

Agenda Item #: 3D1

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: 4/20/2010

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file the executed Closing Agreement on Final Determination Covering Specific Matters dated March 11, 2010 (the "Closing Agreement"), by and among The Raymond F. Kravis Center for the Performing Arts (the "Borrower"), Palm Beach County, Florida (the "Issuer") and the Internal Revenue Service (the "Service").

Summary: Resolution No. 2002-0681 authorized issuance of industrial development bonds for The Raymond F. Kravis Center for the Performing Arts Project, Series 2002 (the "Bonds"). A review of the Bonds by the Service concluded that the Borrower failed to meet certain requirements of Section 103 of the Internal Revenue Code. The Closing Agreement settled certain matters covered under the Service's examination, resulting in the Borrower paying \$320,000 and redeeming a portion of the outstanding Bonds. The parties have executed the Closing Agreement and it should now be received and filed in the Minutes Department. Countywide (PFK)

Background and Justification: Section 13 of Resolution No. 2002-0681 authorized the Chair's execution of the Closing Agreement on behalf of the Issuer. The Minutes Department has requested that the Closing Agreement be presented as "receive and file" for acceptance into the official records of the Board of County Commissioners of Palm Beach County.

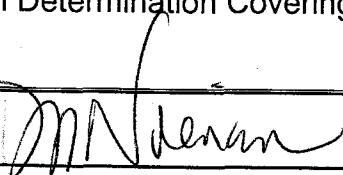
Attachments:

1. Closing Agreement on Final Determination Covering Specific Matters dated March 11, 2010

Recommended by: _____

Department Director

Date



4/1/10

Approved by: _____

N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	<u>0</u>	—	—	—	—
Operating Costs	<u>320,000</u>	—	—	—	—
External Revenues	<u><320,000></u>	—	—	—	—
Program Income (County)	<u>0</u>	—	—	—	—
In-Kind Match (County)	<u>0</u>	—	—	—	—
NET FISCAL IMPACT	<u>0</u> * See OFMB Comment	—	—	—	—
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	—	—	—	—

Is Item Included in Current Budget? Yes ___ No 0

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

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

C. Departmental Fiscal Review: No fiscal impact.

III. REVIEW COMMENTS

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

* PER EXHIBIT A OF THE CLOSING AGREEMENT, THE COUNTY AS ISSUER FORWARDS THE PAYMENT TO THE IRS. FUNDS ARE COVERED BY RAYMOND KRAVITZ CENTER, BONDPROX. 4/15/10
 OFMB 4/15/10
 J. Jacobus 4/16/10
 Contract Dev. and Control

B. Legal Sufficiency:

Paul F. [Signature] 3/30/10
Assistant County Attorney

C. Other Department Review:

Department Director

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

**CLOSING AGREEMENT ON FINAL DETERMINATION
COVERING SPECIFIC MATTERS**

Under section 7121 of the Internal Revenue Code of 1986, as amended (the "Code"), Palm Beach County, EIN 59-6000785, (the "Issuer"), The Raymond F. Kravis Center for the Performing Arts, EIN 59-2245054, (the "Borrower"), and the Commissioner of Internal Revenue (the "Service"), make this closing agreement (the "Agreement").

WHEREAS, the parties have determined the following facts and made the following legal conclusions and representations:

- A. This Agreement is in settlement of issues raised in an examination of the \$41,500,000 Variable Rate Demand Revenue Bonds (The Raymond F. Kravis Center for the Performing Arts Project) Series 2002, dated June 3, 2002, and issued June 4, 2002 (the "Bonds").
- B. The Service has conducted an examination of the Bonds and concluded that the Bonds fail to meet the requirements of section 103 of the Code as a result of private business use of Ballroom Level 1 of the Cohen Pavilion. Consequently, 95% of net proceeds were not used for the qualified purpose as required under Section 145(a) (2) (B) of the Code.
- C. The Service has not formally asserted any claims against the Issuer, or the Borrower, or sought to tax any holders of the Bonds on interest income on the Bonds.
- D. The Issuer, the Borrower, and the Service desire to settle the issues raised during the examination of the Bonds.
- E. The terms of this Agreement were arrived at by negotiation between the Issuer, the Borrower, and the Service, and may differ from the terms of settlement of other bond issues examined or to be examined by the Service.
- F. This Agreement is for the benefit of the past, present and future registered and beneficial owners of the Bonds (collectively, "the Bondholders").

NOW, IT IS HEREBY DETERMINED AND AGREED PURSUANT TO THIS CLOSING AGREEMENT EXECUTED BY THE PARTIES HERETO UNDER CODE SECTION 7121 THAT FOR FEDERAL INCOME TAX PURPOSES:

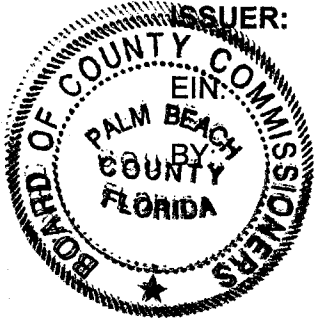
1. Prior to the execution and delivery of this Agreement, sum of \$320,000 (Three Hundred Twenty Thousand Dollars) (the "Settlement Amount") will be paid to the Service via the Electronic Federal Tax Payment System and in accordance with the directions contained in Exhibit A of this Agreement. Payment of the Settlement Amount shall not be made from proceeds of bonds described in section 103(a) of the Code.

