

Minutes of the New Jersey Health Care Facilities Financing Authority meeting held on December 15, 2005 on the fourth floor of Building #4, Station Plaza, 22 South Clinton Avenue, Trenton, New Jersey.

The following **Authority Members** were in attendance:

Edward Tetelman, designee of the Commissioner of Health and Senior Services; Carmen Saginario, Jr., Public Member (via telephone); Gustav Edward Escher, III, Public Member; Freida Phillips, designee of the Commissioner of Human Services; and, Maryann Kralik, designee of the Commissioner of Banking and Insurance.

The following **Authority staff members** were in attendance:

Mark Hopkins, Dennis Hancock, Stephen Fillebrown, Susan Tonry, Michael Ittleton, Suzanne Walton, Marji McAvoy, Lou George, Carole Conover, and Stephanie Zschunke.

The following **representatives from State offices and/or the public** were in attendance:

Clifford T. Rones, Deputy Attorney General; and, Gary Walsh, Windels Marx Lane & Mittendorf.

### ***CALL TO ORDER***

Mark Hopkins called the meeting to order at 10:20 a.m. and announced that this was a regular meeting of the Authority, held in accordance with the schedule adopted at the May 26, 2005 Authority meeting. In accordance with the provisions of the Open Public Meetings Act and the Authority's By-laws, notice of this meeting was delivered to all newspapers with mailboxes at the Statehouse, including *The Star-Ledger* and the *Courier Post*, far enough in advance to permit the publication of an announcement at least 48 hours before the meeting.

In the absence of the Chairman and the Vice Chairman, Mr. Escher nominated Ed Tetelman to serve as Chairman pro tem for the meeting. Ms. Phillips seconded. Mr. Saginario voted yes, Mr. Escher voted yes, Ms. Phillips voted yes, Ms. Kralik voted yes, and Mr. Tetelman voted yes. The motion carried.

### **AB RESOLUTION NO. FF-41**

***NOW, THEREFORE, BE IT RESOLVED***, that the Authority appoints Ed Tetelman to serve as Chairman pro tem for the December 15, 2005 Authority meeting, in the absence of the Authority's Chairman and Vice Chairman.

### ***APPROVAL OF MINUTES***

#### ***November 22, 2005 Authority Meeting***

The minutes for the Authority's November 22, 2005 meeting were distributed for review and approval. Mr. Escher offered a motion to approve the minutes; Ms. Phillips seconded. Mr. Tetelman voted yes, Mr. Saginario voted yes, Mr. Escher voted yes, Ms. Phillips voted yes, and Ms. Kralik voted yes. The motion carried and the minutes were approved.

**RESOLUTION IDENTIFYING FORWARD SWAP**

***Atlantic Health System Hospital Corp.***

Lou George reminded the Members that the Authority is working on a transaction of approximately \$120 million on behalf of Atlantic Health System (“AHS”) to expand Morristown Memorial Hospital, adding a heart care center and a four-story parking garage. The Authority Members determined in October that, due to the issue’s size and variable rate structure, the financing’s requirements would be best served through a negotiated sale.

The financing, using auction rate securities, is expected to occur in 2006. Because of the variable rate nature of these securities, AHS seeks to enter into an interest rate swap agreement on a forward basis to hedge against any variability in interest rates that may occur. Accordingly, AHS has requested the Authority identify for tax purposes such an agreement prior to the authorization of a contingent bond sale. It should be noted that AHS will be responsible for any costs incurred as a result of this agreement.

AHS hired Goldman Sachs & Co. as their underwriter, and Windels, Marx Lane & Mittendorf, LLP was appointed as bond counsel for the transaction. Mr. George then introduced Gary Walsh (of Windels Marx Lane & Mittendorf) who indicated that the resolution before the Board was to authorize designated officers of the Authority to be able to “identify” a swap agreement on the books and records of the Authority.

He then described the arrangement, stating that AHS desires to enter into the swap arrangement as a hedge against future interest rate increases in connection with the 2006 bonds to be issued with a variable rate of interest through the auction process. The swap arrangement will allow AHS to pay a fixed rate of interest to the swap provider and receive a variable rate of interest based upon a percentage of LIBOR. The arrangement will be entered into before the issuance of the bonds, with an effective date for the swap as of the issuance of the bonds.

