

Agenda Item #:

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

Meeting Date: Nov. 3, 2009      ☒ Consent      ☐ Regular  
    ☐ Ordinance      ☐ Public Hearing  
 Department:      Office of Financial Management & Budget

## I. Executive Brief

**Motion and Title:** Staff recommends motion to adopt a Resolution renaming the construction fund for the \$80,705,000 Public Improvement Revenue Bonds, Series 2001 (Convention Center Project) as the Convention Center Renewal/Replacement Fund; authorizing the use of the moneys therein for future capital expenditures relating to the convention center and rebate payments; approving the form and authorizing the execution of a certificate of the County in connection with the permitted uses of the moneys on deposit therein; and providing an effective date.

**Summary:** On March 17, 2009, the Board approved the recommendation by Facilities Development and Operation (FDO) to use the remaining funds in the Series 2001 Bonds Convention Center Construction Fund for future capital expenditures in the Renewal/Replacement Fund for the convention center. The County received a bond counsel opinion indicating that the renaming of the construction fund to the Renewal and Replacement Fund and the use the funds on hand and interest earnings for future capital expenditures and rebate payments for the convention center would be permitted. The County's Certificate summarizes the terms and use of the funds in the Renewal/Replacement Fund. **Countywide (PFK)**

**Background and Justification:** In a Memo to the Board dated February 20, 2009, Facilities Development and Operations presented its recommendations for funding the recurring capital improvements at the Convention Center and Roger Dean Stadium. The remaining funds in the convention center construction fund would be designated for the Renewal/Replacement Fund for the convention center.

**Attachments:**

- ## 1. Resolution

Recommended by: Elizabeth Blaser 10/26/09  
Department Director Date

Approved By: [Signature] 10/27/09  
County Administrator Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Debt Service Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>*</u>	_____	_____	_____	_____
No. 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:

\* No Fiscal Impact. Based on bond counsel opinion, the Resolution changes the name of the Construction Fund for the Series 2001 Bonds to the Convention Center Renewal/Replacement Fund and the funds will be spent for that purpose.

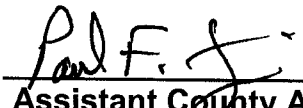
### C. Departmental Fiscal Review: \_\_\_\_\_

## III. REVIEW COMMENTS

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

 10/26/09  
10/26/09 OFMB 10/26/09  
28 10/26/09  
N/A  
Contract Dev. and Control

### B. Legal Sufficiency:

 10/27/09  
Assistant County Attorney

### C. Other Department Review:

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

**RESOLUTION NO. 2009-\_\_\_**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA RENAMING THE CONSTRUCTION FUND FOR THE COUNTY'S \$80,705,000 PUBLIC IMPROVEMENT REVENUE BONDS, SERIES 2001 (CONVENTION CENTER PROJECT) AS THE CONVENTION CENTER RENEWAL/REPLACEMENT FUND; AUTHORIZING THE USE OF THE MONEYS THEREIN FOR FUTURE CAPITAL EXPENDITURES RELATING TO THE CONVENTION CENTER AND REBATE PAYMENTS; APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF A CERTIFICATE OF THE COUNTY IN CONNECTION WITH THE PERMITTED USES OF THE MONEYS ON DEPOSIT THEREIN; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Palm Beach County, Florida (the "Issuer") previously issued its \$80,705,000 Public Improvement Revenue Bonds, Series 2001 (Convention Center Project) (the "Bonds"), pursuant to Resolution No. R-2001-0589, adopted by the Board of County Commissioners on April 17, 2001, as amended and supplemented (the "Bond Resolution"); and

**WHEREAS**, as required by the Bond Resolution, the County Engineer has submitted to the County a certificate indicating that the Project financed by the Bonds is complete (the "Engineer's Certificate"); and

**WHEREAS**, approximately \$6,430,000 of the proceeds of the Bonds and interest earnings thereon currently remain on deposit in the Construction Fund created by the Bond Resolution;

**WHEREAS**, subsequent to the issuance of the Bonds, the County issued its refunding revenue bonds and applied the proceeds thereof to refund and defease the Bonds; and

