MEMORANDUM

Agenda Item No. 5(H)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: October 2, 2007

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving issuance by Pinellas County Educational Facilities Authority of bonds on behalf of Barry University

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The accompanying resolution was prepared and placed on the agenda at the request of Commissioner Joe A. Martinez.

R. A. Cuevas, Jr.
County Attorney

RAC/bw

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: October 2, 2007

FROM: Abigail Price-Williams
Acting County Attorney

SUBJECT: Agenda Item No. 5(H)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 5(H)

10-2-07

RESOLUTION NO. _____

RESOLUTION APPROVING ISSUANCE BY PINELLAS COUNTY EDUCATIONAL FACILITIES AUTHORITY OF ONE OR MORE SERIES OF ITS VARIABLE RATE REVENUE AND REVENUE REFUNDING BONDS IN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $11,000,000 ON BEHALF OF BARRY UNIVERSITY PURSUANT TO SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; APPROVING FORM OF AND AUTHORIZING MAYOR OR HIS DESIGNEE TO EXECUTE FIRST AMENDMENT TO INTERLOCAL AGREEMENT; AND AUTHORIZING COUNTY OFFICIALS TO TAKE ALL ACTION AND TO DO ALL THINGS NECESSARY TO ASSIST IN THE ISSUANCE OF THE BONDS BY THE AUTHORITY

WHEREAS, Miami-Dade County, Florida (the "County") is a political subdivision of the State of Florida and a public body corporate and politic, lawfully organized and existing under the laws of the State of Florida and the Pinellas County Educational Facilities Authority (the "Authority") is a special district and a body corporate and politic of Pinellas County, and each is a "public agency" as defined in Section 163.01(3)(b), Florida Statutes, as amended, (Section 163.01, Florida Statues is known as the "Florida Interlocal Cooperation Act of 1969") and as such "public agencies" are authorized to enter into interlocal agreements pursuant to Section 163.01(5), Florida Statutes, for the joint exercise of powers which they share in common and which each might exercise separately; and

WHEREAS, pursuant to the provisions of Chapter 243, Part II, Florida Statutes, as amended (the "Act"), the Authority is authorized and empowered to issue its revenue bonds for the purpose of assisting institutions of higher education in the construction, financing and refinancing of Projects, as defined in the Act; and

WHEREAS, Authority has previously issued revenue bonds in the amount of $22,000,000 in 1998 ("Series 1998 Bonds") and $27,000,000 in 2000 ("Series 2000 Bonds" and together with the Series 1998 Bonds, "Parity Bonds") on behalf of Barry University, Inc., a Florida non-profit corporation and institution of higher education (the "University"), located within Miami-Dade County at 11300 Northeast Second Avenue, Miami Shores, Florida,; and

WHEREAS, the University has requested that the Authority issue on its behalf additional revenue and revenue refunding bonds in one or more series in an aggregate principal amount not to exceed $11,000,000 (the "Bonds") on a parity with the Parity Bonds in order to (i) finance the costs the completion of construction of a building for the Institute for Community Health & Minority Medicine, a graduate medical science building, which will provide office space for faculty, classroom space for students and house various health programs, and related improvements of the University located at 11300 Northeast Second Avenue, Miami Shores, Florida, which is the campus for the University (the "2007 Project"), (ii) refund a taxable loan dated May 7, 2004 from Bank of America, N.A. to the University in the original amount of $7,300,000 (the "Loan"), the proceeds of which were used for construction of a new 174-bed dormitory, Benincasa Hall, on University campus, and (iii) pay all or a portion of the costs of issuance of the Bonds; and

WHEREAS, in connection with the issuance of the Series 2000 Bonds the County previously entered into an interlocal agreement with the Authority dated October 24, 2000 pursuant to Florida Interlocal Cooperation Act of 1969 (the "Original Interlocal Agreement"); and

WHEREAS, in order to accomplish the purposes of the Act, the County has been requested to enter into a first amendment in substantially the form attached as Exhibit "A" to this

Resolution (the "First Amendment") to the Original Interlocal Agreement with the Authority, to provide for the issuance by the Authority of the Bonds for the benefit of the University; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), provides that the elected legislative body of the governmental unit which has jurisdiction over the area in which the facilities financed with the proceeds of such bonds is located is to approve the issuance of such bonds after a public hearing; and

WHEREAS, the Project is located in Miami-Dade County, and the Board of County Commissioners of Miami-Dade County, Florida (the "Board'), is the elected legislative body of the County; and

WHEREAS, the University caused notice of public hearing to consider the requested approval of the Bonds, the plan of finance and the location and nature of the Project to be financed with the Bonds to be published in *The Miami Herald*, a newspaper of general circulation in the County at least fourteen days prior to the Board's consideration of this Resolution as required by the Code, a copy of said notice is attached as "Exhibit "B" to this Resolution (the "Notice"); and

WHEREAS, the Board has held a public hearing on this date in accordance with such Notice as required by the Code and has reviewed and considered all public comments whether oral or written which have been received; and

WHEREAS, it appears to the County, for the reasons set forth above that entering into the First Amendment with Pinellas County Educational Facilities Authority to provide for the issuance of the Bonds in one or more series is in the best interests of the County and the University,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that

Section 1. The preceding "Whereas Clauses" are incorporated into this Resolution by reference.

