Texas Public Finance Authority

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MINUTES OF THE MEETING OF THE TEXAS PUBLIC FINANCE AUTHORITY CHARTER SCHOOL FINANCE CORPORATION

December 14, 2009

The Board of Directors of the Board of the Texas Public Finance Authority Charter School Finance Corporation (the "CSFC") convened in open meeting, notice duly posted pursuant to law (a copy of which notice is attached hereto as Exhibit "A") at 9:00 a.m., Monday, December 14, 2009, State Capital, Room E2.028, Austin, Texas. Present were: Dr. Marina Walne, President, Mr. Omar Garcia, Vice President; Ms. Kirstin Moody, Secretary; Mr. Robert A. Schulman, Member; and Mr. Tom Canby, Member. Representing TPFA's staff was: Mr. Dwight Burns, Executive Director; Ms. Susan K. Durso, General Counsel, Mr. John Hernandez, Deputy Director; and Ms. Paula Hatfield.

Present in their designated capacities were the following persons: Mary Perry, Rick Salvo, Texas Education Agency; Debi Jones, Morgan Keegan; Katharine Teleki, Sunset Commission; Soner Tarim, Umit Pecen and Ilhan Can, COSMOS Foundation, Inc.

Item 1. Call to order.

Dr. Walne called the meeting to order at 9:17 a.m.

Item 2. Discussion and possible action on procedure for extending Board member terms under By-laws section 2.9.2, and discussion and possible to extend terms of Board members whose terms have expired.

Ms. Durso introduced herself to the Board. She explained that the Bylaws had been recently updated to address the extension of terms that have expired. The Bylaws require that members serve until a successor is named, but does not really address how that reappointment occurs. Staff recommends a small amendment to the Bylaws that would state that a member would continue to serve until a successor is appointed or the member is reappointed by the Authority at its next regularly scheduled meeting because the members serve at the pleasure of the Authority.

Mr. Schulman moved to accept staff's recommendation. Mr. Garcia seconded. The motion passed unanimously.

Item 3. Consideration, discussion, and possible action to approve publication of notice under Internal Revenue Code section 147(f) for, if required, or, in the alternative, approve a Request for Financing from Cosmos Foundation to issue approximately $80 million Education Revenue Bonds, Series 2010, and Qualified School Construction Bonds ("QSCBs") including adoption of a resolution authorizing the Texas Public Finance Authority Charter School Finance Corporation Revenue Bonds (Cosmos Foundation), a Trust Indenture, Loan Agreement, Public Hearing, and other related matters.

Ms. Durso stated agenda items 3, 4 and 5 are all financing requests by different charter school foundations. She explained that CSFC is a conduit issuer for these financings and the Board is approving the economic feasibility of the bond issuance transactions.

COSMOS is requesting $80 million in education revenue bonds and qualified school construction bonds (QSCBs). The education revenue bonds are taxable and the qualified school construction bonds are tax-exempt. QSCBs are exempt from the TEFRA hearing IRS requirement. COSMOS has 13,000 students and plans to use the funds to improve ten campuses around the state. COSMOS has requested a rating from Standard and Poors.

Ms. Durso advised the Board that their job according to statute is to determine the bond financings is economically feasible at the current time and if it determines that the transaction is not economically feasible, then the request can be rejected. The role of the conduit issuer is to be sure the Authority does not have any liability for the issuance since no state funds are used and to determine the school is capable of repaying the debt. Mr. Tom Sage, Vinson & Elkins, represents COSMOS and is available to answer Board questions.

Mr. Sage stated he would explain the conduit process. The federal government treats tax exempt bonds as a subsidy. The subsidy is enjoyed by state and local governments and State of Texas school districts or municipal districts. The treasury also allows for tax exempt bonds to be issued by duly constituted authorities that are non-profit corporations, like the CSFC, which are created to issue bonds on behalf of chapter 503(c) charitable organizations. States have different statutes and different types of corporations that can issue these bonds. In Texas, corporations can issue bonds for higher education, universities, health facilities development corporations that finance all the medical centers in Texas, industrial development corporations that issue industrial development bonds, higher education finance corporations, one specific chapter has the authority to finance charter schools and private schools such as parochial schools. The idea behind the conduit issuance is to qualify the debt under the federal income tax code so that the interest on the debt can be treated as tax exempt interest to the holders of the bonds. There is no intent or design and the entire system is based on the concept that the conduit issuer is not an obligor on the debt because there is no way anyone would ever do this, not just for charter schools, but for billions and billions of health care debt. The transaction structure is such that the CSFC would authorize the issuance of the debt and issue the bonds. The bonds would be payable from a note that is signed by the school and CSFC will issue the bonds and loan 100% of the proceeds to the school. The school signs a note that perfectly matches the terms of the bonds to pay it back. The note is all assigned to a trustee under a trust indenture and at that point, or today after approval, that is all the issuer is expected to do. There are often times questions about what would happen or how the conduit issuer would get involved, but if there were ever a problem, CSFC would receive notice as the issuer of the bonds from the trustee, or if modifications or revisions to any of the documents, the CSFC as parties to those documents would review and consider those changes or amendments.

