

MEMORANDUM

Agenda Item No. 11(A)(3)

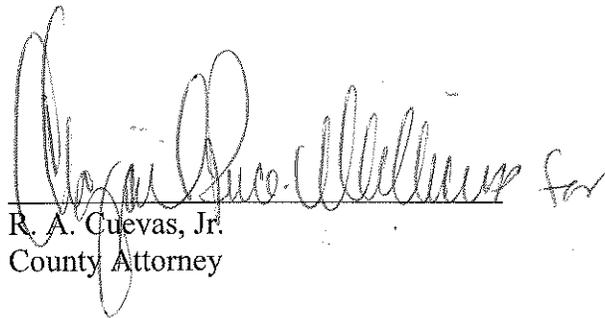
TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 16, 2014

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

SUBJECT: Resolution authorizing Capital
Trust Agency to operate within
jurisdictional boundaries of
Miami-Dade County for purpose
of issuing bonds in an amount
not to exceed \$9,000,000.00 on
behalf of Miami Community
Charter School, Inc.
Resolution No. R-1123-14

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Dennis C. Moss.



R. A. Cuevas, Jr.
County Attorney

RAC/smm



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 16, 2014

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

SUBJECT: Agenda Item No. 11(A)(3)

Please note any items checked.

- "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
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(3)
12-16-14

RESOLUTION NO. R-1123-14

RESOLUTION AUTHORIZING CAPITAL TRUST AGENCY TO OPERATE WITHIN JURISDICTIONAL BOUNDARIES OF MIAMI-DADE COUNTY FOR PURPOSE OF ISSUING BONDS IN AN AMOUNT NOT TO EXCEED \$9,000,000 ON BEHALF OF MIAMI COMMUNITY CHARTER SCHOOL, INC.; APPROVING ISSUANCE OF BONDS FOR PURPOSES OF SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; PROVIDING THAT SUCH BONDS SHALL NOT CONSTITUTE DEBT OR OBLIGATION OF MIAMI-DADE COUNTY; APPROVING FIRST AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN CAPITAL TRUST AGENCY AND MIAMI-DADE COUNTY; AND AUTHORIZING COUNTY MAYOR OR DESIGNEE TO EXECUTE SUCH FIRST AMENDMENT AND EXERCISE PROVISIONS CONTAINED THEREIN

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 (the "State"), and the Capital Trust Agency (the "Issuer") is a public body corporate and politic, lawfully organized and existing under the laws of the State, and each is a "public agency" as defined in Section 163.01, Florida Statutes, as amended, which is titled the "Florida Interlocal Cooperation Act of 1969" (the "Act") and as such "public agencies" are authorized to enter into interlocal agreements pursuant to the Act, for the joint exercise of powers which they share in common and which each might exercise separately; and

WHEREAS, this Board adopted Resolution No. R-1447-09 on December 15, 2009 approving (i) the issuance of bonds by the Issuer in an amount not to exceed \$11,000,000 on behalf of Miami Community Charter School, Inc., a Florida Corporation (the "Interlocal Borrower") and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), to fund the acquisition, construction, furnishing, and equipping

of an approximately 35,000 square foot educational facility for grades 6 through 12 located at 18720 SW 352nd Street, Miami-Dade County, Florida 33034 ("Charter School"); and (ii) approving the form and execution of an Interlocal Agreement between the County and the Issuer ("Interlocal Agreement") to allow the Issuer to operate within the jurisdictional boundaries of the County for the purpose of issuing bonds on behalf of the Interlocal Borrower; and

WHEREAS, the Interlocal Borrower has requested that the Issuer issue another series of bonds in an amount not to exceed \$9,000,000 ("Bonds") to be secured solely by revenues generated from the operations of the Charter School as well as any other collateral of the Interlocal Borrower to (i) fund the cost of (a) the acquisition, construction, installation and equipping of an expansion to the Interlocal Borrower's existing educational facilities for grades K-5, including a 2-story building that will contain approximately 10,000 – 14,000 square feet and which will include classrooms, cafeteria area and related parking, and the acquisition of the site located at 925 SW 1st Street and 921 SW 1st Street, Florida City; (b) the expansion to the Charter School, including a building containing approximately 33,000 square feet which will include classrooms, gymnasium, and food service area; and (c) related facilities, fixtures, furnishings and equipment to the projects described in (a) and (b); (ii) fund a debt service reserve fund for the benefit of the Bonds, if deemed necessary or desirable by the Interlocal Borrower; (iii) fund interest accruing on the Bonds, if deemed necessary or desirable by the Interlocal Borrower; and (iv) pay certain expenses incurred in connection with the issuance of the Bonds; and