According to Mr. Walsh, the concept of identification is set forth in regulations under the federal income tax laws (more specifically Treas. Reg. 1.148-4(h)) and requires the actual issuer (i.e. the Authority) of the bonds (even in the instance where a swap agreement is entered into by the conduit entity, such as AHS) to describe the swap arrangement in sufficient detail and to indicate in the books and records of the actual issuer that such swap arrangement is related to a particular issue of bonds. The regulations also require that the identification occur within three days of the execution of the swap arrangement, not the effective date. As a result of identification, AHS and the Authority will be able to use the fixed rate payable on the swap arrangement as the yield on the bonds for federal income tax purposes, rather the variable rate that is actually payable on the bonds.

Since the swap arrangement is anticipated to be entered into in January, a number of months before the issuance of the bonds, the Authority will need to identify the swap arrangement in January. The resolution provides the authorization to have an authorized officer of the Authority execute whatever documents are needed to identify the swap arrangement for federal income tax purposes.

Mr. Tetelman asked when the interest payments would begin, to which Mr. Walsh replied that payments on both the interest on the bonds and the interest on the swap would begin at the same time, with the issuance of the bonds. He confirmed for Mr. Tetelman that the swap interest rate would fluxuate based on a percentage of LIBOR, while the interest paid to the swap provider will be fixed. There will be some disconnect between the variable rate paid on the auction bonds

and the variable rate paid by the swap counterparty. AHS is currently evaluating the risk involved with that disconnect. Mr. Tetelman asked if the approval granted today would be a one-time action, to which Mr. Walsh replied that the resolution presented today only allows for the identification of a swap affecting only the proposed 2006 AHS bonds, however, the swap entered into as a result of this identification may have a 30-year lifespan, lasting the length of the bond issue.

Mr. Walsh reiterated that the resolution presented today only grants authorization to identify a swap so that the three-day window requirement can be met. The Members are not being asked to approve the swap with this resolution, just the permission to identify one.

Mr. Ronces asked if the resolution binds the Authority to issue the 2006 bonds, which Mr. Walsh stated it does not.

Mr. Escher then moved to adopt the resolution identifying the forward swap to be entered into by Atlantic Health System Hospital Corp. with respect to the borrower's proposed 2006 financing. Ms. Phillips seconded. The vote was unanimous and the motion carried.

### **AB RESOLUTION NO. FF-42**

*(attached)*

### ***FINANCE COMMITTEE REPORT***

#### ***2005 Proposed Budget***

As Chairman of the Authority's Finance Committee, Mr. Escher reported to the Members that the Committee held two meetings to discuss the Authority's 2006 proposed budget. On October 11<sup>th</sup>, the majority of the budget was discussed, excluding only the employee compensation portion, which was awaiting input from the Authorities Unit. On December 6<sup>th</sup>, the Committee finalized deliberations on the entire budget.

The proposed 2006 budget reflects staff's best estimates of revenues and expenses based on recent history and expectations for the coming year. The 2006 budgeted revenue is greater than the projected 2005 revenue due in part to an increase in mortgage servicing fees, which results from collections from Jersey City Medical Center and Englewood Hospital. Other fees and interest income are also higher than in 2005.

Mr. Escher stated that the significant areas of reduction are for office furniture and vehicles. Office expenses have been budgeted at levels that are approximately 5.3% less than the projected 2005 expenses.

Higher costs are anticipated for insurance, printing, data processing and office rental. Contractual service costs are budgeted at levels 6% higher than 2005's projections and include costs for an actuarial study for post-retirement benefits and start-up legal expenses for the Equipment Revenue Note Program. The other significant category of expenses is personnel services, which Mr. Escher moved be discussed in Executive Session.

Mr. Tetelman stated that, as permitted by the Open Public Meetings Act and the Authority's By-Laws, the Members may meet in Executive Session to discuss personnel and contractual matters, and to receive advice from the Office of the Attorney General. Mr. Tetelman stated that the results of the discussion would be made known at such time as the need for confidentiality no longer existed. Mr. Saginario seconded Mr. Escher's motion. The vote was unanimous and the motion carried.

**AB RESOLUTION NO. FF-43**

**NOW, THEREFORE, BE IT RESOLVED**, that, as permitted by the Open Public Meetings Act and the Authority's By-Laws, the Authority meet in Executive Session to discuss personnel and contractual matters, and to receive advice from the Office of the Attorney General.

**BE IT FURTHER RESOLVED**, that the results of discussions may be made known at such time as the need for confidentiality no longer exists.