Mr. Garcia asked technically what happens when or if someone defaults. Mr. Sage said that if a default occurs, the remedies for the trustee besides notifying the CSFC are to seize the assets of the borrower. There is a deposit account control agreement that is put over the depository accounts to perfect the security interest in those accounts so the trustee could seize the depository account and also there is a deed of trust that secures it and the trustee has a right to foreclose on the assets, real and personal property at all the locations.

Mr. Schulman commented that the documents are full of indemnity language and the school districts have difficulty in issuing blanket indemnity and it has not been decided whether charters can do that or not. Mr. Sage agreed that there was nothing definitive about the issue. Mr. Sage said the general prohibition for school districts and other governments to provide indemnity clause is the prohibition on the creation of debt under the Texas Constitution. Under the Texas Constitution a government or political subdivision can only create debt by those means prescribed by the Legislature and the statutes are full of authority for cities to issue water and sewer debt, State of Texas to issue debt for universities, and the concept is that the indemnity clause a obligation is created without going through the statutorily prescribed methods for incurring debt. Mr. Sage stated a charter school is a non-profit corporation that holds a charter from the state so state revenues come in for the education of the students. A charter school is a quasi-public body that operates under the non-profit code and also operate under Chapter 12 of the Education Code and given there is a constitutional provision that would deal with those, he feels comfortable with it and if something was to be inserted such as "to the extent permitted by law" which is a savings clause that is used in governmental transactions.

Mr. Schulman said what was confusing about it was the Administrative Code makes some statements about how charters should spend their money in the same way that school districts do. Dr. Walne asked if there were any additional questions. Ms. Moody asked why a school would come to the CSFC through this process instead of the federal grant process. Mr. Sage said the request for financing was not for a grant, but to issue bonds. Dr. Walne clarified the question to be why this issuer would be approached instead of other issuers. Mr. Sage said higher education finance corporation could be created by any city in the State of Texas, or the TPFA and there a number of small issuers around the state that serve as issuers for a small fee. One of the reasons, COSMOSs was particularly interested in talking to CSFC about these transaction is because it has the Q bonds. The Q bonds used to be called qualified academy bonds and now are called qualified school construction bonds and the only meaningful difference between the two is under the qualified school construction bonds is that new facilities can be built.

The holder of the bond receives a tax credit in lieu of or in addition to interest. The Treasury publishes a tax credit every day on its website. One the quirks to the law and part of the stimulus bill said that the Q bonds can only be expended on projects in the jurisdiction of the issuer. An organization like COSMOS would affect twelve issuers and would be an unworkable number of issuers to issue debt. TPFA CSFC has jurisdiction over the entire state and is preferred for that reason.

Mr. Sage stated an exemption from the Bond Review Board was being requested. If an appearance is necessary it will be in January and Q bond allocation authority expires in February. Mr. Sage said a number of folks from COSMOS were present to discuss its request.

Dr. Tarim, Superintendent and founder of COSMOS, Mr. Umit Pecen, CFO and Mr. Ilhan Can, General Counsel, were present. Materials prepared about COSMOS schools were distributed to the Board. Mr. Can represents COSMOS schools. Dr. Walne asked for comment regarding the economic feasibility of this $80 million project. Dr. Tarim said COSMOS was one of the largest, if not the largest, charter school in Texas. COSMOS has been expanding its school campuses throughout Texas. By 2012, COSMOS expect to have 35 schools. Based on its business plan, five new schools are expected each year. When reviewing COSMOS' track record and factoring in the downturn of the economy, a $10 million surplus or assets remains. COSMOS is very strong and strengthens each year. Dr. Walne asked how COSMOS intends to repay its debt. Dr. Tarim indicated debt was paid back by its profit margin. Charter schools receive roughly $100 less per student per year. COSMOS also receives private funding from organizations.