WHEREAS, in connection with the issuance of the Bonds, the Issuer has requested that the County enter into a First Amendment to Interlocal Agreement with the Issuer; and

WHEREAS, the funding of the expansion to the Charter School will enable the Interlocal Borrower to increase the size of its enrollment which will serve more residents of the County; and

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

WHEREAS, the Project is located in the County and this Board is the highest elected legislative body of the County with jurisdiction over the area where the Charter School is located; and

WHEREAS, after a notice of public hearing was published more than fourteen (14) days prior to such public hearing in the *Miami Herald* (a newspaper of general circulation within the County and the area where the Project is located), a public hearing was held on behalf of the County by a representative of the Issuer ("Hearing Officer") regarding the purpose for, and the issuance of, the Bonds as required by Section 147(f) of the Code, at which time the Hearing Officer provided reasonable opportunity for all interested persons to express their views, both orally and in writing and diligently and conscientiously considered all comments and concerns expressed by such individuals, if any; and

WHEREAS, this Board wishes to approve the issuance and sale of the Bonds and to grant all approvals required or contemplated by Section 147(f) of the Code, in connection with such issuance and sale; and

WHEREAS, for the reasons set forth above, it is a public purpose and in the best interests of the County to approve the issuance of the Bonds by the Issuer and to enter into the related First Amendment to Interlocal Agreement,

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

Section 1. The issuance of the Bonds in an amount not to exceed \$9,000,000 by the

Issuer on behalf of the Interlocal Borrower for the expansion of the Charter School located within the County's jurisdictional boundaries is approved pursuant to the Act.

Section 2. The Board approves the issuance of the Bonds by the Issuer for purposes of Section 147(f) of the Code after accepting the report of the public hearing conducted by the Hearing Officer, a copy of which will be furnished to the committee and this Board prior to consideration of this Resolution. Any action regarding the issuance of the Bonds by this Board does not constitute an endorsement to a prospective purchaser of the Bonds of the creditworthiness of the Interlocal Borrower.

Section 3. The Bonds shall not constitute a debt, liability or obligation of the County or the State of Florida or any political subdivision or public agency of each, but shall be payable solely from the revenues provided by the Interlocal Borrower for the repayment of the Bonds, and neither the faith and credit nor any taxing power of the County, the State of Florida or any political subdivision or public agency of each is pledged to the payment of the principal of, premium, if any, and interest on the Bonds. The County shall have no obligation with respect to the Bonds other than its obligation to enter into the related First Amendment to Interlocal Agreement.

Section 4. The First Amendment to Interlocal Agreement between the County and the Issuer in the form attached as "Exhibit A" is approved, with such changes as shall be approved by the County Mayor or designee after consultation with the County Attorney's Office. The County Mayor or designee is authorized to execute the First Amendment to Interlocal Agreement on behalf of the County and to exercise its provisions necessary for the approval of the Bonds. Execution and delivery by the County Mayor or designee of the First Amendment to Interlocal Agreement shall constitute conclusive evidence of its final approval by such officer and the County.