Section 2. The First Amendment between the County and the Authority is approved, with such changes as shall be approved by the Mayor or his designee after consultation with the Miami-Dade County Attorney's office, and the Mayor or his designee is authorized to execute it on behalf of the County and its execution and delivery by the Mayor or his designee shall constitute evidence of such officer's approval and the County's approval of the First Amendment in final form.

Section 3. After conducting a public hearing in accordance with Section 147(f) of the Code, this Board approves the issuance by the Authority of the Bonds for the purposes described in this Resolution and in the Notice with the understanding that the Bonds are not a debt or liability of the County and will be repaid solely from the revenues of the University.

Section 4. The Mayor and his designee and such other officials, officers and employees of the County are authorized and directed to take all action and do all things necessary to assist the Authority in connection with the issuance of the Bonds in accordance with the requirements of the First Amendment.

Section 5. All of the acts and doings of the members, officials, officers and employees of the County which are in conformity with the intent and purposes of this Resolution, whether previously or subsequently taken or done, shall be and are ratified, confirmed and approved.

Section 6. If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

The foregoing resolution was sponsored by Commissioner Joe A. Martinez and 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:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of October, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency:

Gerald T. Heffernan

EXHIBIT A

FIRST AMENDMENT TO INTERLOCAL AGREEMENT

This First Amendment to Interlocal Agreement (the "First Amendment") dated as of the first day of _____, 2007, is made between Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County"), and the Pinellas County Educational Facilities Authority , a public body corporate and politic of the State of Florida (the "Authority") amending the original Interlocal Agreement dated October 1, 2000 (the "2000 Interlocal") .

WHEREAS, the Pinellas County Educational Facilities Authority (the "Authority") is a public body corporate and politic, organized and existing under and by virtue of Chapter 243, Part II, Florida Statutes (the "Act"), and is a properly constituted Educational Facilities Authority and a "public agency" under the Florida Interlocal Cooperation Act of 1969 (Part I of Chapter 163, Florida Statutes, as amended); and

WHEREAS, Miami-Dade County, Florida (the "County") is a county and a political subdivision of the State of Florida and a public body corporate and politic; and

WHEREAS, the Authority and the County have determined that there is need to provide funds for financing and refinancing educational facilities for Barry University which is an institution of higher learning in the County (the "University"); and

WHEREAS, the Authority has previously issued its Revenue and Revenue Refunding Bonds (Barry University Project), Series 1998 (the "1998 Bonds"), which 1998 Bonds were offered through Education Securities, Inc., a wholly owned broker/dealer subsidiary of the Student Loan Marketing Association, and the proceeds were used to provide a means of making a loan to Barry University, which is a private, independent institution of higher education, which by virtue of law is an accredited, nonprofit independent educational institution empowered to provide a program in education beyond the high school level, and the University caused an Interlocal Agreement to be entered into by and between the Authority and the County, to finance the cost of qualifying projects or to refinance or reimburse outstanding principal indebtedness originally incurred to finance such qualifying projects; and

WHEREAS, the Authority has previously issued its Revenue Bonds (Barry University Project), Series 2000 (the "2000 Bonds"), and the proceeds were used to provide a means of making a loan to the University, and the University caused an Interlocal Agreement to be entered into be and by and between the Authority and the County, to finance the cost of qualifying projects; and

WHEREAS, the Authority has previously issued the 1998 Bonds and the 2000 Bonds on behalf of the University and is now desirous of assisting the University in issuing additional bonds in one or more series (the "Bonds") on parity with its 1998 Bonds and its 2000 Bonds through the issuance of new Bonds of various series which will also provide additional funds to the University for qualifying educational projects (the "2007 Project"), for refinancing a taxable loan (the "Loan") and for refunding all or a portion of the 1998 Bonds and the 2000 Bonds (the "Refunding"); and

WHEREAS, it is deemed desirable by both the Authority and the County that the Authority and the County enter into this First Amendment, as provided for and under the authority of Chapter 163, Florida Statutes, in accordance with the prior authorization by the members of the Authority and the Board of County Commissioners of Miami-Dade County, Florida, in order to assist the University in financing a qualifying Project (as defined in the Act), refinancing the Loan and undertaking the Refunding; and