Within the last three years, COSMOS has received more than $10 million from private funding. Dr. Walne asked about the size of an average class. Dr. Tarim stated the faculty to student ratio is 1:15. Dr. Walne asked if she were to visit the school how many students would she see in a class. Dr. Tarim said that if it were a high school classroom it would be 15-18, but if it is a middle school classroom, it is a maximum of 24.

Dr. Tarim said last year the school had nineteen campuses and this year there are twenty-five campuses. Of those 19, 11 are exemplary, 6 of them are recognized and 2 of them are academically acceptable so the target is to move schools over to exemplary. Mr. Schulman asked if these expansions were planned expansions or part of the Commissioner of the Texas Education Agency, Commissioner Scott's, permission to allow a charter school to expand on its own. Dr. Tarim said that was correct. Of the 19 schools, COSMOS has 15 charter school districts. Mr. Schulman asked it COSMOS would consider backing up the waiver with a regular amendment request because some folks are concerned with the legality of the waiver. Dr. Tarim said he believed that charter schools were the future of the public school system as long as it is done properly.

Ms. Moody asked if Mr. Schulman was saying that the expansion of the school to the ten new campuses is going through a process that is an alternative to whatever the traditional amendment process was. Mr. Schulman said yes, and it was a waiver of process and there have been some question about it. Ms. Moody asked if the school had been approved. Mr. Sage said these campuses had been approved under the traditional manner.

Ms. Moody asked if the deadline was still February 1. Dr. Tarim said 'February 1.' Ms. Moody asked how many campuses would be applied for in the amendment process this year. Dr. Tarim said seven new campuses and some of the projects are for this year and the following year.

Ms. Moody said that if approval were forthcoming, the assumption would be that COSMOS was going to be granted the new campuses through the regular amendment process or through the waiver process. Dr. Walne asked if COSMOS was going through the regular amendment process for these proposed schools and Dr. Tarim said 'yes.'

Mr. Canby stated he remembered the Board approving one that was going to take a school beyond its enrollment limit and the approval was granted contingent upon TEA approving the amendment to the charter school. Mr. Schulman stated that recollection was on the side of the credit enhancement program. Mr. Schulman stated the conduit process was to be certain liability issues were covered and that he trusted counsel had reviewed the materials.

Dr. Walne asked one last question about waiting lists. Dr. Tarim said 9,000 students were on the waiting list and this year there are 14,000 students waiting. Dr. Tarim said there was a huge demand at each of its locations.

Mr. Burns stated there were two issues concerning economic feasibility to cover the debt. One would be the revenue stream to cover debt service and the other would be the valuation of the deed of trust or appraisal of the various real estate holdings and how it relates to the liabilities.

Debi Jones, Morgan Keegan, introduced herself and stated she was serving as senior managing underwriter for COSMOS. Based on current market conditions, it is anticipated that this transaction will be issued in two different series of bonds, one will be tax-exempt and the balance will be through the QSCB process. It is anticipated that the tax-exempt bonds would have an all-in cost of approximately 7.04% and the QSCBs would have all-in cost of approximately 3% for a blended yield of 5.6%. These amounts are predicated on receiving an investment grade rating from Standard & Poors, which is expected. The coverage on the debt service right now is projected to be 2.0 times the coverage of maximum annual debt service. Mr. Sage said appraisals of some of the properties were in process and the appraised values of the properties are almost always significantly less than the debt. The deeds of trust as security of the debt tie the schools hands so no more debt can be obtained. Mr. Burns asked if the initial credit rating by S&P was consistent with what was being seen today. Mr. Sage said he did not know what the exact loan to value ratio was, but that he could find out.

Mr. Burns asked if it were still true in Texas that charters were not allowed to set up a black box and Mr. Sage said that was correct. Under Chapter 12, HB 11 in 2001, the law was put in place that state money had to go to the depository account of the school and the depository account control agreement that is filed with TEA. There are occasions where the depository account is the same as trustee so it is the same bank.

Ms. Moody questioned that if the other campuses did not get approved which would result in new ADA not arriving, what would happen. Mr. Sage briefly consulted with his clients. Dr. Tarim stated that because the schools were enrolling a new grade each year and the schools had a surplus of cash that even if the campuses were not approved, the bonds could be paid. Mr. Burns stated there was charter risk which is endemic to charter school bonds.

