

RESOLUTION NO. 2011- 135

A RESOLUTION OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE EXECUTION AND DELIVERY OF AN INTERLOCAL AGREEMENT WITH JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION; APPROVING THE ISSUANCE BY THE JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION, OF NOT TO EXCEED \$10,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF ITS REVENUE AND REVENUE REFUNDING BONDS (THE BOLLES SCHOOL PROJECT), SERIES 2011 TO REFUND THE COMMISSION'S OUTSTANDING VARIABLE RATE DEMAND REVENUE BONDS (BOLLES SCHOOL PROJECT), SERIES 1999A (THE "REFUNDED BONDS"); REFINANCE CERTAIN OUTSTANDING DEBT PREVIOUSLY INCURRED BY THE BORROWER (THE "REFINANCED NOTES"); PAY THE COST OF TERMINATING TWO INTEREST RATE SWAP AGREEMENTS IF SUCH COST IS FOUND TO BE ELIGIBLE FOR FINANCING BY BOND COUNSEL; FINANCE MISCELLANEOUS CAPITAL EXPENDITURES BY THE BORROWER FOR EDUCATIONAL FACILITIES; AND PAY THE COSTS OF ISSUING THE BONDS; AND PROVIDING OTHER DETAILS AND AN EFFECTIVE DATE.

WHEREAS, St. Johns County, Florida (the "County"), has the authority pursuant to Chapter 159, Part II, Florida Statutes, as amended (Chapter 159), to issue revenue bonds to finance qualifying projects within the County; and

WHEREAS, the Jacksonville Economic Development Commission (the "Commission") has the authority pursuant to Chapter 159 to issue revenue bonds to finance qualifying projects in the City of Jacksonville, Florida (the "City"); and

WHEREAS, the Commission represents to the County that the Commission has been advised that The Bolles School, a Florida non-profit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and its affiliates (the "Borrower"), desires to finance, refinance or refund all or a part of the cost of the acquisition, construction, renovation, expansion and improvement and equipping of certain "educational facilities" constituting a "project," as such terms are used in Chapter 159, in the City of Jacksonville, Florida (the "City"), and in St. Johns County, Florida located on the sites hereafter described (collectively, the "Project"): the San Jose Campus, 7400 San Jose Boulevard and the Bartram Campus, 2264 Bartram Road in Jacksonville, Florida and the Ponte Vedra Campus, 200 ATP Boulevard, Ponte Vedra Beach, Florida, in St. Johns County, Florida; and

WHEREAS, the Commission and the County have previously executed an Interlocal Agreement dated July 1, 1999 with respect to the issuance of the Commission's Variable Rate Demand Revenue Bonds (Bolles School Project), Series 1999A; and

WHEREAS, the Commission represents to the County that the Commission has been advised that the Borrower has requested that the Commission and the County enter into this Agreement to authorize the Commission to issues under Chapter 159 not to exceed \$10,000,000 in aggregate principal amount of its Revenue and Revenue Refunding Bonds (The Bolles School Project), Series 2011 (the "Bonds"), to (i) refund the Commission's outstanding Variable Rate Demand Revenue Bonds (Bolles School Project), Series 1999A (the "Refunded Bonds"), (ii) refinance certain outstanding debt previously incurred by the Borrower, (the "Refinanced Notes"), (iii) pay the cost of terminating two interest rate swap agreements if such cost is found to be eligible for financing by Bond Counsel, (iv) finance miscellaneous capital expenditures by the Borrower for educational facilities, and (v) pay the costs of issuing the Bonds. A portion of the proceeds of the Bonds will be applied to finance the portion of the Project located in the County, and such financing will result in a significant cost savings to the Borrower over the issuance and sale of separate bonds by the Commission and the County in order to finance the Project, refinance the Refinanced Debt and refund the Refunded Bonds; and

WHEREAS, the Commission and the County desire to agree to the issuance of the Bonds by the Commission for such purposes and such agreement by such parties is in the public interest.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, that:

SECTION 1. Authority. This Resolution is adopted pursuant to the laws of the State of Florida, including Chapter 125, Part I, Chapter 159, Part II, and Section 163.01, Florida Statutes, as amended, and other applicable provisions of law.

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

- A. Notice of a public hearing to Be held on April 7 & June 9, 2011 by the Jacksonville Economic Development Commission on behalf of, among others, the County, inviting comments and discussions concerning issuance of the Bonds by the Commission to finance the Project, was published in *The St. Augustine Record*, a newspaper of general circulation in the County, at least 14 days prior to such hearing date, a copy of which is attached hereto.
- B. Following such notice, a public hearing was held on June 9, 2011, by the Commission, during which comments and discussions concerning the issuance of the Bonds by the Commission to finance the Project were requested as heard.
- C. The Project and the issuance of the Bonds by the Commission to finance the Project will have a substantial public benefit in the County.
- D. The Board is the elected legislative body of the County, and the County has jurisdiction over the St. Johns County Project for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code").