The Prime Sponsor of the foregoing resolution is Commissioner Dennis C. Moss. It was offered by Commissioner **Esteban L. Bovo, Jr.**, who moved its adoption. The motion was seconded by Commissioner **Xavier L. Suarez** and upon being put to a vote, the vote was as follows:

	Rebeca Sosa, Chairwoman		aye
Bruno A. Barreiro	aye	Esteban L. Bovo, Jr.	aye
Daniella Levine Cava	aye	Jose "Pepe" Diaz	aye
Audrey M. Edmonson	aye	Sally A. Heyman	aye
Barbara J. Jordan	aye	Jean Monestime	aye
Dennis C. Moss	aye	Sen. Javier D. Souto	absent
Xavier L. Suarez	aye	Juan C. Zapata	aye

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of December, 2014. 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



HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
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 (this "Amendment") is dated _____, 2014 (the "Amendment Date") between CAPITAL TRUST AGENCY (the "Issuer"), a public body corporate and politic duly created and existing under the laws of Constitution of the State of Florida, and MIAMI-DADE COUNTY (the "Interlocal Participant"), a political subdivision of the State of Florida.

WITNESSETH:

WHEREAS, pursuant to the Florida Interlocal Cooperation Act of 1969, Section 163.01, Part I, Chapter 163, Florida Statutes, as amended (the "Interlocal Cooperation Act"), the Issuer and the Interlocal Participant entered into that certain Interlocal Agreement dated as of August 1, 2010 (the "Agreement"), which was recorded in the Office of the Clerk, Official Records Book 27423, Pages 3672-3681, Miami-Dade County, Florida and Office of the Clerk, Official Records Book 3002, Pages 412-421, Santa Rosa County, Florida;

WHEREAS, pursuant to the Agreement, the Issuer and the Interlocal Participant provided for the issuance by the Issuer of the Issuer's revenue bonds in an amount not to exceed \$11,000,000 (the "Bonds") on behalf of the Interlocal Participant and a loan of the Bond proceeds to Miami Community Charter School, Inc., a Florida not for profit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code")(the "Interlocal Borrower"), for purposes of providing funds to, among other things, (i) pay or reimburse the Interlocal Borrower for the payment of the cost of financing or refinancing certain educational facilities within Miami-Dade County, Florida (the "County"), as described therein (the "Project"), (ii) fund a debt service reserve fund for the benefit of the Bonds if deemed necessary or desirable by the Interlocal Borrower, (iii) fund accruing interest on the Bonds, and (iv) pay certain expenses incurred in connection with issuance of the Bonds;

WHEREAS, on October 28, 2010, pursuant to the Interlocal Cooperation Act and the Florida Industrial Development Financing Act, Part II, Chapter 159, Florida Statutes, as amended (the "Financing Act"), the Issuer issued the Bonds designated as its Tax-Exempt Revenue Bonds (Miami Community Charter School Project), Series 2010A in the aggregate principal amount of \$7,000,000 and its Taxable Revenue Bonds (Miami Community Charter School Project), Series 2010B in the aggregate principal amount of \$700,000;

WHEREAS, Section 6(a) of the Agreement provides that the Agreement may be amended by an instrument in writing (i) approved by a resolution of the governing body of the Issuer and of the Interlocal Participant, (ii) executed by duly authorized officers of the Issuer and the Interlocal Participant and (iii) filed with the Clerk of the Circuit Court of Miami-Dade County, Florida;

WHEREAS, the Interlocal Borrower has requested that the Issuer and the Interlocal Participant amend the Agreement pursuant to Section 6.2(a) thereof to provide for the issuance

by the Issuer of additional revenue bonds in an amount not to exceed \$9,000,000 (the "Additional Bonds") on behalf of the Interlocal Participant and a loan of the proceeds thereof to the Interlocal Borrower for the purposes of (i) providing for the payment or reimbursement of the cost of financing or refinancing certain additional educational facilities within the County as described in Exhibit A hereto (the "Additional Project"), (ii) fund a debt service reserve fund for the benefit of the Additional Bonds if deemed necessary or desirable by the Interlocal Borrower, (iii) fund interest accruing on the Additional Bonds if deemed necessary or desirable by the Interlocal Borrower, and (iv) pay certain expenses incurred in connection with the issuance of the Additional Bonds; and

WHEREAS, the parties hereto wish to amend the Agreement to provide for the issuance of the Additional Bonds for the purposes of providing funds to the Issuer to loan to the Interlocal Borrower for the purposes of financing or refinancing the Additional Project as described above, as hereinafter provided;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto hereby agree as follows:

ARTICLE I

AMENDMENTS

Section 1.1 Additional Bonds. All of the provisions of the Agreement shall apply in the same manner and with the same effect to the Additional Bonds as such provisions apply to the Bonds.