Ms. Jones said the coverage was based on 2011 projected revenues that would be after the opening of all the campuses on the project list. However, based on its revenues from the last fiscal year, the revenues were about 1.1 times what would be needed on an annual coverage basis without any additional projections. It is covered on an annual basis. Ms. Jones said for the next two years the debt service would be covered on existing and new debt.

Mr. Garcia asked Mary Perry based on what she knows about the school and based on her history of what the State Board has done in the past, if she knew of any problem the Board would have approving the amendment. Mary Perry, Texas Education Agency, stated she knew of no outstanding issues regarding COSMOS or Harmony Schools at this time. She clarified it was the Commissioner who would grant the amendments.

Mr. Schulman moved to approve the financing request for COSMOS. Mr. Garcia seconded. The motion passed unanimously.

Item 4. Consideration, discussion, and possible action to approve publication of notice under Internal Revenue Code section 147(f) for, if required, or, in the alternative, approve a Request for Financing from Nova Academy to issue approximately $5 million Qualified School Construction Bonds ("QSCBs"), Series 2010, including adoption of a resolution authorizing the Texas Public Finance Authority Charter School Finance Corporation Revenue Bonds (Cosmos Foundation), a Trust Indenture, Loan Agreement, Public Hearing, and other related matters.

Ms. Durso introduced the request from Nova charter schools, a campus in Oak Cliff and one in Nova Academy, both in the Dallas area. The request is for $5 million in the QSCBs and another $105,000 in traditional bonds. They have already received a BBB rating from Standard & Poors. The audited financials from 2008 and 2009 were included in the materials distributed to the Board. Ms. Durso noted that there was a significant deficiency, but not one that rose to a level of material weakness, and it was a budget variance on proposed anticipated budget versus actual budget numbers and the superintendent described that as related to some repairs and improvements that were needed for safety issues. There was another issue about having a couple of bank balances that the entire deposit was not secured by the FDIC due to the level of deposit. The item is considered a low risk on the audit. The financing is the same type as COSMOS, a conduit issuer financing, and The Board s finding is the same as it was on the COSMOS.

Mr. Sage, Vinson & Elkins, represents Nova Academy. Nova operates two campuses. This financing is to make some improvements on the Oak Cliff campus and to build a new campus which will be an additional campus to what Nova has currently. Nova has completed the rating process and received a BBB rating, which is one step up from just making the investment grade. The investment banking team is led by RBC Capital Markets out of Dallas and underwriters are in place. The State has given Nova a Q bond allocation so the same schedule applies on that. There are going to be tax-exempt and Q bonds portions to this issuance and the market for Q bonds is developing. Q bonds is a brand new product and there hundreds and hundreds of billions dollars nationwide and Texas that have been allocated and with the tax credit there has to be taxable income to offset it. Many institutions do not have a lot of taxable income so the marketing is developing.

Ms. Jones pointed at the supplemental 3% coupon because the tax rate is not quite enough to get investors to buy it for zero percent. This is an aggregate amount of debt and there will be some movement between the tax-exempt and the Q bonds and that amount will not be known until the day of pricing.

Nova is much smaller than COSMOS. This financing will reimburse the school for some of the repairs made this last year for public safety issues to the existing campuses, an old church building. The goal is to price this debt in early-to-mid January depending on how the Bond Review Board treats the mater and close shortly thereafter.

Mr. Schulman asked what the amount of additional annual debt service the school will incur from this financing. Mr. Sage said he would find the answer to that question later and email the Board. Mr. Schulman stated the Board had the responsibility to determine financial ability to repay the debt.

Mr. Burns asked if Mr. Sage was attempting to call the banker, RBC Capital Markets.

Ms. Moody asked about the notes provided from staff stating that there are bank balances not insured accounts. Ms. Durso explained those notes were revealed in the school's audit. Mr. Canby directed everyone's attention to page 35 of the audit report. Mr. Schulman stated schools avoid this situation by having pledged securities, which is traditional for school districts. Ms. Moody asked if this school should be counseled to secure these funds and Mr. Schulman said he felt sure the auditors had advised the school to do so.

Dr. Walne asked if the Board could review the request from AW Brown and return to consider Nova after RBC Capital Markets calls back.

Mr. Burns indicated that a copy of Standard & Poors rating report was found and shared with Board members.

Mr. Garcia moved to approve the request for financing. Mr. Canby seconds. The motion passes unanimously.

