida Revenue Bonds (Pine Crest Preparatory School Inc. Project) Series 2002 (the "Prior Bonds"), which Prior Bonds financed the costs of certain educational facilities at the School's Boca Raton and Fort Lauderdale campuses. Since part of the educational facilities are located in the City of Boca Raton, Florida, a municipal corporation located in the County, and part are located in the City of Fort Lauderdale, Florida, the County will be authorized pursuant to an interlocal agreement with the City of Fort Lauderdale, Florida to issue the Bonds for such educational facilities. The Bonds will be payable solely from revenues derived from the School and further secured by a letter of credit from Bank of America, N.A. **Neither the taxing power nor the faith and credit of the County, nor any County funds shall be pledged to pay principal or redemption premium, if any, or interest on the Bonds. District 4 (PFK)**

**Background and Policy Issues:** Under the Internal Revenue Code, prior to the issuance of the Bonds, the County is required to conduct a TEFRA public hearing. The Bonds will be credit-enhanced by a letter of credit issued by Bank of America, N.A. The School has also requested that the Board adopt a resolution authorizing the issuance of the Bonds.

**Attachments:**

1. The Bond Resolution is attached. The exhibits are voluminous and are available in the County Attorney's Office.

Recommended by: DM Neiman 7/10/08  
County Attorney Date  
Approved by: N/A

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	—	—	—	—	—
Operating Costs	—	—	—	—	—
External Revenues	<u>(\$10,000)</u>	—	—	—	—
Program Income (County)	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—
NET FISCAL IMPACT	<u>(\$10,000)</u>	—	—	—	—
# ADDITIONAL FTE POSITIONS (Cumulative)	—	—	—	—	—

Is Item Included in Current Budget? Yes \_\_\_ No \_\_\_

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 cost 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:

*atwillhite* 7-17-08  
OFMB  
7-14-08  
7/16/08

*[Signature]* 7/18/08  
Contract Dev. and Control  
7/17/08

### B. Legal Sufficiency:

*Paul F. [Signature]* 7/8/08  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

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



RESOLUTION NO. R-2008-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE NEGOTIATED SALE OF ITS PALM BEACH COUNTY, FLORIDA, REVENUE AND REFUNDING REVENUE BONDS (PINE CREST PREPARATORY SCHOOL, INC. PROJECT), SERIES 2008 (THE "BONDS") IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$75,000,000; APPROVING THE ISSUANCE OF THE BONDS WITHIN THE MEANING OF SECTION 147(f) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INTERLOCAL AGREEMENT; DETERMINING CERTAIN DETAILS OF THE BONDS; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT TO PROVIDE SECURITY FOR SUCH BONDS; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE BETWEEN THE COUNTY AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN OTHER DOCUMENTS, INCLUDING AN UNDERWRITING AGREEMENT; APPROVING FORM AND AUTHORIZING DISTRIBUTION OF THE OFFICIAL STATEMENT FOR THE BONDS; APPROVING THE FORM OF THE LETTER OF CREDIT TO BE ISSUED BY BANK OF AMERICA, N.A.; APPROVING THE UNDERWRITER, THE REMARKETING AGENT, THE TRUSTEE, THE PAYING AGENT AND THE TENDER AGENT; AUTHORIZING THE REGISTRATION OF THE BONDS UNDER A BOOK-ENTRY SYSTEM; AUTHORIZING THE PROPER OFFICERS OF THE COUNTY TO DO ALL OTHER THINGS DEEMED NECESSARY OR ADVISABLE IN CONNECTION WITH THE SALE AND DELIVERY OF THE BONDS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Pine Crest Preparatory School, Inc. (the "Borrower") is a Florida not-for-profit corporation which is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which owns and operates certain educational facilities located in the City of Fort Lauderdale, Florida ("Fort Lauderdale") and the City of Boca Raton, Florida, a municipal corporation located in Palm Beach County, Florida (the "County"); and

**WHEREAS**, pursuant to the provisions of the Florida Constitution, Part II of Chapter 159, Florida Statutes, as amended, Chapter 125, Florida Statutes, as amended, and other applicable provisions of law (the "Act") and the policies of the County, the Borrower has submitted an application (the "Application") to the County requesting that the County issue, pursuant to the provisions of the Act, revenue bonds in an aggregate principal amount not exceeding \$75,000,000 to finance all or a portion of the costs of (i) current refunding all

outstanding City of Fort Lauderdale, Florida Revenue Bonds (Pine Crest Preparatory School Inc. Project) Series 2002 (the "Prior Bonds"), currently outstanding in the principal amount of \$25,500,000, (ii) acquiring, constructing, reconstructing and equipping educational facilities located in the County and in Fort Lauderdale and (iii) paying certain costs incurred in connection with the issuance of the Bonds (collectively, the "Project"); and

