

MEMORANDUM

February 12, 2014

TO: Honorable Mayor and City Commissioners

FROM: Kenneth Fields, City Manager

SUBJECT: Resolution 2014-03, City Issuance of Industrial Development Revenue Bonds for the Edward W. Bok Academy Project) – Public Hearing

SYNOPSIS: The approval will authorize the issuance of Industrial Development Revenue Bonds in one or more series in the principal amount of not to exceed \$4,141,000.

RECOMMENDATION

The Lake Wales Charter Schools, Inc. requests that the City Commission adopt after public hearing Resolution 2014-03, which:

1. Authorizes the City to issue Industrial Development Bonds Series 2014 in an aggregate principal amount not to exceed \$4,141,000 for the Edward W. Bok Academy Middle School Project; and
2. Authorizes the Mayor to execute a Memorandum of Agreement with the Borrower, the Lake Wales Charter Schools, a not for profit corporation.

BACKGROUND

The Lake Wales Charter Schools, Inc., a not for profit corporation (the “Borrower”), has applied to the City of Lake Wales to issue the Series 2014 Bonds for the purpose of refinancing the Project described below. On February 3, 2014, a Notice of Public Hearing was published in The Lakeland Ledger noticing a public hearing to be held by the City Commission on the date hereof at 6:00 p.m. regarding the issuance of the Series 2014 Bonds.

The Series 2014 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the City, Polk County, the State of Florida or any political subdivision or agency. The Series 2014 Bonds shall be payable solely from the revenues pledged in the loan and/or financing agreement entered into by and between the City and the Borrower prior to or contemporaneously with the issuance of the Series 2014 Bonds.

PROJECT

The principal purpose of the Series 2014 Bonds is the refinancing of all or a portion of the costs of acquiring and constructing improvements to the Edward W. Bok Academy middle school

facility located at 13901 Highway 27, Lake Wales, Florida. No portion of the financing will be used for new construction.

Adoption of the resolution shall not be construed as an approval of any necessary rezoning applications or for any other regulatory permits relating to the Project.

The City's adoption of the resolution shall not be construed to:

- a) Attest to the Borrower's ability to repay the indebtedness represented by the Series 2014 Bonds.
- b) A recommendation to prospective purchasers of the Series 2014 Bonds to purchase the same.
- c) Have waived any right of the City or stopping the City from asserting any rights or responsibilities it may have in that regard.

The bond resolution granting the final authority for the issuance of the Series 2014 Bonds will not be presented to the City Commission for adoption until documents related to the issuance are in substantially final form. The Series 2014 Bonds will not be issued until the County Commission of Polk County, Florida approves the issuance of the Series 2014 Bonds for federal tax purposes.

OTHER OPTIONS

Do not adopt the resolution. The Borrower will have to pursue other refinancing alternatives.

FISCAL IMPACT

The Borrower will pay the bond issuance costs including the City's Attorney and Special Counsel fees and expenses. As previously stated the bond issue does not constitute an indebtedness or pledge of the general credit or taxing power of the City.

The refinancing of the facility will not impact services currently provided by the City (Fire, Police, Streets, Parks, Library, Water and Sewer).

ATTACHMENTS

Resolution 2014-03

Memorandum of Agreement

Affidavit of Publication for the February 18, 2014 Public Hearing Notice

RESOLUTION 2014-03

A RESOLUTION OF THE CITY OF LAKE WALES, FLORIDA AUTHORIZING A MEMORANDUM OF AGREEMENT WITH LAKE WALES CHARTER SCHOOLS, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, WITH RESPECT TO THE REFINANCING OF THE ACQUISITION, RENOVATION AND EQUIPPING OF EDUCATIONAL FACILITIES; PROVIDING FOR THE ISSUANCE OF EDUCATIONAL FACILITIES REFUNDING REVENUE BONDS OF THE CITY OF LAKE WALES, FLORIDA, IN AN ORIGINAL PRINCIPAL AMOUNT NOT TO EXCEED \$4,141,000 FOR THE PURPOSE OF PAYING ALL OR ANY PART OF SUCH COSTS; PROVIDING CERTAIN OTHER DETAILS WITH RESPECT THERETO; AUTHORIZING AND CALLING FOR A PUBLIC HEARING ON THE PROPOSED ISSUANCE OF SAID BONDS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, that:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of Chapter 159, Part II, Florida Statutes, Chapter 166, Part II, Florida Statutes, the municipal charter of the City of Lake Wales, Florida (the "Issuer"), Chapter 2, Article V, Division 4 of the Code of Ordinances of the Issuer (the "Debt Policy"), and other applicable provisions of law (collectively, the "Act").