Item 5. Consideration, discussion, and possible action to approve publication of notice under Internal Revenue Code section 147(f) for, if required, or, in the alternative, approve a Request for Financing from A. W. Brown Fellowship Charter School to issue approximately $6 million Qualified School Construction Bonds ("QSCBs"), Series 2010, including adoption of a resolution authorizing the Texas Public Finance Authority Charter School Finance Corporation Revenue Bonds (Cosmos Foundation), a Trust Indenture, Loan Agreement, Public Hearing, and other related matters.

Mr. Sage stated that AW Brown has participated in three financings. AW Brown is one of the earliest charter schools seeking financing and is located in south Dallas. AW Brown operates two schools off of Red Bud, in the Oak Cliff area. Its schools are rated exemplary. AW Brown is one of the first schools in Texas to move up to the BBB rating category. RBC Capital Markets is its banker.

The school does not have rapid growth plans, but is hoping to get into the A rating category with this financing request. They have purchased a piece of property within about 2 miles of its existing location to build a high school. All the old debt was re-purchased with a tender offer. They had ACA insurance involved with that and it had become a fairly burdensome relationship. Some market opportunities presented and the school secured a line of credit with Regions Bank, a taxable line of credit, and tender offers were made to buy the debt at less than face value. Because of the way the market was positioned late last fall or spring, it was possible to purchase it all back at 80 to 85% par. It compressed their debt outstanding and freed up money that was held under trust indentures to contribute toward that. They went from about $16-17 million debt to about $14 million in debt.

Mr. Schulman asked if Mr. Sage had been privy to the memorandum the Board received from its counsel. Ms. Durso stated no. Mr. Schulman asked about questions related to the audit and whether Ms. Durso wanted to talk about it. Ms. Durso stated the last audit available for review was for 2008 and there were a couple of questions. There is an ambiguity. The statement reads "auditee qualified as a low risk auditee" and on the other audits from the other companies it either said "yes or no." On AW Brown, it said "high." Ms. Durso stated that in those documents the outstanding debt had been defeased. She asked how the process worked when the pledged assets are already securing previous debt?

Mr. Sage stated he did not know the answer to the high or low risk in the audit. Mr. Garcia said Mr. Canby could speak to the meaning of it. Mr. Canby said it was very typical of auditing standards and he did not see anything in the audit that was cause for concern. Mr. Sage said the defeasance information was not included simply because it did not occur in the period covered by the audit. The last question about how additional assets are handled when doing these financings is a great question. The construction of the financing structure is under a master indenture structure. The master indenture is a pool of assets and it is pool only belonging to one organization. All the financings are out of the pool and all the parity financings are out of that pool. For instance, in the COSMOS financing, is adding debt payable from the pool, but also adding assets to the pool which include the revenues and the deed of trust. The deed of trust is recorded with the initial transaction and the deed of trust is supplemented from time to time to maintain it and it reserves the right to add property and debt on a parity basis and so long as property is added that does not have prior liens on it, those are included on a first lien basis.

Ms. Durso stated that was understood, but the part not understood is when future income is pledged on the prior debt. Mr. Sage said yes, and on AW Brown, that debt was defeased. Ms. Durso stated it was open again to pledge again. Mr. Sage said on the others the state revenues were pledged and the way the revenue pledge was defined the revenue pledge include the revenue of participating campuses because you can't include the revenues from campuses that do not benefit from the financing structure. Ms. Durso asked if the revenue was from only the participating campuses. Mr. Sage confirmed that.

Mr. Garcia asked Mr. Canby if he knew what the 2009 audit status was or why it had not been completed. Mr. Canby stated he knew the 2009 audit was being worked on. A lot of these audits are being completed now. Mr. Sage indicated copies would be provided to the board as soon as it is completed.

Mr. Schulman noted that the auditor name was Brown and wondered if there was a family connection between the auditor and the school, AW Brown. Mr. Sage indicated there was no relationship. Mr. Garcia asked about other relationships and Mr. Sage indicated that Rev. Brown's wife is a teacher at the school.

Ms. Moody questioned the school's rating. Ms. Durso indicated she had pulled the rating for AW Brown and in 2008, the two campuses were academically acceptable and in 2009, the campuses were recognized.

Dr. Walne stated the school had debt before and had been successful in managing it. Mr. Sage confirmed and said the debt had been issued at a BBB- rating and were upgraded two years ago to BBB.