Section 1.2 Additional Project. All the provisions of the Agreement shall apply in the same manner and with the same effect to the Additional Project as such provisions apply to the Project.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties. Each of the Issuer and the Interlocal Participant hereby represents and warrants as follows:

(a) The execution, delivery and performance by it of this Amendment and the Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting it.

(b) No authorization, approval or other action by, and no notice to or filing with, any governmental issuer or regulatory body is required for the due execution, delivery and performance by it of this Amendment or the Agreement, as amended hereby.

(c) This Amendment and the Agreement, as amended hereby, constitute its legal, valid and binding obligations enforceable against it in accordance with their

respective terms, except that (i) the enforcement thereof may be limited by bankruptcy, reorganization, insolvency, liquidation, moratorium and other laws relating to or affecting the enforcement of creditors' rights and remedies generally, as the same may be applied in the event of its bankruptcy, reorganization, insolvency, liquidation or similar situation and (ii) no representation or warranty is expressed as to the availability of equitable remedies.

ARTICLE III

MISCELLANEOUS

Section 3.1 Ratification; Severability; Governing Law. Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby. This Amendment shall be governed by and construed in accordance with the laws of the State of Florida.

Section 3.2 Counterparts. This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[The remainder of this page is intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers hereunto duly authorized as of the Amendment Date.

CAPITAL TRUST AGENCY

By: _____
Title: Executive Director
Printed Name: Ed Gray, III

[SEAL]

MIAMI-DADE COUNTY, FLORIDA

By: _____
Title: County Manager
Printed Name: George M. Burgess

Attest:

Title: Deputy Clerk
Printed Name: _____

Approved by Office of Miami-Dade County
Attorney as to form and legal sufficiency

Gerald T. Heffernan

[Signature page to First Amendment to Interlocal Agreement]

STATE OF FLORIDA

COUNTY OF: _____

I, _____, a Notary Public in and for the said County in the State aforesaid, do hereby certify that Ed Gray, III, the Executive Director of the Capital Trust Agency, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized signed and delivered the said instrument as the free and voluntary act of said Agency for the uses and purposes therein set forth and took an oath.

IN WITNESS WHEREOF, under my hand and notarial seal this _____ day of December, 2014.

(seal)

Notary Public

My commission expires: _____

Name: _____

Address: _____

Personally Known _____ or
Produced Identification _____
Type of Identification Produced _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I, _____, a Notary Public in and for the said County in the State aforesaid, do hereby certify that George M. Burgess, the County Manager of Miami-Dade County, Florida, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized signed and delivered the said instrument as the free and voluntary act of said Agency for the uses and purposes therein set forth and took an oath.

IN WITNESS WHEREOF, under my hand and notarial seal this _____ day of December, 2014.

(seal)

Notary Public

My commission expires: _____

Name: _____

Address: _____

Personally Known _____ or

Produced Identification _____

Type of Identification Produced _____

Exhibit A

Description of the Additional Project

The Additional Project consists of the acquisition, construction, installation and equipping of an expansion to the Interlocal Borrower's existing educational facilities for grades K-5, including a 2-story building which will contain approximately 10,000 – 14,000 square feet and which will include classrooms, cafeteria area and related parking, and include the acquisition of the site therefor consisting of approximately ½ acre of land, located at 925 SW 1st Street, Florida City, in Miami-Dade County, Florida 33034 and approximately 12,473 square feet of land, located at 921 SW 1st Street, Florida City, in Miami-Dade County, Florida 33034, and an expansion to the Interlocal Borrower's existing educational facilities for grades 6-12, including a building containing approximately 33,000 square feet which will include classrooms, gymnasium, and food service area, located at 18720 SW 352nd Street, Florida City, in Miami-Dade County, Florida 33034, in each case including related facilities, fixtures, furnishings and equipment. The Additional Project will be owned by the Interlocal Borrower and operated by the Interlocal Borrower as charter school facilities pursuant to Section 1002.33, Florida Statutes, as amended.