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared that:

A. Lake Wales Charter Schools, Inc., a not-for-profit corporation is organized, existing and in good standing under the laws of the State of Florida and authorized to do business in the State of Florida (the "Borrower"), has informed the Issuer of its intent to (i) refinance the outstanding portion of a mortgage loan dated June 24, 2008, by and between the Borrower and Bank of the Ozarks, the proceeds of which were used for the acquisition, renovation, addition and equipping of improvements of approximately 10 acres of land together with four existing buildings totaling approximately 40,910 square feet and containing 23 classrooms, a cafeteria, a kitchen, an auditorium, a library/media center, administrative offices, and athletic facilities located at 13901 Highway 27, Lake Wales, Florida 33859 (which is outside the municipal boundaries of the Issuer), and such other improvements, acquisitions, additions and renovations at the school (the "Project"); and (ii) pay a portion of the costs associated with the Bonds.

B. The Borrower has requested the Issuer to exercise its powers to issue revenue bonds, pursuant to the Act, for the purpose of refinancing the Project.

C. The Issuer is authorized and empowered by the Act to provide for the issuance of and to issue and sell its revenue bonds for the purpose of paying all or any part of the "cost of a project," as that term is defined in Chapter 159, Part II, Florida Statutes, and the Issuer finds that the costs to be paid from the proceeds of the Bonds will be "costs of a project" within the meaning of Chapter 159, Part II, Florida Statutes.

D. Pursuant to Section 2-578(g) of the Code of Ordinances of the Issuer, the Issuer finds (i) the Project has a general public purpose and is consistent with the Issuer's overall service and policy objectives, and (ii) the Bonds will not in any way pledge the Issuer's full faith and credit or any other revenues or property of the Issuer; therefore, the Issuer finds the Bonds comply with and satisfy the Debt Policy.

E. In order to make a significant contribution to the economic growth within the municipal boundaries of the Issuer, to provide and preserve gainful employment, and to serve a public purpose by advancing the public education and the general welfare of the State of Florida (the "State") and its people, upon satisfaction of all conditions by the Borrower in the Memorandum of Agreement to the sole satisfaction of the Issuer, it is desirable that the Issuer provide for the issuance and sale of its City of Lake Wales, Florida Educational Facilities Refunding Revenue Bonds (Edward W. Bok Academy Project), Series 2014, in the aggregate principal amount of not to exceed \$4,141,000 (the "Bonds") and that the Issuer use the proceeds thereof to pay any "cost" as defined in Chapter 159, Part II, Florida Statutes, and the Issuer finds that the Project makes a significant contribution to the economic growth within the municipal boundaries of the Issuer, provides and preserves gainful employment, and serves a public purpose by advancing public education and the general welfare of the State and its people.

F. Upon satisfaction of such conditions, the Issuer is willing to refinance the Project for the Borrower from proceeds of the sale of its revenue bonds, and loan the proceeds to the Borrower, such loan to be payable by the Borrower in installments, guaranteed by the Borrower sufficient to pay the principal of, premium (if any), interest and other costs due on such revenue bonds when and as the same become due.

G. The Project is a "project" within the meaning of Chapter 159, Part II, Florida Statutes. The Project is owned and operated by the Borrower.

H. The Issuer finds that it will be able to cope satisfactorily with the impact of the Project and is 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, relocation, equipping, operation, repair and maintenance for the refinancing of the Project and on account of any increase in population or other circumstances resulting therefrom.

I. It is believed essential by the Borrower that the refinancing of the Project commence at the earliest practical date, and the Borrower is unwilling to make commitments therefor without satisfactory assurances from the Issuer that, upon satisfaction of all requirements of law, and other

conditions to be met by the Borrower, revenue bonds will be issued and sold and the proceeds thereof will be made available to refinance the cost of the Project, to the extent of such proceeds.