Ms. Moody asked whether Mr. Burns and Ms. Durso were comfortable with the existing debt. Mr. Hernandez, Texas Public Finance Authority, asked Mr. Sage regarding the existing debt because he did find evidence of there being a tender and a defeasance. The remaining debt service on the loans has not yet been provided for review. The 2009 financials have not been reviewed either to determine how much revenue is available to cover new additional debt. Mr. Schulman asked if the request was premature given the missing information. Mr. Burns stated no 2009 audited results were available from any of the schools and Mr. Garcia said AW Brown was the only one that did not have 2009 financials.

Mr. Sage said this transaction was not going to market until January. Mr. Garcia asked Ms. Durso if it would be acceptable to approve something contingent upon staff reviewing the 2009 financials. Mr. Sage indicated he believe there should be some kind of objective question to be answered. Ms. Durso said it would be her recommendation that the item be entertained at another time not contingent upon staff's review of any documents.

Ms. Moody moved to postpone this item until the next meeting, later in January or February. Mr. Schulman seconded. The motion passed unanimously.

Item 6. Discussion and possible action on request by KIPP, Inc., seeking Board's approval to amend bond documents for 2006 bonds insured by ACA Financial Assurance to release the ACA policy.

Ms. Durso stated that Mr. Schulman has a conflict with this item. Mr. Schulman left the room prior to discussion. Mr. Sage also represents KIPP. KIPP has a prior financing that was insured by ACA Financial Guaranty Corporation and that company is having some issues with their stability and that is affecting the liquidity of the 2006 bonds. Mr. Sage is bringing forward the concerns KIPP has and about the potential for adopting some amendments to the bond documents.

Mr. Sage stated ACA was the insurer on the outstanding bonds that came through this corporation in 2006. The ACA was an A-rated insurer that insured charter schools in Texas. ACA has had some problems over the past few years and ACA has a C-rating right now. Several things are occurring such as it creates some drag on the trade of these securities and the borrower has a much higher credit rating than the insurer so people feel like there is a pricing problem. The bigger issue is that ACA was very aggressive in negotiating its insurance policies. However, when dealing with an organization that by their own statements is not interested in maintaining business relationships and is not working with the clients and is simply in a mode to preserve their own assets the application of the provisions has become very unpleasant.

Mr. Sage said that while successful negotiations to close were achieved in October for the second series of bonds as well as IDEA Academy, it is becoming harder and harder to get ACA's consent and ACA has to consent to the additional debt. Mr. Sage contacted ACA's counsel, Fulbright & Jaworski in Houston. Discussions about how to cancel the ACA policy are underway. The policies are irrevocable, but evidently irrevocable does not really mean irrevocable. There are a couple of theories under which it may work and counsel is trying to figure it out under Maryland law because ACA is a Maryland corporation. The effect would be that if IDEA were to release the policy obviously IDEA would release its obligation to ACA and itsr restrictions and the only restrictions that would apply would be those of trustee. The policy would be released and ACA would go away. A bond insurance company is paid a premium and it is a thirty year deal, the fee is so much a year for 30 years or the company does not realize so much revenue each year until the debt is paid off. If the policy is cancelled, the company receives a lot of revenue. ACA is interested in doing it. It is not known whether it is 100% permitted under Maryland law, but this is an update.

Ms. Moody asked about the role of CSFC. Mr. Sage said CSFC was the issuer of the bonds and to effectuate this bond documents would need to be amended. If it were to come to pass, Mr. Sage would request that the Board approve an amendment to the bond documents. Today, this is a discussion item only. Mr. Garcia asked what the amendment would accomplish. Mr. Sage said the bond documents would be to have an amended, restated indenture and would remove every reference to ACA in the document, plus loan document and other core documents to eliminate references to ACA. Mr. Garcia asked what that language would be replaced with and Mr. Sage said "no insurance." Mr. Sage indicated he had talked with a couple of the trustees and exploration about whether bondholder consent is needed on some items. The documents do not require it; which is a bit surprising. We believe it might the bondholder consent might be at the 50% level. It is not possible to pay the debt off or defease it so it is a thorny problem. Mr. Garcia asked when an answer about the Maryland issue would be known. Mr. Sage thought an answer would be known in early January. Mr. Canby asked why insurance was sought in 2006. Mr. Sage said insurance was obtained in order to achieve a lower interest rate. Mr. Sage said he would report developments to the Board at a future meeting.

Item 7. Discussion and possible action Corporation's rules, including whether to adopt rules allowing grantees to seek an extension of time to close on a bond issuance supported by a Texas Credit Enhancement Program grant and regarding the approval and release of applications for grants. .