WHEREAS, the Authority and the County entered into the 2000 Interlocal dated October 1, 2000; and

WHEREAS, it is deemed desirable by both the Authority and the County that the Authority and the County continue the 2000 Interlocal, as amended by this First Amendment, as provided for and under the authority of Chapter 163, Florida Statutes, in accordance with the prior authorization by respective boards of each governmental entity in order to assist the University in financing the Project, refinancing the Loan and undertaking the Refunding; and

WHEREAS, the Authority plans to initially authorize and approve the issuance of not exceeding $10,000,000 Pinellas County Educational Facilities Authority Variable Rate Revenue and Revenue Refunding Bonds (Barry University Project), Series 2007 (the "Bonds") pursuant to the authority of Chapter 243, Part II, Florida Statutes and thereafter to consider the issuance of additional Bonds to undertake the Refunding in one or more series, to be secured as a general obligation of the University as more particularly described in the Trust Indenture or an amendment thereto to be dated as of the first day of the month any series of Bonds are issued, between the Authority and a qualified bank acting as a Trustee, including any amendments and supplements thereto (the "Indenture"); the payment of the principal of and premium, if any, and interest on the Bonds as the same shall become due to be made solely from the sources and revenues as required by the Indenture; and

WHEREAS, the Authority and the University have determined that the provision of funds by the Authority to the University will assist in the development and furtherance of the education and the residents of the County, including improvement of the opportunities for development of intellectual and mental capacities, and shall serve a public purpose by improving educational opportunities, and providing adequate educational facilities therein and will promote the economical development of educational facilities; and

WHEREAS, the Authority has found that the University will be financially responsible and capable and willing to fulfill its obligations including the obligation to make the debt service payments in the amounts and at the times required, and the obligation to repair and maintain the Project at their own expense; and

WHEREAS, title to the Project shall be in the University and the Authority shall not have any title or interest therein and neither the Authority, Miami-Dade County, Pinellas County, or the State of Florida or any political subdivision of each shall in any way be obligated to pay the principal, premium, if any, or interest on the Bonds as the same shall become due, and the issue of the Bonds shall not directly, indirectly, or contingently obligate the Authority, Miami-Dade County, Pinellas County, the State of Florida, or any political subdivision of each to levy or pledge any form of taxation or to make any appropriation from ad valorem taxation revenues for their payment.

NOW, THEREFORE, the Pinellas County Educational Facilities Authority and Miami-Dade County, Florida AGREE AS FOLLOWS:

SECTION 1: The University shall be permitted to borrow funds from the Authority to pay for the Project, refinance the Loan and undertake the Refunding, and the funds shall be repaid solely from the revenues of the University and the funds shall be duly expended for their stated purpose and shall not be payable from or by the County in any manner whatsoever as further set forth in Section 5.

SECTION 2: At all times during the term of this First Amendment, amending the 2000 Interlocal, the Authority and the County constitute "public agencies" as that term is defined in Section 163.01(3)(b), Florida Statutes, as amended, and both the Authority and the County have in common the power and authority to issue revenue Bonds in order to provide financing for the Project, for refinancing the Loan and undertaking the Refunding; which power and authority they may exercise separately.

SECTION 3: The Authority and the County are entering into this First Amendment in order to more effectively perform their service function related to the provision of adequate educational facilities and services pursuant to the powers granted under Section 163.01, Florida Statutes, as amended, and to permit the Authority to operate within the County as contemplated by the loan to the University.

SECTION 4: This Interlocal Agreement shall in no way be interpreted to authorize the delegation of the constitutional or statutory duties of the Authority, Miami-Dade County, Pinellas County, the State of Florida, or any officers of any political subdivision of each.

SECTION 5: This Interlocal Agreement and each series of the Bonds shall not be deemed to constitute a debt, liability, or obligation of or a pledge of the faith and credit of Miami-Dade County, Pinellas County, the Authority, the State of Florida, or any political subdivision of each. The issuance of each series of the Bonds pursuant to this Interlocal Agreement shall not directly, indirectly, or contingently obligate the Authority, Miami-Dade

County, Pinellas County, the State of Florida, or any political subdivision of each to levy or to pledge any form of taxation or to make any appropriation for their payment.

SECTION 6: Title to the Project and of future Projects financed or refinanced pursuant to this First Amendment shall be in the University and the Authority and the County shall not have any title or interest in the Project or future Projects.

SECTION 7: If the Bonds are issued, the Authority shall be the sole issuer of the Bonds and the Bonds shall not identify the County as an issuer or obligor of the Bonds. The County shall not be responsible for any undertaking in connection with the Bonds except as set forth in this Interlocal Agreement.

The Authority and its counsel 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.