**WHEREAS**, County staff having found the Borrower's Application meeting the necessary requirements for the County to consider the issuance of revenue bonds to finance the Project, the Board of County Commissioners of Palm Beach County, Florida, the governing body of the County (herein, the "Board") has approved the Application on July 8, 2008 and on such date, adopted a resolution, at the request of the Borrower, as a declaration of official intent by the County to issue its not exceeding \$75,000,000 in original aggregate principal amount of Revenue and Refunding Revenue Bonds (Pine Crest Preparatory School, Inc. Project), Series 2008 (the "Bonds") to finance all or a portion of the costs of the Project pursuant to the limitations and conditions set forth in such resolution and as set forth in subsequent proceedings of the Board; and

**WHEREAS**, on this date, the Board held a public hearing (the "Public Hearing") regarding the proposed financing of the Project through the issuance by the County of the Bonds, as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

**WHEREAS**, there was published, at least fourteen (14) days prior to the Public Hearing, a notice of such hearing, proof of publication of such notice being attached hereto as Exhibit A; and

**WHEREAS**, it is intended that this Resolution shall constitute the approval of the issuance of the Bonds required by Section 147(f) of the Code; and

**WHEREAS**, pursuant to the Florida Interlocal Cooperation Act of 1969, Sections 163.01 through 163.04, Florida Statutes, as amended (the "Interlocal Act"), the County and Fort



Lauderdale are authorized to enter into interlocal agreements as public agencies (as such term is defined in the Interlocal Act) of the State to provide for the joint exercise of powers, privileges and authority which the County and Fort Lauderdale share in common; and

**WHEREAS**, the County and Fort Lauderdale constitute public agencies for purposes of the Interlocal Act; and

**WHEREAS**, the County hereby determines that to evidence the authorization granted to the County for the purposes herein described, and to set forth the limitations and conditions of such grant of authority, the County and Fort Lauderdale shall enter into that certain Interlocal Agreement substantially in the form attached hereto as Exhibit B (herein, the "Interlocal Agreement"); and

**WHEREAS**, the proceeds of the Bonds will be loaned to the Borrower pursuant to the terms and provisions of that certain Loan Agreement (the "Loan Agreement") by and between the County and the Borrower in substantially the form attached hereto as Exhibit C and the proceeds will be used by the Borrower to finance all or a portion of the costs of the Project; and

**WHEREAS**, the Board hereby determines that it would be in the best interest of the County to enter into that certain Trust Indenture (the "Indenture") by and between the County and the Trustee (as hereinafter defined) for the purpose of setting forth the terms, conditions and covenants that are necessary to secure the Bonds and protect the rights of the holders of the Bonds and the Board deems it advisable for the County to enter into the Indenture with respect to the Bonds, in substantially the form attached hereto as Exhibit D; and

**WHEREAS**, as further security for the repayment of the Bonds and to pay the purchase price of the Bonds when required under the terms of the Indenture, the Borrower has arranged for the delivery of an irrevocable direct-pay letter of credit (the "Letter of Credit") from Bank of America, N.A. (the "Bank"), which Bank's long-term and short-term financial strength is rated "AA" and "F1+", respectively, by Fitch Ratings (the "Rating"); and

**WHEREAS**, in connection with the sale of the Bonds, the Board hereby determines, in the manner provided in this Resolution, that it would be in the best interest of the County to sell the Bonds on a negotiated basis and to approve the form of and accept the terms of an Underwriting Agreement (the "Underwriting Agreement") by and among the County, the Borrower and Banc of America Securities LLC, as underwriter (the "Underwriter"), in substantially the form attached hereto as Exhibit E; and

**WHEREAS**, in addition to the proof of publication of the Public Hearing, the Loan Agreement, the Indenture and the Underwriting Agreement, there has been prepared and submitted to the Board a draft Official Statement (the "Official Statement") to be used in connection with the offering and sale of the Bonds, in substantially the form attached hereto as Exhibit F.

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

**SECTION 1. Recitals.** That the recitals set forth above are adopted by the Board as the findings of the County and are incorporated herein.

**SECTION 2. Definitions.** That the capitalized words and terms referred to in Article I of the Indenture, unless a different meaning clearly appears from the context, shall have the same meanings, if used, in this Resolution.

**SECTION 3. TEFRA Approval.** That the Bonds are hereby approved within the meaning of Section 147(f) of the Code.

**SECTION 4. Approval of Interlocal Agreement.** In order for the County to issue the Bonds to finance the portions of the Project located outside the territorial boundaries of the County, the County hereby requires and approves the Interlocal Agreement in substantially the form attached hereto as Exhibit B. The Chairperson or Vice Chair or any other member of the Board designated by the Chairperson (each individually, a "Designated Member") is hereby authorized to execute and deliver on behalf of the County, and the Clerk of the Circuit Court in

and for Palm Beach County, Florida, ex-officio clerk of the Board (the "Clerk") (or, in her absence, any Deputy Clerk) of the County is authorized to affix the Seal of the County and attest to the execution of the Interlocal Agreement in the form presented to this meeting together with such changes, modifications and deletions as the officer of the Board executing the same may deem necessary and appropriate with the advice of the County Attorney, such execution and delivery to be conclusive evidence of the approval and authorization thereof by the County.