2. The Settlement Amount paid pursuant to this Agreement is not refundable, or subject to credit or offset under any circumstance.
3. Outstanding Bonds in the amount of \$2,880,000 (Two Million, Eight Hundred Eighty Thousand Dollars) will be redeemed on or before May 3, 2010.
4. Within five (5) business days of the redemption of the Bonds, the Borrower will provide evidence to the Service that \$2,880,000 (Two Million, Eight Hundred Eighty Thousand Dollars) principal amount of the Bonds have been retired. Such evidence shall be sent to: Internal Revenue Service, Attn: Cynthia Gamble, 625 Fulton Street, Suite 500, Brooklyn, NY 11201.
5. This Agreement is executed with respect to a federal income tax liability of the Bondholders.
6. The Bondholders are not required to include in their gross income any interest on the Bonds because of the violations set forth herein.
7. No income shall be recognized by any Bondholder as a result of this Agreement or any payments made pursuant to this Agreement.
8. Notwithstanding anything to the contrary contained herein, the Service may take any appropriate action with respect to the Bonds, including taxing the Bondholders on interest earned on the Bonds, for violations other than those set forth herein or for violations arising after the effective date of this Agreement. Failure to retire the Bonds as specified in paragraph 3 above would be deemed to constitute a violation arising after the effective date of this Agreement.
9. No party shall endeavor by litigation or other means to attack the validity of this Agreement.
10. This Agreement may not be cited or relied upon by any person or entity whatsoever as precedent in the disposition of any other case.
11. The Issuer and the Borrower hereby consent to disclosure by the Service of information concerning the existence and subject matter of this Agreement to Members of Congress, the press, and the general public:
 - a) In the event of a default by the Issuer or the Borrower on any term in the Agreement; or
 - b) To the extent the Service deems necessary to correct any material misstatement with respect to this Agreement in response to a public statement by the Issuer, the Borrower, or an agent of the Issuer or Borrower.
12. This Agreement is final and conclusive, except that:
 - a) The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;

CLOSING AGREEMENT between Palm Beach County, Florida (EIN 59-6000785), the Issuer; The Raymond F. Kravis Center for the Performing Arts (EIN 59-2245054), the Borrower, and the Internal Revenue Service

- b) It is subject to sections of the Code that expressly provide that effect be given to their provisions (including any stated exceptions for section 7122) notwithstanding any other law or rule of law; and
- c) If it relates to a tax period ending after the effective date of this agreement, it is subject to any law enacted after the Agreement date that applies to that tax period.

By signing, the above parties certify that they have read and agreed to the terms of this Agreement.



ISSUER: Palm Beach County, Florida

EIN: 59-6000785

[Signature]
SIGNATURE

BURT AARONSON
NAME (PLEASE PRINT)

CHAFA, BEC
TITLE

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

3/11/10
DATE

[Signature]
COUNTY ATTORNEY

CONDUIT BORROWER: The Raymond F. Kravis Center for the Performing Arts

EIN: 59-2245054

BY: [Signature]
SIGNATURE

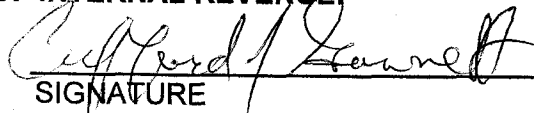
William Meyce
NAME (PLEASE PRINT)

Chairman
TITLE

3-9-10
DATE

COMMISSIONER OF INTERNAL REVENUE:

BY:


SIGNATURE

CLIFFORD J. GANNETT
DIRECTOR, TAX EXEMPT BONDS

NAME AND TITLE

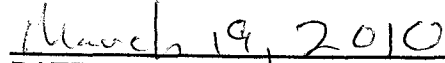

DATE

Exhibit A

Taxpayer Information Worksheet for
Electronic Federal Tax Payment System Deposit

This Agreement requires the electronic deposit of an amount to the U.S. Treasury through the Electronic Federal Tax Payment System (EFTPS) as a term for resolution of certain identified matters related to the tax-exempt treatment of interest income paid on a municipal obligation. This payment must be deposited in accordance with the directions contained in this Exhibit.

Please carefully review the taxpayer information listed below and immediately report any errors to the IRS Tax Exempt Bonds employee assigned to your case. If, to the best of your knowledge, the information is correct, then please deposit all required payments through the EFTPS (either *EFTPS – Direct* or *EFTPS – through a Financial Institution*) accurately and in accordance with this information and the terms of this Agreement.

1. Total Amount of Tax Deposit: **\$320,000**
2. Taxpayer's Employee Identification Number (EIN): **59-6000785**
3. Taxpayer Name Control (4 characters): **PALM**
4. Taxpayer Name (up to 35 characters): **PALM BEACH COUNTY, FLORIDA**
5. Tax Type (5 characters): **80384**
6. Tax Year (2 digits): **02**
7. Tax Month (2 digits): **06**

Your financial institution may call the EFTPS Financial Institution Helpline for questions or assistance at **1-800-605-9876** (Monday – Friday, 8:00 a.m. – 8:00 p.m., Eastern Standard Time).

NOTE: If you are not enrolled in *EFTPS – Direct* or *EFTPS – through a Financial Institution*, or otherwise wish to use the Same Day Payment option, then please provide your financial institution with the information listed above and direct them to accurately deposit your payments utilizing the following routing and account numbers:

Routing Number (RTN): **091036164 FRB MPLS ETA**
Account Number: **20092900**

If the financial institution has difficulty transmitting the EFTPS same-day payment, please call **1-800-382-0045** (Monday – Friday, 7:45 a.m. – 4:30 p.m. Central Standard Time) to receive assistance from a Customer Service Representative at the Minneapolis Federal Reserve Bank.