Ms. Durso explained that Shekinah was the recipient of a credit enhancement grant in the amount of $7,500 and at one point, about a month ago, the school contacted us to inform us they were unsure of being able to close within the twelve month period. They sought an extension and based on the document the Board approved and adopted the grant application it stated pretty clearly that the Voard did not intend to be an extension. Therefore, given the fact that all of the applicants were dealing with that set of circumstances, it was not appropriate to ask for an extension under that particular application. The Board's rules provide that if a school is unable to close within the twelve months, it does not prohibit the school from making another application.

The situation with Shekinah brought up the issue of whether the Board would want to allow an extension and if the Board does want to allow an extension, what would be considered reasonable.

Mr. Sage, representing Shekinah, stated that when Vinson & Elkins worked with the Board to develop these rules the idea was that no one requesting a TCEP grant would be able to tie up the money while failing to proceed with a financing. There are always exceptions or other issues such as if the school waits 10 months, then proceeds with a financing, but is unable to close within the twelve months. In this case, there are a fairly good set of facts to support an extension. Mr. Sage stated he was not asking for an extension today. The market has been terrible all year and it was impossible to sell charter school debt until August of this year. At that time, Shekinah got its team in place, pursued Regions Bank which completed its due diligence and gave approval in November. For a bond financing to finish in that amount of time is difficult and would have needed to close by January 5. Mr. Sage said that if CSFC were going to have a rule about extension, it might be a good idea to know why it took so long, do they have a pending transaction that is ready to go, etc. including a maximum extension of 90 days and only one extension can be granted. Mr. Sage said the rules could preserve the original intent, but also provide some latitude to cover the circumstances over the past twelve months.

Ms. Durso said the funds should not be tied up with some other school may not get access to the funds when they were ready to go. Ms. Durso said she hated to make a rule based on the market of the last year. The premise that the school is not prohibited from coming back and seeking funds and, in fact, if the school ends up not using the funds, the funds will once again be opened during the next grant period. Although ther may be the circumstance such as when a school has everything together even an extension of 30 days would be a maximum to close if the school were really ready.

Mr. Schulman stated he also shared this client, Shekinah, with Mr. Sage. Mr. Schulman stated his opinion was that the rules would be based on varied sets of circumstances and those decisions would be made at that time based on the circumstances. Mr. Schulman stated he did not want staff to make a decision about a 30 or 60 day extension without establishing a set of criteria for guidance. Mr. Schulman asked Mr. Sage if he anticipated this kind of situation presenting itself again. Mr. Sage stated he hoped it did not happen again in the future.

Ms. Durso stated under the current application it does not indicate there is an extension at all. It states the financing must close within twelve months and schools are not prohibited from making another application. Ms. Durso stated that if the Board would like to open the process up to extensions, then the language would need to be amended. Then, the Board would discuss whether they want a proposed rule that sets out criteria or is it preferred to be just in the application where it says the Board will consider it in the totality of the circumstances. This is a discussion item should it come up in the future, staff will have some idea how to proceed.

Mr. Schulman asked if there were any bylaw or rule that limited what the CSFC could do. Ms. Durso stated she wanted to review the agreement with the Department of Education regarding the grant funds. Mr. Schulman wants to know if the Board has the discretion in terms of existing programs whether by rule the Board could address it if the need arose and secondly, would like to have the discretion in the future on the applications if it would just take the application modification to make it possible. Ms. Durso stated that when she reviewed prior minutes with the General Counsel, the Board did leave open the door to possible extensions. Ms. Durso said she would report back to the Board at the next meeting if any prohibition exists. Dr. Walne echoed that she would like the discretion to evaluate circumstances, too.

Ms. Moody asked about the impact of extensions on staff work. Ms. Durso said she did not believe it would be more work if schools had to reapply. Actually, extensions are more burdensome on the Board because it is necessary to convene a meeting to address it. Mr. Schulman asked if criteria should be included to weed out those schools without legitimate requests. Ms. Durso agreed and said inclusion of a date by which the school would need to come back because otherwise the Board might find itself at the end of a twelve month period trying to assemble and make a meeting. Mr. Garcia asked if it matter if the application be amended itself or change the bylaws to allow for something like that. Ms. Durso stated the bylaws would not actually change, but that the rules would change and it would be preferred if any change was in the rules, but there is nothing prohibiting the Board from doing it per application period.

Item 8. Update on TCEP grants, including fourth round of TCEP Applications have been posted in the <u>Texas Register</u> and are due January 15, 2010 with evaluation and review to follow; anticipated next meeting will be in February.