**SECTION 5. Authorization of Bonds.** That, for the purpose of financing the costs of all or a portion of the Project, there are hereby authorized to be issued by the County its Revenue and Refunding Revenue Bonds (Pine Crest Preparatory School, Inc. Project), Series 2008 in an aggregate principal amount of not exceeding \$75,000,000 (the "Bonds").

**SECTION 6. Security for the Bonds.** That the Bonds will be special and limited obligations of the County. The principal of, or redemption price, or purchase price and interest on, the Bonds will be payable solely from the sources set forth in the Indenture. Neither the members of the Board nor any person executing any of the Bonds shall be liable personally on any of the Bonds by reason of the issuance thereof. The Bonds are special and limited obligations of the County and will not be a debt of the County, the State of Florida (the "State") or any other political subdivision thereof, and neither the faith and credit nor the taxing power of the County, the State or any other political subdivision thereof will be pledged to the payment of the principal of, or redemption price, or purchase price or interest on any of the Bonds.

**SECTION 7. Approval and Execution of Loan Agreement.** That the form of the Loan Agreement presented at this meeting and attached hereto as Exhibit C expected to be dated as of July 1, 2008, by and between the County and the Borrower, is hereby approved and adopted by the County, together with such changes, modifications and deletions as may be deemed necessary and appropriate. The Chairperson, Vice Chair or any Designated Member is hereby authorized to execute and deliver on behalf of the County, and the Clerk (or, in her absence, any Deputy Clerk) of the County is authorized to affix the Seal of the County and



attest to the execution of the Loan Agreement in the form presented to this meeting together with such changes, modifications and deletions as the officer of the Board executing the same may deem necessary and appropriate with the advice of Bond Counsel and the County Attorney, such execution and delivery to be conclusive evidence of the approval and authorization thereof by the County.

**SECTION 8.** Approval and Execution of Indenture. That the form, terms and provisions of the Indenture presented at this meeting and attached hereto as Exhibit D expected to be dated as of July 1, 2008, between the County and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), is hereby approved and adopted by the County, together with such changes, modifications and deletions as may be deemed necessary and appropriate. The Chairperson, Vice Chair or any Designated Member is hereby authorized to execute and deliver on behalf of the County, and the Clerk (or, in her absence, any Deputy Clerk) of the County is authorized to affix the Seal of the County and attest to the execution of the Indenture in the form presented to this meeting together with such changes, modifications and deletions as the officer of the Board executing the same may deem necessary and appropriate with the advice of Bond Counsel and the County Attorney, such execution and delivery to be conclusive evidence of the approval and authorization thereof by the County.

**SECTION 9.** Details of the Bonds. That the proceeds of the Bonds shall be applied, the Bonds shall mature in the year or years and in the amounts, bear interest at such rates, be subject to optional and mandatory tender, and be subject to redemption, all as provided in the Indenture. The execution of the Indenture shall constitute approval of such terms as set forth in this Section 9.

**SECTION 10.** Appointment of Trustee, Tender Agent, Paying Agent and Bond Registrar. That The Bank of New York Mellon Trust Company, N.A., having its designated corporate trust office in Jacksonville, Florida, is hereby appointed Trustee, Tender Agent, Paying Agent and Bond Registrar under the Indenture.



**SECTION 11. Negotiated Sale of Bonds Authorized.** That, based on current market conditions, the structure of the Bonds, the volatility of interest rates, the flexibility afforded by a negotiated sale and the nature and size of the financing, the Board hereby finds that it is necessary and in the best interest of the County that the Bonds be sold on a negotiated basis.

**SECTION 12. Appointment of Underwriter and Remarketing Agent.** That the County hereby appoints Banc of America Securities LLC, as the Underwriter of the Bonds pursuant to the terms and provisions of the Underwriting Agreement and as Remarketing Agent pursuant to the terms and provisions of the Remarketing Agreement expected to be dated as of July 1, 2008, between the Borrower and the Underwriter, as Remarketing Agent.