J. It is necessary and desirable and in the best interest of the Issuer that the Issuer and the Borrower enter into a Memorandum of Agreement (the "Memorandum of Agreement"), providing among other things for the issuance of the Bonds by the Issuer and the sale of the Bonds in a private placement upon satisfaction of conditions described therein; for the use and application of the proceeds of the issuance and sale of the Bonds to refinance all or any part of the "cost" (as defined in the Chapter 159, Part II, Florida Statutes) of the Project, to the extent of such proceeds; and for the loan of the proceeds of the sale of the Bonds by the Issuer to the Borrower pursuant to a financing agreement requiring the Borrower to pay the loan in installments sufficient to pay all of the interest, principal, redemption premiums (if any) and other costs due under and pursuant to the Bonds when and as the same become due and payable, to operate, repair and maintain the Project at the Borrower's own expense, and to pay all other costs incurred by the Issuer in connection with the refinancing of the Project which are not paid out of the Bond proceeds or otherwise.

K. The Borrower is financially responsible and fully capable and willing to fulfill its obligations under the proposed financing agreement or agreements, including the obligation to make installment payments on the loan for the Project refinanced with the proceeds of the sale of the Bonds in the amount and at the times to be required by the financing agreement or agreements; the obligation to operate, repair and maintain such Project at its own expense; and to serve the purpose of the Act and other responsibilities to be imposed under the financing agreement or agreements, due consideration having been given to various factors determinative of the financial capability of the Borrower.

L. Neither the Issuer, Polk County, Florida, the State, nor any other political subdivision of the State shall be obligated to pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto, and all payments required on the Bonds shall be payable solely from the proceeds derived by the Issuer from the Borrower under a financing agreement or agreements, and the Issuer shall never be required to (i) levy ad valorem taxes on any property within its area of operation to pay the principal of and premium, if any, and interest on the Bonds or to make any other payments provided for under any financing agreement or agreements, or (ii) pay the same from any funds of the Issuer other than those derived by the Issuer from the Borrower under any financing agreement or agreements; and such Bonds shall not constitute a lien upon any property owned by or situated within the municipal boundaries of the Issuer except the Project and any other property that may be pledged as security therefor by the Borrower, in the manner provided in any financing agreement or agreements. Neither the full faith and credit or taxing power of the Issuer nor the full faith and credit or taxing power of the State, Polk County, Florida or any other political subdivision of the State is pledged to the payment of the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. Such Bonds are limited special obligations of the Issuer payable solely from the sources identified above. No member or officer of the Issuer will be subject to any personal liability by reason of the issuance of the Bonds.

M. Prior to issuance of the Bonds, the Issuer will receive an opinion from bond counsel to the effect that the Bonds will be validly issued and that the interest on the Bonds will, under existing laws of the United States, be excluded from gross income of the holders for federal income tax purposes.

N. A negotiated sale of the Bonds is required and necessary, and is in the best interest of the Issuer, for the following reasons: the Bonds will be special and limited obligations of the Issuer payable solely out of revenues and proceeds derived by the Issuer pursuant to the financing agreement, and the Borrower will be obligated for the payment of all costs of the Issuer in connection with the refinancing of the Project which are not paid out of the Bond proceeds or otherwise and for operation and maintenance of the Project at no expense to the Issuer; the cost of issuance of the Bonds, which will be borne directly or indirectly by the Borrower, could be greater if the Bonds are sold at public sale by competitive bids than if the Bonds are sold at negotiated sale, and a public sale by competitive bids would cause undue delay in the refinancing of the Project; revenue bonds having the characteristics of the Bonds are typically and frequently sold at negotiated sale; the Borrower has requested that a negotiated sale of the Bonds be authorized by the Issuer; and authorization of a negotiated sale of the Bonds is necessary in order to serve the purposes of the Act.

SECTION 3. AUTHORIZATION OF EXECUTION AND DELIVERY OF MEMORANDUM OF AGREEMENT.

