

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Resolution approving the issuance of industrial revenue bonds by the
Seminole County Industrial Development Authority.

DEPARTMENT: Economic Development **DIVISION:** Economic Development

AUTHORIZED BY: Don Fisher **CONTACT:** William J. McDermott **EXT.** 7132

Agenda Date <u>3/08/05</u>	Regular <input type="checkbox"/>	Consent <input checked="" type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Adopt the attached Resolution approving the issuance of industrial revenue bonds.

BACKGROUND:

On February 15, 2005 the Seminole County Industrial Development Authority adopted the resolution to provide the issuance of First Mortgage Revenue Bonds (Trinity Preparatory School of Florida, Inc. Project), to finance the costs of the acquisition, construction, and equipping of education facilities in Seminole County.

Attachments:

- Resolution No. 05-R-
- Exhibits A & B
- Meeting minutes February 15, 2005

Reviewed by:
Co Atty: <u>[Signature]</u>
DFS: _____
Other: _____
DCM: <u>SS</u>
CM: <u>[Signature]</u>
File No. <u>CE001</u>

RESOLUTION NO. 05-R-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA, APPROVING THE ISSUANCE BY THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY OF THAT AUTHORITY'S TAX-EXEMPT ADJUSTABLE MODE REVENUE BONDS (TRINITY PREPARATORY SCHOOL OF FLORIDA, INC. PROJECT), SERIES 2005, IN THE AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$5,000,000 OF WHICH NOT EXCEEDING \$2,135,000 WILL BE ISSUED FOR THE PURPOSE OF PROVIDING FUNDS TO MAKE A LOAN TO TRINITY PREPARATORY SCHOOL OF FLORIDA, INC., TO FINANCE THE COSTS OF THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF EDUCATION FACILITIES, IN SEMINOLE COUNTY WHICH FACILITIES WILL BE OWNED AND OPERATED BY THE BORROWER.

WHEREAS, the Orange County Industrial Development Authority (the "Orange Authority") previously adopted on February 15, 2005, its Resolution approving the issuance of the Orange Authority's Tax-Exempt Adjustable Mode Revenue Bonds (Trinity Preparatory School of Florida, Inc. Project), Series 2005, in a principal amount not to exceed \$5,000,000 (the "Bonds"), to provide funds to make a loan to Trinity Preparatory School of Florida, Inc. (the "Borrower"), to finance the acquisition, construction, renovation and equipping of educational facilities in Orange County, Florida, and Seminole County, Florida ("Seminole County"), all as more particularly described on Exhibit "A" hereto, which facilities (collectively, the "Projects") will be owned and operated by the Borrower;

WHEREAS, the Board of County Commissioners of Orange County, Florida has been requested to approve the issuance of the Bonds by the Orange Authority in an aggregate principal amount not to exceed \$5,000,000, to finance the Projects; and

WHEREAS, pursuant to a Resolution adopted by the Seminole County Industrial Development Authority (the "Seminole Authority") on February 15, 2005, the Seminole Authority authorized the execution of an Interlocal Agreement (the "Interlocal Agreement") authorizing the Orange Authority to issue the Bonds to finance the portion of the Projects located in Seminole County; and

WHEREAS, the Borrower has requested that the Board of County Commissioners of Seminole County, Florida (the "Board") approve the issuance of the principal amount of the Bonds to be applied to finance the cost of the portion of the Projects to be located in Seminole County and the Seminole Authority has recommended such approval;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Seminole County, Florida that:

SECTION 1. Authority. This Resolution is adopted pursuant to the laws of the State of Florida, including, in particular Chapter 125, Part III of Chapter 159 and Part I, Chapter 163, Florida Statutes, and other applicable provisions of law (the "Act").

SECTION 2. Findings. The Board hereby finds, determines and declares as follows:

A. A public hearing was held on February 15, 2005, before the Seminole Authority, concerning issuance of the Bonds by the Orange Authority to finance the portion of the Projects located in Seminole County at which time comments and discussions from interested persons were solicited and heard by the Seminole Authority after and pursuant to appropriate publication of notice thereof in *The Orlando Sentinel*, a newspaper of general circulation in Seminole County at least fourteen (14) days prior to the date thereof, as shown in the affidavit of publication attached hereto as Exhibit "B."