- E. In accordance with Chapter 159, the Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the Commission, the County, the State of Florida or any political subdivision thereof but shall be payable solely from the revenues pledged therefore pursuant to a loan agreement entered into by and between the Commission and the Borrower prior to or contemporaneously with the issuance of the Bonds.

SECTION 3. Authorization of Interlocal Agreement. The form of the Interlocal Agreement attached hereto is hereby approved. The Chairman or Vice Chairman and the Clerk or Deputy Clerk of the Board are hereby authorized in the name and on behalf of the County pursuant to this Resolution to execute and deliver the Interlocal Agreement on behalf of the County in substantially the form attached to this Resolution, with such changes, insertions and deletions as the officers signing such document may approve, their execution thereof to be conclusive evidence of such approval. The officers executing the Interlocal Agreement are hereby further authorized to do all which may be required or advisable with respect to or in any way related thereto, including, but not limited to, filing the Interlocal Agreement with the Clerk of the Circuit Court in and for the County in accordance with Section 163.01(11), Florida Statutes, as amended. The Chairman or Vice Chairman and the Clerk or Deputy Clerk of the Board are hereby further authorized to take such further action and execute such further instruments as may be necessary or appropriate to fully effectuate the purpose and intention of this Resolution and the Interlocal Agreement.

SECTION 4. Approval of Bonds. The issuance of the Bonds by the Commission to finance the Project be and is hereby approved.

SECTION 5. Effective Date. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 17th day of May, 2011.

ATTEST: Cheryl Strickland, Clerk

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Ram Halterman
Deputy Clerk

By: J. Ken Bryan
J. Ken Bryan, Chairman

Effective Date: May 17th, 2011

Rendition Date: May 31, 2011

After recording, return to:

Grace E. Dunlap, Esq.
Bryant Miller Olive P.A.
One Tampa City Center, Suite 2700
Tampa, Florida 33602

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the "Agreement") is dated as of July 1, 2011, and is entered into between the JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION (the "Commission"), a local governmental body and a public instrumentality of the State of Florida, and ST. JOHNS COUNTY, FLORIDA (the "County"), a political subdivision of the State of Florida:

WITNESSETH

WHEREAS, the Commission and the County each represent to the other that, pursuant to Chapter 159, Part II, Florida Statutes, as amended ("Chapter 159"), and other applicable provisions of law, it is authorized to issue bonds to finance or refinance the costs of the acquisition, construction, renovation, expansion, improvement and equipping of education facilities; and

WHEREAS, the Commission and the County each represent to the other that it constitutes a "public agency" within the meaning of Section 163.01, Florida Statutes, as amended (the "Interlocal Act"), and is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege or authority which each of them could exercise separately; and

WHEREAS, the Commission represents to the County that the Commission has been advised that The Bolles School, a Florida nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and its affiliates Bartram Campus/Bolles, Inc. and Bolles/Ponte Vedra, Inc. (collectively, the "Borrower"), desires to finance, refinance or refund all or a part of the cost of the acquisition, construction, renovation, expansion and improvement and equipping of certain "educational facilities" constituting a "project," as such terms are used in Chapter 159, in the City of Jacksonville, Florida (the "City"), and in St. Johns County, Florida located on the sites hereafter described (collectively, the "Project"): the San Jose Campus, 7400 San Jose Boulevard and the Bartram Campus, 2264 Bartram Road in Jacksonville, Florida and the Ponte Vedra Campus, 200 ATP Boulevard, Ponte Vedra Beach, Florida in St Johns County, Florida; and

WHEREAS, the Commission and the County have previously executed an Interlocal

Agreement dated July 1, 1999 with respect to the issuance of the Commission's Variable Rate Demand Revenue Bonds (Bolles School Project), Series 1999A; and

WHEREAS, the Commission represents to the County that the Commission has been advised that the Borrower has requested that the Commission and the County enter into this Agreement to authorized the Commission to issues under Chapter 159 not to exceed \$10,000,000 in aggregate principal amount of its Revenue and Revenue Refunding Bonds (The Bolles School Project), Series 2011 (the "Bonds"), to (i) refund the Commission's outstanding Variable Rate Demand Revenue Bonds (Bolles School Project), Series 1999A (the "Refunded Bonds"), (ii) refinance certain outstanding debt previously incurred by the Borrower, (the "Refinanced Notes"), (iii) pay the cost of terminating two interest rate swap agreements if such cost is found to be eligible for financing by Bond Counsel, (iv) finance miscellaneous capital expenditures by the Borrower for educational facilities, and (v) pay the costs of issuing the Bonds. A portion of the proceeds of the Bonds will be applied to finance the portion of the Project located in the County, and such financing will result in a significant costs savings to the Borrower over the issuance and sale of separate bonds by the Commission and the County in order to finance the Project, refinance the Refinanced Debt and refund the Refunded Bonds; and