A. The Mayor or deputy Mayor of the Issuer shall be and is hereby authorized and directed to execute and the City Clerk or deputy City Clerk shall be and is hereby authorized and directed to attest under the official seal of the Issuer, the Memorandum of Agreement in substantially the form attached hereto as Exhibit A, which is incorporated herein by reference, together with such changes therein, whether made prior to or after adoption of this Resolution, as shall be approved from time to time by the officers executing the same on behalf of the Issuer, such approval to be conclusively evidenced by their execution of each such agreement.

B. Execution of the Memorandum of Agreement shall be in the name of and on behalf of the Issuer, and the City Clerk is hereby authorized and directed to deliver such agreement to the Borrower.

C. Such officers and all other proper officers, Council members, directors, agents and employees of the Issuer are hereby authorized, empowered and directed to execute and deliver such further agreements, instruments and documents and to take such further action as may be necessary and desirable to effectuate and carry out the intent and purposes of each such agreement, when executed and delivered by the Issuer, and are further authorized to take such other steps and actions as may be required and necessary in order to issue such Bonds, but only in accordance with the terms hereof.

D. Bryant Miller Olive P.A., Bond Counsel, is hereby authorized to commence preparation of all agreements, instruments and documents necessary and desirable in order to issue the Bonds.

SECTION 4. SALE OF THE BONDS. The Borrower has provided the Issuer with a copy of the commitment letter from Citizens Bank & Trust (the "Lender"), pursuant to which the Bonds will be privately placed with the Lender for its own investment. The Bonds will state that any resale of the Bonds shall be restricted to accredited or sophisticated investors within the meaning of and in accordance with applicable state and federal securities laws and the policies of the Issuer described by ordinance or resolution of the City Commission.

SECTION 5. EFFECT OF RESOLUTION. This Resolution is an "initial resolution" and is the Issuer's declaration of "official intent" and official action toward issuance of the Bonds for purposes of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, including, but not limited to Section 1.103-18, as amended.

SECTION 6. PUBLIC HEARING.

(A) A public hearing was held by the City Commission of the Issuer on February 18, 2014, at 6:00 p.m. in City Commission Chambers, Municipal Administration Building, 201 West Central Avenue, Lake Wales, Florida 33853, Florida at which public hearing all parties and interested citizens were able to appear and be heard as to any and all matters pertinent to the issuance of the Bonds and the loan of the proceeds thereof to the Borrower to refinance the costs of acquiring, constructing, reconstructing, expanding, renovating and/or equipping the Project.

(B) The City Commission hereby ratifies the publication of the notice of such public hearing in a newspaper of general circulation within Polk County, Florida in advance of the public hearing before the City Commission conducted in connection with the Bonds and the facilities to be financed with the proceeds thereof as required by Section 147(f) of the Code.

(C) The results of such public hearing shall be provided to Polk County, Florida for its consideration of approval.

SECTION 7. SECTION 265 DESIGNATION OF THE BOND. The Issuer hereby designates, for the account and benefit of the Borrower, the Bond in the amount which is issued hereunder, which shall be an amount not to exceed \$4,141,000 (which together with any previous tax-exempt debt of the Borrower issued in the calendar year 2014 totals less than \$10,000,000) as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3)(B)(i) of the Code. There are no entities which are subordinate to or which issue obligations on behalf of the Borrower. The Borrower hereby covenants and agrees not to take any action or to fail to take any action if such action or failure would cause the Bond to no longer be a "qualified tax-exempt obligation."

SECTION 8 LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications nor for any other regulatory permits relating to the Project and the Issuer shall not be construed by reason of its adoption of this Resolution to have waived any right of the Issuer or estopping the Issuer from asserting any rights or responsibilities it may have in that regard.

SECTION 9. REPEALING CLAUSE. All resolutions or orders and parts thereof in conflict herewith, to the extent of such conflicts, are hereby superseded and repealed.

SECTION 10. SEVERABILITY. If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Resolution.

SECTION 11. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

DULY RESOLVED this 18th day of February, 2014.