B. The Board is the elected legislative body of Seminole County, and Seminole County, for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), has jurisdiction over the portion of the Projects located in Seminole County.

C. The Authority has requested that the County approve the issuance of the Bonds in order to satisfy the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, and Section 125.01(Z), Florida Statutes.

D. The purposes of Part II and III of Chapter 159, Florida Statutes, will be effectively served and it is desirable and in the best interest of the County that the issuance of the Bonds and the use of the proceeds thereof to finance the costs of the Project be approved by the Board of County Commissioners of the County (the "Board").

E. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the Orange Authority, Orange County, Florida, Seminole County, the Seminole Authority, the State of Florida or any political subdivision or agency thereof but shall be payable solely from the revenues pledged therefor pursuant to a loan agreement or other financing agreement entered into by and between the Orange Authority and the Borrower prior to or contemporaneously with the issuance of the Bonds.

SECTION 3. Approval. Solely for the purposes of Section 147(f) of the Code and Sections 125.01(2) and 159.47(1)(f), Florida Statutes, the Board hereby approves the issuance of the Bonds by the Orange Authority in an aggregate principal amount not exceeding \$5,000,000, with up to \$2,135,000 to be applied to finance the cost of the portion of the Projects located in Seminole County. The approval given herein shall not be construed as (i) an endorsement of the creditworthiness of the Borrower or the financial viability of the Projects, (ii) a recommendation to any prospective purchaser to purchase the Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (iv) approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the portions of the Project located in Seminole County, and the Board shall not be construed by reason of its adoption of this Resolution to make any such endorsement, finding or recommendation or to have waived any right of the Board or estopping the Board from asserting any rights or responsibilities it may have in such regard. Further, the approval by the Board of the issuance of the Bonds by the Seminole Authority shall not be construed to obligate Seminole County to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Bonds or the acquisition and construction of the Projects located in Seminole County.

SECTION 4. Effective Date. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this ___ day of _____, 2005.

**BOARD OF COUNTY COMMISSIONERS
OF SEMINOLE COUNTY, FLORIDA**

(SEAL)

By: _____
Chair

ATTEST:

By: _____
Clerk of the Circuit Court

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EXHIBIT "A"

ORANGE COUNTY PROJECTS:

- (1) Construction of an approximately 17,600 square foot student resource center located in both Orange and Seminole Counties (replacing an approximately 7,000 square foot facility);
- (2) Holloway Hall renovations and the addition of covered walkways relating thereto located in Orange County;
- (3) Education Center modifications for use for arts purposes located in Orange County;
- (4) Renovations to the Pagoda dining facility located in Orange County;
- (5) Construction of a maintenance building located in Seminole County;

SEMINOLE COUNTY PROJECTS:

- (1) Construction of an approximately 17,600 square foot student resource center located in both Orange and Seminole Counties (replacing an approximately 7,000 square foot facility);
- (2) Construction of a track facility to be located in Seminole County;

EXHIBIT "B"

NOTICE OF PUBLIC HEARING

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held by the Seminole County Industrial Development Authority (the "Seminole Authority"), on Tuesday, February 15, 2005, at 8:30 p.m., in Suite 116, 1230 North Douglas, Longwood, Florida, for the purpose of receiving comments and hearing discussion concerning a plan of financing involving the issuance by the Orange County Industrial Development Authority (the "Orange Authority") of not to exceed \$5,000,000 principal amount of industrial development revenue bonds (the "Bonds"), the proceeds of which will be loaned by the Orange Authority to Trinity Preparatory School of Florida, Inc., a Florida non-profit corporation (the "Borrower"), and, pursuant to an Interlocal Agreement between the Seminole Authority and the Orange Authority, applied by the Borrower to finance the acquisition, construction, renovation and equipping of various educational facilities, including, without limitation the following:

Construction of an approximately 17,600 square foot student resource center located in both Orange and Seminole Counties (replacing an approximately 7,000 square foot facility);

Holloway Hall renovations and the addition of covered walkways relating thereto located in Orange County;

Education Center modifications for use for arts purposes located in Orange County;

Renovations to the Pagoda dining facility located in Orange County;

Construction of a maintenance building located in Orange County;

Construction of a track facility to be located in Seminole County;

and related improvements, all to be owned by the Borrower and located on the campus of the Borrower at 5700 Trinity Prep Lane, unincorporated Winter Park, Florida (collectively, the "Project"). Not exceeding \$2,135,000 of the Bond proceeds are expected to be expended on the portions of the Project located in Seminole County, Florida.