**WHEREAS**, notwithstanding the defeasance of the lien on the Pledged Revenues securing the Bonds established by the Bond Resolution as the result of the refunding of the Bonds, the County desires to maintain the Construction Fund in effect, subject to the terms hereof and to the applicable provisions of the Bond Resolution, as more fully described herein; and

**WHEREAS**, the Bond Resolution permits the County to use funds on deposit in the Construction Fund following completion of the Project for any lawful purpose of the County, subject to obtaining an Opinion of Bond Counsel to the effect that such application will not adversely affect the exclusion of interest on the Bonds from the gross income of the holders thereof for Federal income tax purposes; and

**WHEREAS**, the County desires to rename the Construction Fund the "Convention Center Renewal/Replacement Fund" and to use the moneys on deposit therein for future Capital Expenditures relating to the Convention Center (as such capitalized terms are hereinafter defined) and for arbitrage rebate payments with respect to the Bonds and any bonds issued to refund the Bonds;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA 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 in the Bond Resolution.

Section 2. Renaming of Construction Fund. The Construction Fund is hereby renamed the "Convention Center Renewal/Replacement Fund."

Section 3. Use of Moneys; County Certificate. Moneys on deposit in the Convention Center Renewal/Replacement Fund shall be used only for "Capital Expenditures" in connection with the County's Convention Center on Okeechobee Boulevard in downtown West Palm Beach, Florida (the "Convention Center"), as such Capital Expenditures are more fully set forth in the County Certificate (hereinafter defined) attached hereto as Exhibit A, or for rebate payments as described in Section 4 hereof. For purposes of this Resolution, a "Capital Expenditure" shall have the meaning ascribed to such term in Section 150 of the Internal Revenue Code of 1986, as amended (the "Code"). No moneys from any other source shall be used by the County for Capital Expenditures at the Convention Center until there is no money remaining in the Convention Center Renewal/Replacement Fund. Prior to the initial application of funds in the Convention Center Renewal/Replacement Fund, the County shall obtain the Opinion of Bond Counsel required by the Bond Resolution. The receipt of the required Opinion of Bond Counsel shall be acknowledged in the certificate of the County to be delivered to Bond Counsel in connection with obtaining such Opinion of Bond Counsel (the "County Certificate"). The County Certificate, substantially in the form attached hereto as Exhibit A, is hereby approved, with such changes, deletions, insertions and modifications as may be approved by the County's Debt Manager. The execution of such County Certificate by the Debt Manager shall be conclusive evidence of the approval of any changes from the form thereof attached to this Resolution. The Debt Manager is hereby authorized and directed to execute and deliver the County Certificate.

Section 4. Rebate Payments. Moneys on deposit in the Convention Center Renewal/Replacement Fund may also be used to make payments of arbitrage rebate to the federal government pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, with respect to the Bonds and any bonds issued to refund the Bonds.

Section 5. Interest Earnings. Any interest earned from moneys on deposit in the Convention Center Renewal/Replacement Fund shall be retained therein.

Section 6. Continued Applicability of Bond Resolution. The use of the moneys in the Convention Center Renewal/Replacement Fund shall continue to be subject to Sections 10(a), 10(b), 10(c), 10(d) and 11 of Article III of the Bond Resolution, all of which sections relate to the tax exempt status of the Bonds, but not to any other sections thereof.

Section 7. Amendment. No amendment to this Resolution shall be effective, and the County will not expend funds on deposit in the Convention Center Renewal/Replacement Fund except for Capital Expenditures in connection with the Convention Center, unless the County has first received an Opinion of Bond Counsel to the effect that the application of funds on deposit in the Convention Center Renewal/Replacement Fund pursuant to this Resolution will not adversely affect the exclusion of interest on the Bonds from the gross income of the holders thereof for federal income tax purposes pursuant to Section 103(a) of the Code.

Section 8. 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.

Section 9. Repealer. All resolutions or parts thereof of the County in conflict with the provisions herein contained are, to the extent of any such conflict, hereby superseded and repealed.