WHEREAS, the Commission and the County have agreed to enter into this Agreement or the purposes stated above; and

WHEREAS, on April 7, 2011 and June 9, 2011, the Commission authorized and approved the issuance of the Bonds, the application of the proceeds thereof and the execution and delivery of this Agreement; and

WHEREAS, on May 17, 2011, the County approved the issuance of the Bonds by the Commission and the execution and delivery of this Agreement; and

WHEREAS, on May 24, 2011, the City Council of the City approved the issuance of the Bonds by the Commission and approved the execution and delivery of this Agreement by the Commission; and

WHEREAS, the Interlocal Act authorized the Commission and the County to enter into this Agreement and the Interlocal Act and Chapter 159 confer upon the Commission authorization to issue the Bonds and to apply the proceeds thereof to the financing of the Project through a loan of such proceeds to the Borrower; and

WHEREAS, the parties hereto desire to agree to the issuance of the Bonds by the Commission for such purposes and such agreement by such parties is in the public interest; and

WHEREAS, pursuant to Section 6 hereof, the Borrower has agreed to indemnify the Commission and the County in connection with its execution of this Agreement;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, and intending to be legally bound hereby, the parties hereto agree as follows:

SECTION 1. Authorization to Issue the Bonds.

The Commission and the County do hereby agree that the Commission is hereby authorized to issue the Bonds in an aggregate principal amount of not to exceed \$10,000,000 and to loan the proceeds thereof to the Borrower to finance the Project, refund the Refunded Bonds and refinance the Refinance Notes, with a portion of such proceeds to be applied to finance and refinance the portion of the Project located in the County. The Commission is hereby authorized to exercise all powers relating to the issuance of the Bonds vested in the County pursuant to the Constitution and the laws of the State of Florida and to do all things within the jurisdiction of the County which are necessary or convenient for the issuance of the Bonds and the financing of the Project, refunding of the Refunded Bonds and the refinancing of the Refinanced Notes to the same extent as if the County were issuing its own revenue bonds under Chapter 159 for such purposes without any further authorization from the County to exercise such powers or to take such actions. It is in the intent of this Agreement and the parties hereto that the Commission be vested, to the maximum extent permitted by law, with all powers which the County might exercise with respect to the issuance of the Bonds and the lending of the proceeds thereof to the Borrower to finance the Project, refund the Refunded Bonds and refinance the Refinanced Notes as though the County were issuing the Bonds as its own special limited obligations.

SECTION 2. Qualifying Projects.

A. Each of the parties hereto represents that the portion of the Project within its jurisdiction constitutes a "project" as such term is used in Chapter 159.

B. The Commission hereby further represents, determines and agrees as follows:

1. The portion of the Project located with the City is appropriate to the needs and circumstances of, and shall make a significant contribution to the economic growth of the City; shall provide or preserve gainful employment; and serve a public purpose by advancing the economic prosperity, the public health or the general welfare of the State of Florida and its people.

2. No financing for the Project shall be entered into with a party that is not financially responsible and fully capable and willing to fulfill its obligations under the financing agreement, including the obligations to make payments in the amounts and at the times required, to operate, repair and maintain at its own expense the Project, and to serve the purposes of Chapter 159 and such other responsibilities as may be imposed under the financing agreement.

3. The City and the other local agencies will be able to cope satisfactorily with the impact of the Project located in the City 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 of other circumstances resulting therefrom.

4. Adequate provision will be made in the financing agreement for the operation, repair and maintenance of the Project at the expense of the Borrower and for the payment of principal of and interest on the Bonds.

5. The Borrower has represented to the Commission that the Borrower has expended at least \$ _____ to finance or refinance the portion of the Project located in the County.

6. A public hearing was held on May 10, 2011, by a hearing officer for the Commission, on behalf of the Commission and the County, during which comments concerning the issuance of the Bonds by the Commission to finance or refinance the Project were requested and could be heard.

C. The County hereby represents, determines and agrees as follows:

1. The portion of the Project located with the County is appropriate to the needs and circumstances of, and shall make a significant contribution to the economic growth of the County; shall provide or preserve gainful employment; and shall serve a public purpose by advancing the economic prosperity, the public health or the general welfare of the State of Florida and its people.

2. The County and the other local agencies will be able to cope satisfactorily with the impact of the Project located in the County 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.

SECTION 3. No Pecuniary Liability of the Commission or the County; Limited Obligation of the Commission.