All interested or affected taxpayers, property owners and citizens are invited to attend this public hearing, which will be the only public hearing held concerning the issuance of the Bonds, and, either personally or through their representatives, will be given an opportunity to express their views concerning the proposed project and the issuance of the proposed Bonds. Anyone desiring to make written comments may file them with the Seminole County Industrial Development

Authority, c/o Metro Orlando Economic Development Commission, 1230 north Douglas Ave., Suite 116, Longwood, Florida 32779, Attention: Tracy Turk. Written comments should be received by the Seminole Authority on or before 1:00 p.m. on Monday, February 14, 2005. Comments made at the hearing are for the consideration of the Seminole Authority and will not bind the Seminole Authority to any action it may take.

SHOULD ANY PERSON DECIDE TO APPEAL ANY DECISION MADE BY THE SEMINOLE AUTHORITY WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR THAT PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

This notice is given pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended.

SEMINOLE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

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SEMINOLE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY

Regular Meeting February 15, 2005

A regular meeting of the Seminole County Industrial Development Authority (the "Authority") was held in the conference room at the Metro Orlando Economic Development Commission's office, 1230 North Douglas Avenue, Suite 116, Longwood, Florida, commencing at 8:30 o'clock AM on February 15, 2005, notice of this regular meeting having been given in accordance with the requirements of Florida law.

Board members present at the meeting were:

Mack McReynolds, Chairman
Doug Former
Gary Scarboro
Stanley Weinroth

Board members Andrew Van Gaale and Lee Holt were absent. The members in attendance constituted a quorum of the members of the Authority.

Also present at the meeting were Tracy Turk, Secretary of the Authority, William J. McDermott, Director of the Economic Development Office for Seminole County, Steven Wennerstron and Craig Maughan from Trinity Preparatory School of Florida, Inc. ("Trinity"), Hank Morgan, Esq. of the law firm of Holland and Knight, bond counsel for Trinity, Terry Swatley from the manager of the Fern Park Development Center, Charles Sykes, Jr., President of Progressive Healthcare Providers, Inc., Jerry Peterson, Esq., of the law firm of Peck, Shaffer & Williams, bond counsel for Progressive Healthcare Providers/Fern Park, LLC, and J. Gordon Arkin, Esq., of the law firm of Foley & Lardner LLP, legal counsel to the Authority.

Mr. McReynolds acted as Chairman and Tracy Turk acted as Secretary of the meeting. The Chairman invited all of those present to introduce themselves.

The Chairman advised that he would like to discuss the questions that had been asked at the last Authority meeting about the Fern Park Project. The meeting then discussed the sources and use of proceeds of the proposed bond issue for this Project, the higher per diem Medicaid reimbursement forecast to be received by this Project if the proposed bonds are issued, the appraised value of the Facility to be acquired with the proceeds of the proposed bonds, and the additional disclosure that had been added to the draft of the Private Placement Memorandum for the proposed bonds.

The Chairman then asked for a motion to approve the minutes of the Authority's regular meeting held on January 18, 2005. Minutes of that meeting had previously been distributed to the members of the Authority. Upon motion duly made and seconded, the minutes of that meeting were unanimously approved as written.

The next order of business was consideration of Trinity's request that the Authority authorize the execution and delivery of an Interlocal Agreement with the Orange County Industrial Development Authority ("OCIDA"), to allow OCIDA to issue not to exceed \$5,000,000 of its Tax-Exempt Adjustable Mode Revenue Bonds (Trinity Preparatory School of Florida, Inc. Project), Series 2005, to provide funds to finance the acquisition, construction, renovation and equipping of facilities for Trinity located in Orange and Seminole Counties, with not to exceed \$2,135,000 of the proceeds of such bonds to be expended on that portion of the Project located in Seminole County, Florida.