Ms. Durso updated the Board on the Fourth round of applications. There was a short period of time when the prior General Counsel had left and when Ms. Dursostarted. During that short period of time, the Fourth Round of Applications were posted, but were not posted in the <u>Texas Register</u>. It was important and established that the posting occur in the <u>Texas Register</u>. With the agreement of the Executive Director, Ms. Durso notified the two applicants that did submit applications timely that the period of applying was going to be extended and that their applications would still be available in that they did not have to reapply. The notice was placed in the <u>Texas Register</u> and there has been an extension.

Ms. Moody asked where the application had been posted. Ms. Durso stated it was posted only on TPFA website.

Item 9. Adjourn.

The meeting adjourned at _____ a.m.

The foregoing minutes were approved and passed by the Board of Directors on February 2, 2010.

Kirsten WC Moody

Kirsten Moody
Secretary, Board of Directors

ATTACHMENT: Posting Notice - Exhibit A

Open Meeting Archive

Agency Name:	Texas Public Finance Authority
Date of Meeting:	12/14/2009
Time of Meeting:	09:00 AM
Board:	TPFA Charter School Finance Corporation
Street Location:	Capitol Hearing Extension Room E2.028
City Location:	Austin
State Location:	TX
Status:	Active
Date of Submission:	12/04/2009
Additional Information Obtained From:	If you need any additional information contact Paula Hatfield, 512/463-5544, 300 W. 15th Street, Suite 411, Austin, Texas 78701.
Emergency Mtg:	N
Agenda:	TEXAS PUBLIC FINANCE AUTHORITY CHARTER SCHOOL FINANCE CORPORATION MONDAY, DECEMBER 14, 2009 9:00 A.M. CAPITOL EXTENSION HEARING ROOM, ROOM E2.028 AUSTIN, TEXAS 78701

1. Call to order.

2. Discussion and possible action on procedure for extending Board member terms under By-laws section 2.9.2, and discussion and possible to extend terms of Board members whose terms have expired.

3. Consideration, discussion, and possible action to approve publication of notice under Internal Revenue Code section 147(f) for, if required, or, in the alternative, approve a Request for Financing from Cosmos Foundation to issue approximately $80 million Education Revenue Bonds, Series 2010, and Qualified School Construction Bonds (¿QSCBs¿) including adoption of a resolution authorizing the Texas Public Finance Authority Charter School Finance Corporation Revenue Bonds (Cosmos Foundation), a Trust Indenture, Loan Agreement, Public Hearing, and other related matters.

4. Consideration, discussion, and possible action to approve publication of notice under Internal Revenue Code section 147(f) for, if required, or, in the alternative, approve a Request for Financing from Nova Academy to issue approximately $5 million Qualified School Construction Bonds (¿QSCBs¿), Series 2010, including adoption of a resolution authorizing the Texas Public Finance Authority Charter School Finance Corporation Revenue Bonds (Cosmos Foundation), a Trust Indenture, Loan Agreement, Public Hearing, and other related matters.

5. Consideration, discussion, and possible action to approve publication of notice under Internal Revenue Code section 147(f) for, if required, or, in the alternative, approve a Request for Financing from A. W. Brown Fellowship Charter School to issue approximately $6 million Qualified School Construction Bonds (¿QSCBs¿), Series 2010, including adoption of a resolution authorizing the Texas Public Finance Authority Charter School Finance Corporation Revenue Bods (Cosmos Foundation), a Trust Indenture, Loan Agreement, Public Hearing, and other related matters.

6. Discussion and possible action on request by KIPP, Inc., seeking Board¿s approval to amend bond documents for 2006 bonds insured by ACA Financial Assurance to release the ACA policy.

7. Discussion and possible action Corporation¿s rules, including whether to adopt rules allowing grantees to seek an extension of time to close on a bond issuance supported by a Texas Credit Enhancement Program grant and regarding the approval and release of applications for grants.

8. Update on TCEP grants, including fourth round of TCEP Applications have been posted in the Texas Register and are due January 15, 2010 with evaluation and review to follow; anticipated next meeting will be in February.

9. Adjourn.

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Paula Hatfield or Donna Richardson at 512/463-5544. Requests should be made as far in advance as possible.

Certification: I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements. Susan K. Durso, General Counsel, Certifying Official; Paula Hatfield, Agency Liaison.

TRD ID:	2009009200
Datestamp:	12/04/2009 04:32 PM
Archive Date:	12/16/2009