Neither the provisions, covenants or agreements contained in this Agreement and any obligations imposed upon the Commission or the County hereunder, nor the Bonds issued pursuant to this Agreement, shall constitute an indebtedness or liability of the Commission or the County. The Bonds when issued, and the interest thereon, shall be limited and special obligations of the Commission payable solely from the Borrower from certain nongovernmental revenues and other nongovernmental amounts payable thereto by the terms thereof.

SECTION 4. No Personal Liability.

No covenant or agreement contained in this Agreement shall be deemed to be a covenant or agreement of any member, officer, agent or employee of the Commission or the County in his or her individual capacity and no member, officer, agent or employee of the Commission or the County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

SECTION 5. Allocation of Responsibilities.

The Commission shall take all actions it deems necessary or appropriate in connection with the issuance of the Bonds, including, in its discretion, the preparation, review, execution and filing with government agencies of certificates, opinions, agreements and other documents to be delivered at the closing of the Bonds and the establishment of any funds and accounts pursuant to a trust indenture related to the Bonds.

Neither the Commission nor the County shall be liable for the costs of issuing the Bonds or the costs incurred by either of them in connection with the preparation, review, execution or approval of this Agreement or any documentation or opinions required to be delivered in connection therewith by the Commission, the County or counsel to either. All of such costs shall be paid from the proceeds of the Bonds or from other moneys of the Borrower.

SECTION 6. Indemnity.

The Borrower, by its approval and acknowledgement at the end of this Agreement, agrees to indemnify and hold harmless the Commission and the County, their respective officers, employees and agents, from and against any and all losses, claims, damages, liabilities or expenses of every conceivable kind, character and nature whatsoever, including, but not limited to, losses, claims, damages, liabilities or expenses (including reasonable fees and expenses of attorneys, accountants, consultants and other experts), arising out of, resulting from, or in any way connected with this Agreement or the issuance of the Bonds, other than any such losses, damages, liabilities or expenses, in the case of the Commission, arising from the willful misconduct of the Commission and in the case of the County, arising from the willful misconduct of the County.

SECTION 7. Term.

This Agreement will remain in full force and effect from the date of its execution, subject to the provisions of Section 8 hereof, until such time as it is terminated by any party hereto upon 10 days written notice to the other party hereto. Notwithstanding the foregoing, it is agreed that this Agreement may not be terminated so long as any of the Bonds remain outstanding or unpaid. Nothing herein shall be deemed in any way to limit or restrict either

party hereto from issuing its own obligations or entering into any other agreement for the financing or refinance of any facility which either party hereto may choose to finance or refinance.

SECTION. 8. Filing of Agreement.

It is agreed that this Agreement shall be filed by the Borrower or its authorized agent or representative with the Clerk of the Circuit Court of St. Johns County, Florida, and with the Clerk of the Circuit County of Duval County, Florida, all in accordance with the Interlocal Act, and that this Agreement shall not become effective until so filed with the Borrower's executed approval and acknowledgment attached thereto.

SECTION 9. Severability of Invalid Provisions.

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

SECTION 10. Governing Law.

This Agreement is being delivered and is intended to be performed in the State of Florida, and shall be construed and enforced in accordance with, and the rights of the parties shall be government by, the laws of the State of Florida.

SECTION 11. Execution in Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be executed by the proper officers thereof, all as of the date first above written.

JACKSONVILLE ECONOMIC
DEVELOPMENT COMMISSION

By: _____
Chairman

ATTEST:

By: _____
Executive Director

ST. JOHNS COUNTY, FLORIDA

By: _____
Chairman of its Board of County
Commissioners

ATTEST:

By: _____
Clerk

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this ___ day of _____, 2011, by _____, the Chairman of the Jacksonville Economic Development Commission, on behalf of the Commission. Such person did not take an oath and: (*notary must check applicable box*)

- is personally known to me.
- Produced a current Florida driver's license as identification.
- Produced _____ as identification.

[Notary Seal must be affixed]

Signature of Notary

Name of Notary

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ___ day of _____, 2011, by _____, the Chairman of the Board of County Commissioners of St. Johns County, Florida, on behalf of St. Johns County. Such person did not take an oath and: (*notary must check applicable box*)

- is personally known to me.
- Produced a current Florida driver's license as identification.
- Produced _____ as identification.

[Notary Seal must be affixed]

Signature of Notary

Name of Notary

APPROVAL AND ACKNOWLEDGMENT

The Bolles School, a Florida nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Borrower"), hereby approves the foregoing Interlocal Agreement, certifies that the information contained therein regarding the Borrower is correct and acknowledges its acceptance of its obligations arising thereunder, including, without limitation, its obligations under Section 6 thereof, by causing this Approval and Acknowledgment to be executed by its proper officer as of the dated of said Interlocal Agreement.

THE BOLLES SCHOOL

By: _____
Associate Head of School
for Finance