Hank Morgan, Esq. advised the meeting that his firm was serving as bond counsel for this Project. He also advised that in 1998, the Authority had authorized an Interlocal Agreement with OCIDA in substantially the same form as the one the Authority was being asked to authorize today, in order to allow Trinity to finance other improvements to its educational facilities in Orange and Seminole Counties. He advised that because Trinity's campus was physically located in both counties, the approval of this Authority and OCIDA and the Board of County Commissioners for both counties was required to issue these bonds. He also advised that doing one rather than two bond issues significantly reduced the costs of issuance to be paid by Trinity, and that Wachovia Bank was the likely issuer of the letter of credit to secure these bonds.

Mr. Arkin advised that he had reviewed the proposed form of resolution and that it was in order.

There being no questions from the members of the Authority, the Chairman inquired whether any member wished to make a motion not to grant further consideration to the adoption of the proposed resolution. No motion having been made, the Chairman announced that this was the time set for a public hearing for the purpose of considering the Project and the proposed issuance of the bonds by OCIDA to finance the Project, including not to exceed \$2,135,000 of such bonds to finance that portion of the Project, consisting of a new track facility and a new student resource center, to be located in Seminole County. No one appeared for or in opposition to the proposed Project. Upon motion duly made, seconded and unanimously adopted, the public hearing on this matter was concluded.

The next item of business was considering of the resolution to authorize the Interlocal Agreement between the Authority and OCIDA. On motion made by Mr. Weinroth and seconded by Mr. Scarboro, the following resolution was unanimously adopted:

RESOLUTION NO. 2005-01B

A RESOLUTION OF THE SEMINOLE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY APPROVING THE EXECUTION OF AN INTERLOCAL AGREEMENT WITH THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY; APPROVING THE ISSUANCE BY THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY OF THAT AUTHORITY'S TAX-EXEMPT ADJUSTABLE MODE REVENUE BONDS (TRINITY

PREPARATORY SCHOOL OF FLORIDA, INC. PROJECT), SERIES 2005, IN THE AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$5,000,000, FOR THE PURPOSE OF PROVIDING FUNDS TO MAKE A LOAN TO TRINITY PREPARATORY SCHOOL OF FLORIDA, INC., TO FINANCE THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF EDUCATIONAL FACILITIES IN SEMINOLE COUNTY AND ORANGE COUNTY, WHICH EDUCATIONAL FACILITIES WILL BE OWNED AND OPERATED BY THE BORROWER; PROVIDING OTHER DETAILS AND AN EFFECTIVE DATE

The Chairman advised that the next item of business was consideration of the proposed bonds for the Progressive Healthcare Providers/Fern Park Project.

Jerry Peterson, Esq., advised the meeting that his firm was serving as bond counsel for this Project. Mr. Peterson advised that RHA/Fern Park, the current owner of the Fern Park Facility, was having trouble paying debt service on the bonds issued by the Authority to finance its acquisition of this Facility because Medicaid had failed to allow it to get a stepped up basis in this Facility since it had become the owner of the Facility by purchasing the stock of Fern Park, Inc., the owner of the Facility, rather than by purchasing the Facility itself. Mr. Peterson explained that Medicaid's reimbursement includes that portion of debt service representing interest, and straight line depreciation based on the provider's allowable basis in the Facility. Since RHA/Fern Park did not get a stepped up basis, and did not establish a depreciation reserve, as the principal portion of its level debt service payments increased and the interest portion of its level debt service payment declined, it was becoming unable to pay the debt service on the outstanding bonds. The sale of the Facility to Progressive Healthcare Providers/Fern Park, LLC will solve this problem, since Medicaid had advised that the new owner will receive a stepped up basis, reflecting the acquisition cost of \$3,875,000 to be paid from the proceeds of the proposed bonds, and because a depreciation reserve will be funded from excess cash flow projected to be received from 2006 through 2019, as discussed in the draft Private Placement Memorandum for the proposed bonds. Mr. Swatley, a representative of the current and proposed managers of the Facility, confirmed that this purchase price, which was set at the amount Medicaid will allow, and which is lower than the \$4,000,000 current approved value of the Facility, would not have changed even if approximately \$720,535 of accrued and unpaid managed fees, as discussed in the draft Private Placement Memorandum for the proposed bonds, were not going to be paid by the Seller to the current manager. He also advised that the higher per diem reimbursement that is forecast to be received from Medicare after the issuance of the proposed bonds will allow the manager to pay higher salaries to its employees at the Facility, of which there are 100 FTE's, which will make it easier to hire and retain qualified staff, and that \$50,000 of the proceeds of the proposed bonds will be used to finance needed capital improvements to the Facility. He also confirmed that the seller and its insurance company were paying to install new roofs at the Facility that were damaged in last year's hurricanes.