**SECTION 13. Sale of the Bonds.** That the proposal submitted by the Underwriter offering to sell the Bonds on the terms and conditions set forth in the Underwriting Agreement by and among the County, the Borrower and the Underwriter substantially in the form attached hereto as Exhibit E, is hereby approved and adopted by the County. Subject to the last sentence of this Section 13, the Chairperson, Vice Chair or any Designated Member is hereby authorized to execute and deliver on behalf of the County, and the Clerk (or, in her absence, any Deputy Clerk) of the County is hereby authorized (if so required) to affix the Seal of the County and attest to the execution of the Underwriting Agreement in substantially the form presented at this meeting. The disclosure statements of the Underwriter, as required by Section 218.385 of the Florida Statutes, to be delivered to the County prior to the execution of the Underwriting Agreement, a copy of which is attached as an exhibit to the Underwriting Agreement, will be entered into the official records of the Board. The Underwriting Agreement when in final form as determined by the County Attorney and Bond Counsel may be executed by the County without further action provided that (i) the initial interest rate on the Bonds does not exceed 8.00%, and (ii) the purchase price for the Bonds is not less than 98% of the par amount of the Bonds.

**SECTION 14. Official Statement.** That the form, terms and provisions of the Official Statement attached hereto as Exhibit F, with such changes as are necessary to conform to the details of the Bonds and the requirements of the Underwriting Agreement, is hereby approved. The County hereby authorizes the Official Statement when in final form to be used in connection with the offering and sale of the Bonds. The Official Statement may be modified in a manner not inconsistent with the substance thereof and the terms of the Bonds as shall be deemed advisable by Bond Counsel or Counsel to the County.

**SECTION 15. Book-Entry Registration System.** That the registration of the Bonds shall initially be by a book-entry only system and to evidence the same, the Chairperson, Vice Chair or any Designated Member is hereby authorized to execute and deliver on behalf of the County, and, if required, the Clerk (or, in her absence, any Deputy Clerk) of the County is hereby authorized to affix the Seal of the County and attest to the execution of any documents required to accomplish such system of registration.

**SECTION 16. Agreement of County.** That all covenants, stipulations, obligations and agreements contained in this Resolution and contained in the Indenture or other agreements to which the County is a party and which have been hereby approved by the County, shall be deemed to be the covenants, stipulations, obligations and agreements of the County and all such covenants, stipulations, obligations and agreements shall be binding upon the County.

**SECTION 17. No Other Rights Conferred.** That, except as herein otherwise expressly provided, nothing in this Resolution or in the Indenture, expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation other than the County, the owners of the Bonds issued under the provisions of this Resolution and the Indenture, the Trustee, the Borrower and the Bank, any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision thereof or the Indenture or any provision thereof; this Resolution, the Indenture and all of its provisions being intended to



be and being for the sole and exclusive benefit of the County, the owners from time to time of the Bonds issued under the provisions of this Resolution and the Indenture, the Trustee, the Borrower, the Borrower and the Bank.

**SECTION 18. Severability.** That, in case any one or more of the provisions of this Resolution, the Agreement, the Indenture, the Underwriting Agreement or of any of the Bonds issued hereunder or any other agreement securing or relating to the Bonds shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any of the other provisions of this Resolution, the Agreement, the Indenture, the Underwriting Agreement or of said Bonds or other agreements, but this Resolution, the Agreement, the Indenture, the Underwriting Agreement, the other agreements and said Bonds shall be construed and enforced as if such illegal or invalid provision or provisions had not been contained therein.

**SECTION 19. Further Actions.** That the Chairperson of the Board, each other member of the Board, the Clerk or any Deputy Clerk, the County Administrator and the Debt Manager, and any other authorized official of the County, be and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments, to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Resolution.

**SECTION 20. Headings Not Part of this Resolution.** That any headings preceding the texts of the several sections of this Resolution shall be solely for convenience of reference and shall not form a part of this Resolution, nor shall they affect its meaning, construction or effect.

**SECTION 21. Repealer.** That all resolutions or proceedings, or parts thereof, in conflict with the provisions of this Resolution are to the extent of such conflict hereby repealed

**SECTION 22.** Effective Date. That this Resolution shall take effect immediately upon its passage.

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 vote was as follows:

Commissioner Addie L. Greene, Chairperson	-
Commissioner John F. Koons, Vice Chair	-
Commissioner Karen T. Marcus	-
Commissioner Robert J. Kanjian	-
Commissioner Mary McCarty	-
Commissioner Burt Aaronson	-
Commissioner Jess R. Santamaria	-

The Chairperson thereupon declared the Resolution duly passed and adopted this 22<sup>nd</sup> day of July, 2008.

PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By: Paul F. [Signature]  
County Attorney



## LIST OF EXHIBITS

- EXHIBIT A - Proof of Publication
- EXHIBIT B - Interlocal Agreement
- EXHIBIT C - Loan Agreement
- EXHIBIT D - Trust Indenture
- EXHIBIT E - Underwriting Agreement
- EXHIBIT F - Draft Official Statement

MIA 180.064,534v5050372.010200