Section 10. 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 vote was as follows:

District 1: Karen T. Marcus  
District 2: John F. Koons  
District 3: Shelley Vana  
District 4: Steven L. Abrams  
District 5: Burt Aaronson  
District 6: Jess R. Santamaria  
District 7: Priscilla A. Taylor

The Chairman thereupon declared the Resolution duly passed and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

SHARON R. BOCK, CLERK & COMPTROLLER

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

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: Paul F. [Signature]  
Assistant County Attorney

**EXHIBIT A**  
**COUNTY CERTIFICATE**

## COUNTY CERTIFICATE

The undersigned is the Debt Manager of Palm Beach County, Florida (the "County") and hereby certifies the following with respect to the use of certain unexpended proceeds of the County's \$80,705,000 Public Improvement Revenue Bonds, Series 2001 (Convention Center Project) (the "Series 2001 Bonds").

### 1. Background

(a) The Series 2001 Bonds were issued on May 16, 2001 for the purpose of providing the moneys required to pay the costs of: (i) constructing and equipping the first phase of the hereinafter defined "Convention Center" (the "Project"), (ii) obtaining a policy that insures the timely payment of debt service on the Series 2001 Bonds (the "Insurance Policy"), (iii) obtaining a Reserve Account Credit Facility in an amount equal to the Debt Service Reserve Requirement for the Series 2001 Bonds, and (iv) issuing the Series 2001 Bonds. Proceeds in the amount of \$78,467,479 were deposited in the Construction Fund established by Resolution No. R-2001-0589 adopted by the County on April 17, 2001, as amended and supplemented (the "2001 Resolution").

(b) On February 25, 2004 the Series 2001 Bonds were advance refunded with proceeds of the County's Public Improvement Revenue Refunding Bonds, Series 2004 (Convention Center Project) (the "Series 2004 Bonds"). At the time the Series 2004 Bonds were issued the Project was not complete.

(c) The proceeds on deposit in the Construction Fund were expended, and investment earnings accumulated, substantially as shown in Exhibit A.

### 2. Current Status and Expectations

(a) The total sources and uses of the proceeds of the Series 2001 Bonds are set forth in Exhibit B, attached hereto. The balance of \$6,436,423 that remains unexpended on deposit in the Construction Fund (the "Unexpended Proceeds") represents accumulated investment earnings that were not expected at the date of issuance of the Series 2001 Bonds.

(b) The County Engineer has certified that the Project that was to have been financed with the proceeds of the Series 2001 Bonds is complete (the "Engineer's Certificate"). A true and correct copy of the Engineer's Certificate is attached as Exhibit C hereto.

(c) Based on the Renewal/ Replacement/Proposed for Capital Improvement Plan (the "Capital Improvement Plan"), dated January 7, 2009, provided by the Palm Beach County Convention Center Operations Department, additional capital expenditures are expected to be made by the County with respect to the Convention Center (the "Additional Projects"). For purposes hereof, the term "Convention Center" shall mean the County's Convention Center on Okeechobee Boulevard in downtown West Palm Beach, Florida.

(d) The County has received the Opinion of Bond Counsel (as defined in the 2001 Resolution) required to apply Unexpended Proceeds following receipt of the Engineer's Certificate. Pursuant to a Resolution adopted on \_\_\_\_\_, 2009 the County has authorized the use of the Unexpended Proceeds to fund the costs of the Additional Projects and has re-designated the Construction Fund as the "Convention Center Renewal/Replacement Fund." The County reasonably expects that the Unexpended Proceeds will be expended by December 31, 2020. Notwithstanding the foregoing, nothing herein shall require the County to expend funds on deposit in the Convention Center Renewal/Replacement Fund on any line item set forth in the Capital Improvement Plan and the County may modify amounts to be expended on any line item in said Capital Improvement Plan, so long as funds on deposit in the Convention Center Renewal/Replacement Fund are only expended on "Capital Expenditures," within the meaning of Section 150 of the Internal Revenue Code of 1986, as amended (the "Code"). No moneys from any other source shall be used by the County for Capital Expenditures at the Convention Center until there is no money remaining in the Convention Center Renewal/Replacement Fund. The County may also use moneys on deposit in the Convention Center Renewal/Replacement Fund to make payments of arbitrage rebate to the federal government pursuant to Section 148 of the Code, with respect to the Series 2001 Bonds and the Series 2004 Bonds.

### **3. Use of Additional Projects**

(a) The County will not enter into any arrangement to transfer ownership of the Additional Projects or any portion thereof to a nongovernmental person before the last Series 2004 Bond is retired.