CITY COMMISSION OF THE CITY OF LAKE
WALES, FLORIDA

(SEAL)

ATTEST:

Eugene Fultz, Mayor

Clara VanBlargan, City Clerk

EXHIBIT A

MEMORANDUM OF AGREEMENT

AFFIDAVIT OF PUBLICATION

NEWS CHIEF

Lakeland, Polk County, Florida

STATE OF FLORIDA)

Before the undersigned authority personally appeared Paula Freeman, who Under oath says that she is Customer Service for Advertising at The Ledger, the owner of The News Chief, a daily newspaper published at Lakeland in Polk County, Florida; that the attached copy of advertisement, being a

PUBLIC NOTICE

in the matter of REVENUE BONDS / EDWARD W. BOK ACADEMY

Concerning CITY OF LAKE WALES

was published in said newspaper in the issues of

2-3; 2014

Affiant further says that said The News Chief is a newspaper published at Lakeland, in said Polk County, Florida, and that the said newspaper has heretofore been continuously published in said Polk County, Florida, daily, and has been entered as second class matter at the post office in Lakeland, in said Polk County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Signed.....

Paula Freeman
Customer Service for Advertising
Who is personally known to me.

Sworn to and subscribed before me this 3rd
day of FEBRUARY A.D. 2014

Patricia Ann Rouse
Notary Public

(Seal)

My Commission Expires October 17, 2016



NOTICE OF PUBLIC HEARING REGARDING

NOT TO EXCEED \$4,141,000
CITY OF LAKE WALES, FLORIDA
INDUSTRIAL DEVELOPMENT REVENUE BONDS
(EDWARD W. BOK ACADEMY PROJECT)
SERIES 2014

TO WHOM IT MAY CONCERN:

You are hereby notified that on Tuesday, February 18, 2014 at 6:00 p.m., or as soon thereafter as the matter may be heard, in the City Commission Chambers in the Municipal Administration Building, 201 West Central Avenue, Lake Wales, Florida, a Public Hearing will be held by the City of Lake Wales, Florida on the proposed issuance of City of Lake Wales, Florida Industrial Development Revenue Bonds (Edward W. Bok Academy Project), Series 2014 (the "Bonds") and on the location and nature of the facility to be financed. The Bonds are to be issued in an aggregate principal amount not to exceed \$4,141,000 for the purpose of refinancing the costs of the acquisition of and construction of improvements at Edward W. Bok Academy located on approximately 10 acres of real property located in Polk County, Florida, in close proximity to the City of Lake Wales, Florida, at 13901 Highway 27, Lake Wales, Florida 33859 to provide a 6-8 middle school facility for approximately 570 students (the "Project"), owned and operated by Lake Wales Charter Schools, Inc., a nonprofit corporation organized and existing under the laws of the State of Florida (the "Borrower") which has been determined by the Internal Revenue Service to be an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

THE BONDS SHALL NEVER CONSTITUTE AN INDEBTEDNESS OR GENERAL OBLIGATION OF THE STATE OF FLORIDA, THE CITY OF LAKE WALES, POLK COUNTY OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF FLORIDA, BUT SHALL BE PAYABLE SOLELY FROM FUNDS PAID BY LAKE WALES CHARTER SCHOOLS, INC. AND SHALL BE SECURED BY COLLATERAL FURNISHED BY LAKE WALES CHARTER SCHOOLS, INC.

Persons wishing to express their views regarding the Project and the issuance of the Bonds may appear at the hearing or may submit their views in writing. Written comments should be submitted to the City of Lake Wales at P.O. Box 1320, Lake Wales, Florida 33859 1320 or 201 West Central Avenue, Lake Wales, Florida 33853, Attention: City Manager, and should be mailed in sufficient time to be received before February 18, 2014, the date of the hearing. Should any person decide to appeal any decision made by the City of Lake Wales or Polk County, Florida following the hearing, he or she will need a record of the proceedings and he or she may need to assure that a verbatim record of the proceedings be made, which record includes the testimony and evidence upon which the appeal will be heard. Following the hearing, the City Commission will approve or disapprove the issuance of the Bonds and submit its request to the Board of County Commissioners for approval or disapproval of the issuance of the Bonds.

Any person requiring reasonable accommodation at this meeting because of a disability or physical impairment should contact the City Clerk or the City Manager at (863) 678-4182 or fax a written request to (863) 678-4180 at least 48 hours prior to the meeting.

NC9131 2-3; 2014 CITY COMMISSION OF LAKE WALES, FLORIDA