The County shall not be liable for the costs of issuing the Bonds or the cost incurred in connection with the preparation, review, execution or approval of this First Amendment or any documentation or opinions required to be delivered in connection with the issuance of the Bonds.

SECTION 8: Neither the provisions, covenants or agreements contained in this First Amendment, nor the Bonds issued pursuant to this First Amendment shall constitute an indebtedness or liability of the County. It is hereby expressly acknowledged by the parties that the Bonds shall be issued by the Authority and not by the County. The Bonds, when issued, and the interest thereon shall be limited and special obligations of the Authority payable solely from the pledged revenues.

SECTION 9: No covenant or agreement contained in this First Amendment shall be deemed to be a covenant or agreement of any member, officer, agent or employee of the County in an individual capacity, and no member, officer, agent or employee of the County shall be liable personally on this First Amendment or be subject to any personal liability or accountability by reason of the execution of this First Amendment.

SECTION 10: The University has agreed to pay the County, administrative fees relating to the execution, delivery and administration of this First Amendment.

SECTION 11: The University, to the fullest extent permitted by law, agrees to indemnify and hold harmless 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 of attorneys, accountants, consultants and other experts) arising out of, resulting from or in any way connected with this First Amendment or the issuance of the Bonds.

SECTION 12: This First Amendment will remain in full force and effect from the date of its execution until such time as it is terminated by any party upon ten (10) days' written notice to the other party. Notwithstanding the foregoing, it is agreed that this First Amendment may not be terminated by any party during any period that the Bonds remain outstanding, or during any period in which the proceeds of such Bonds are still in the possession of the Authority or its agents pending distribution, unless the parties to this First Amendment mutually agree in writing to the terms of such termination. It is further agreed that in the event of termination the parties to this First Amendment will provide continuing cooperation to each other in fulfilling the obligations associated with the issuance of Bonds pursuant to this First Amendment.

In the event the Bonds are not issued by the Authority within twelve months from the date of this First Amendment, this First Amendment t shall terminate and have no further effect.

SECTION 13: It is agreed that prior to issuance of the Bonds, this First Amendment shall be filed with the Clerk of the Circuit Court of Miami-Dade County and with the Clerk of Circuit Court for Pinellas County, as required by Section 163.01(11) of the Interlocal Act.

SECTION 14: This First Amendment 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.

EXHIBIT B
PUBLIC TEFRA NOTICE

MIAMI-DADE COUNTY, FLORIDA
PUBLIC HEARING NOTICE

NOTICE IS HEREBY GIVEN PURSUANT TO Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") that the Board of County Commissioners of Miami-Dade County, Florida (the "Board") will hold a public hearing on _____ __, 2007, beginning at _:_0 _.m. or shortly thereafter at the Metro-Dade Center, Commissioner Chambers, 111 N.W. First Street, Miami, Florida.

The Board will consider a proposed issuance by the Pinellas County Educational Facilities Authority (the "Authority") of its revenue and revenue refunding bonds in an aggregate principal amount not to exceed $[11,000,000] (Barry University Project), Series 2007 (the "Bonds").

The proceeds from the sale of the Bonds, when and if issued, will be loaned by the Authority to Barry University, Inc., a non-profit independent educational institution empowered to provide a program of education beyond the high school level, organized and existing under the laws of State of Florida (the "University"). The proceeds will be used to (i) finance the costs the completion of construction of a building for the Institute for Community Health & Minority Medicine, a graduate medical science building, which will provide office space for faculty, classroom space for students and house various health programs, and related improvements of the University located at 11300 Northeast Second Avenue, Miami Shores, Florida, which is the campus for the University (the "2007 Project"), (ii) refund a taxable loan dated May 7, 2004 from Bank of America, N.A. to the University in the original amount of $7,300,000 (the "Loan"), the proceeds of which were used for construction of a new 174-bed dormitory, Benincasa Hall, on the University campus, and (iii) pay all or a portion of the costs of issuance of the Bonds. The School will own and operate the Project.

The hearing is being held for the purpose of affording residents of Miami-Dade County, Florida and other interested persons an opportunity to express their views, both orally and in writing, on the proposed issuance of the Bonds and the nature and location of the Miami-Dade Facility to be financed with the proceeds thereof.

THE BONDS WILL NOT CONSTITUTE AN INDEBTEDNESS OF THE STATE OF FLORIDA, MIAMI-DADE OR PINELLAS COUNTY OR ANY POLITICAL SUBDIVISION OF EACH, but will be payable solely from the revenues derived from the operation of the University and other revenues of the University pledged to the payment of the Bonds.

If any person decides to appeal any decision made by the Board with respect to any matter considered at such meeting, such person will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and the evidence upon which the appeal is to be based.

MIAMI-DADE COUNTY, FLORIDA
Board of County Commissioners

By: /s/ Harvey Ruvin
Clerk