Mr. Swatley also addressed the subpoena that was recently issued by the Florida Attorney General, and that is discussed in the draft Private Placement Memorandum for the proposed bonds. Mr. Swatley advised that a similar subpoena had been issued in late 2000 or

early 2001, that all of the requested documents had been produced and reviewed by the Attorney General, and that all parties had thought that the matter had been resolved. He said that last summer the Attorney General's office was reorganized, and new subpoenas were issued on any file involving a Medicaid investigation, unless the file was marked "Resolved." He advised that he believed it was an oversight that this file had not been so marked and that this matter would be resolved shortly.

Mr. Swatley was asked what would happen if these were a fire at the Facility. He advised that there was fire insurance to pay the cost of rebuilding, that there was business interruption insurance to pay the debt service on the bonds during reconstruction, and that the patients would be cared for in temporary living quarters, which would preserve the flow of income from Medicare reimbursement.

Mr. Arkin advised the meeting that the proposed Bond Resolution and the documents referred to therein were in order.

There being no further questions from members of the Authority, on motion made by Mr. Weinroth and seconded by Mr. Scarboro, the following resolution was unanimously adopted:

RESOLUTION NO. 2005-02

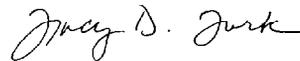
RESOLUTION OF THE SEMINOLE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (THE "ISSUER"), PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$5,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEMINOLE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY FIRST MORTGAGE REVENUE BONDS (PROGRESSIVE HEALTHCARE PROVIDERS/FERN PARK, LLC FACILITY) SERIES 2005A AND SEMINOLE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY TAXABLE FIRST MORTGAGE REVENUE BONDS (PROGRESSIVE HEALTHCARE PROVIDERS/FERN PARK, LLC FACILITY) SERIES 2005B, THE PROCEEDS OF WHICH ARE TO BE LOANED TO PROGRESSIVE HEALTHCARE PROVIDERS/FERN PARK LLC, A GEORGIA LIMITED LIABILITY COMPANY (THE "BORROWER"), FOR THE PURPOSE OF FINANCING THE COSTS OF ACQUIRING THE FACILITY, AS DESCRIBED HEREIN, AND PAYING CERTAIN EXPENSES INCURRED IN CONNECTION WITH THE ISSUANCE OF THE BONDS, WHICH BONDS WILL BE PAYABLE FROM LOAN PAYMENTS AND OTHER AMOUNTS DESCRIBED IN THE HEREIN DESCRIBED TRUST INDENTURE; AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT, A TRUST INDENTURE, AN ASSIGNMENT OF MORTGAGE, A TAX REGULATORY AGREEMENT AND A BOND PURCHASE AGREEMENT IN

CONNECTION WITH THE SALE OF THE BONDS;
AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY
AND FINAL LIMITED OFFERING MEMORANDUM; AND
SETTING FORTH THE TERMS AND CONDITIONS UPON
WHICH THE BONDS ARE TO BE ISSUED AND PROVIDING
FOR OTHER MATTERS CONSISTENT WITH THE
ISSUANCE, SALE AND DELIVERY OF THE BONDS.

Ms. Turk provided the members of the Authority with a Lexicon of Terms prepared by Mr. Arkin, containing the definition of various financing terms that Mr. Arkin had discussed at the workshop held at his office last month. Ms. Turk agreed to file a copy of this Lexicon of Terms with the minutes of this meeting. The Chairman and the other members of the Authority thanked Mr. Arkin for conducting the workshop, and his firm for providing lunch to the members of the Authority that attended this workshop.

Ms. Turk also provided the members of the Authority with the Authority's Financial Statements for the years ended September 30, 2003 and 2004, confirmed that these Financial Statements would be filed with the Department of Financial Services for the State of Florida, and agreed to file a copy of these Financial Statements with the minutes of this meeting.

There being no further business, the meeting was adjourned at 10:00 o'clock A.M.



Tracy Turk, Secretary
Seminole County Industrial Development Authority