(b) The County will not enter into a management contract or similar arrangement with any nongovernmental person with respect to any portion of the Additional Projects unless the contract satisfies the safe harbor requirements of Revenue Procedure 97-13.

(c) The County will not permit more than 10 percent of the Additional Projects to be used for a private business use as (within the meaning of section 141(b) of the Code) if more than 10 percent of the debt service on the Series 2004 Bonds is (i) secured by property used for a private business use or payments in respect of such property or (ii) to be derived from payments in respect of property used in a private business use. For this purpose, concession agreements and booking contracts which do not qualify for the 90-day or 30-day exception in 26 C.F.R. §1.141-3(d)(3) give rise to private business use.

(d) Notwithstanding anything to the contrary in this Section 3, the County may enter into any contract or arrangement with respect to the Additional Projects if the County receives an opinion of Bond Counsel that such contract or arrangement will not adversely affect the exemption from federal income taxation of interest on the Series 2001 Bonds or the Series 2004 Bonds.



(e) If an action is taken that would (absent remedial action) cause the Series 2001 Bonds or the Series 2004 Bonds to be treated as private activity bonds (within the meaning of Section 141 of the Code), the County will take remedial action under 26 CFR § 1.141-12 to the extent necessary to preserve the exclusion from gross income of interest on the Series 2001 Bonds or the Series 2004 Bonds.

#### 4. Arbitrage Restrictions

(a) As proceeds of the Series 2004 Bonds discharge the principal of the Series 2001 Bonds, the Unexpended Proceeds become Transferred Proceeds of the Series 2004 Bonds in an amount equal to the Unexpended Proceeds multiplied by a fraction the numerator of which is the principal amount of the Series 2001 Bonds discharged on that date and the denominator of which is the total outstanding principal amount of the Series 2001 Bonds immediately before the discharge date.

(b) The Unexpended Proceeds will not be invested at a yield in excess of the yield on the Series 2001 Bonds, 5.265677%, or the yield on the Series 2004 Bonds, 3.059617%, as applicable.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this \_\_\_\_ day of \_\_\_\_, 2009.

**PALM BEACH COUNTY, FLORIDA**

By: \_\_\_\_\_  
Debt Manager

## EXHIBIT A

### SOURCES AND USES OF PROCEEDS – BY FISCAL YEAR

<u>Entry</u>	<u>Credit</u>	<u>Debit</u>	<u>Balance</u>
Deposit of Bond Proceeds	\$ 78,467,479		\$ 78,467,479
FY 2001 Project Costs		\$ 3,849,006	74,618,473
FY 2001 Interest Earnings	3,041,039		77,659,512
Reimbursement to County		3,211,057	74,484,455
 FY 2002 Project Costs		25,653,425	48,795,030
FY 2002 Interest Earnings	3,569,092		52,346,122
 FY 2003 Project Costs		40,022,778	12,341,344
FY 2003 Interest Earnings	1,173,135		13,514,479
 FY 2004 Project Costs		7,529,810	5,984,669
FY 2004 Interest Earnings	285,555		6,270,224
 FY 2005 Project Costs		688,415	5,581,809
FY 2005 Interest Earnings	123,696		6,705,505
 FY 2006 Project Costs		148,842	5,556,663
FY 2006 Interest Earnings	234,146		5,790,809
 FY 2007 Project Costs		3,476	5,787,333
FY 2007 Interest Earnings	332,854		6,120,187
 FY 2008 Project Costs		19,503	6,100,684
FY 2008 Interest Earnings	309,299		6,409,983
 FY 2009 Project Costs (YTD)		249,508	6,160,475
FY 2009 Interest Earnings (YTD)	275,948		6,436,423

**EXHIBIT B**

**SOURCES AND USES OF PROCEEDS OF 2001 BONDS**

Sources:		
Net Proceeds of Bonds	\$	79,623,707
Total Interest Earnings		<u>9,344,764</u>
TOTAL SOURCES:		88,968,471
Uses:		
Construction and FF&E	\$	78,164,763
Costs of Issuance (inc. UW discount)		1,156,228
Reimbursement to County		<u>3,211,057</u>
TOTAL USES:		<u>82,532,048</u>
BALANCE IN CONSTRUCTION FUND		6,436,423

**EXHIBIT C**  
**ENGINEER'S CERTIFICATE**