Public session reconvened. Mr. Escher moved to approve the proposed Authority 2006 Budget, including the portions agreed upon in Executive Session; Ms. Phillips seconded. The vote was unanimous and the motion carried.

**AB RESOLUTION NO. EE-44**

**NOW, THEREFORE, BE IT RESOLVED**, that the Authority hereby approves the proposed Authority 2006 Budget, including the employee compensation and fee adjustment portions as discussed in Executive Session.

***AUTHORITY EXPENSES***

Mr. Tetelman referred to a summary of Authority expenses and invoices. Ms. Phillips offered a motion to approve the bills and to authorize their payment; Ms. Kralik seconded. The vote was unanimous and the motion carried.

**AB RESOLUTION NO. FF-45**

**WHEREAS**, the Authority has reviewed memoranda dated December 15, 2005, summarizing all expenses incurred by the Authority in connection with FHA Mortgage Servicing, Trustee/Escrow Agent/Paying Agent fees, and general operating expenses in the amounts of \$705,517.94, \$49,722.88 and \$196,362.04 respectively, and has found such expenses to be appropriate;

**NOW, THEREFORE, BE IT RESOLVED**, that the Authority hereby approves all expenses as submitted and authorizes the execution of checks representing the payment thereof.

***STAFF REPORTS***

Mr. Tetelman referenced staff reports that were distributed for review, including the Project Development Summary, Interest Rate Trends Graph, Cash Flow Statement, and Legislative Advisory.

Mr. Hopkins then presented his Executive Director's report, stating that Jim Van Wart attended the dedication ceremony for Hackensack University Medical Center's new Women & Children's Pavilion on December 11<sup>th</sup>, and the University Medical Center at Princeton announced the location selected for its new hospital, which is a 155-acre site, currently owned by

FMC Corp., on Route 1 North and Plainsboro Road in Plainsboro. Mr. Hopkins then took a moment to acknowledge the outstanding work of the Authority's staff throughout 2005.

***EXECUTIVE SESSION***

As permitted by the Open Public Meetings Act and the Authority's By-Laws, the Members voted to meet in Executive Session to discuss personnel and contractual matters, and to receive advice from the Office of the Attorney General. Mr. Tetelman stated that the results of the discussion would be made known at such time as the need for confidentiality no longer existed. Mr. Escher offered a motion to enter the session; Ms. Phillips seconded it. The vote was unanimous and the motion carried.

**AB RESOLUTION NO. FF-46**

**NOW, THEREFORE, BE IT RESOLVED**, that, as permitted by the Open Public Meetings Act and the Authority's By-Laws, the Authority meet in Executive Session to discuss personnel and contractual matters, and to receive advice from the Office of the Attorney General.

**BE IT FURTHER RESOLVED**, that the results of discussions may be made known at such time as the need for confidentiality no longer exists.

Public session reconvened. Mr. Tetelman took a moment to, on behalf of the Authority Members, wish the Authority staff and their families a happy and healthy holiday season.

***ADJOURN***

As there was no further business to be addressed, Mr. Escher moved to adjourn the meeting, Ms. Phillips seconded. The vote was unanimous and the motion was carried at 11:42 a.m.

I HEREBY CERTIFY THAT THE  
FOREGOING IS A TRUE COPY OF  
MINUTES OF THE NEW JERSEY  
HEALTH CARE FACILITIES  
FINANCING AUTHORITY MEETING  
HELD ON DECEMBER 15, 2005.

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Dennis Hancock  
Assistant Secretary

## **EXECUTIVE SESSION I AUTHORITY MEETING**

**ATTENDEES:** Ed Tetelman, designee of the Commissioner of Health and Senior Services; Carmen Saginario, Jr., Public Member (via telephone); Gus Escher, Public Member; Freida Phillips, designee of the Commissioner of Human Services; Maryann Kralik, designee of the Commissioner of Banking and Insurance; Mark Hopkins, staff; and, Clifford T. Roncs, Deputy Attorney General.

### **PERSONNEL MATTERS:**

Members discussed the employee compensation portion of the Authority's proposed 2006 Budget, which included an average increase in salary of 4%.

### **CONTRACTUAL MATTERS:**

Members discussed a proposal adjusting the Authority's fee structure to eliminate initial fees for the borrowers, reduce annual fees on traditional financings from 10.31 basis points to 10 basis points and eliminate the inflation factor on annual fees but retain the inflation factor on the cap amount of financings (previously no annual fees were charged for amounts over \$75,000,000, for 2006 this would increase to \$80,000,000). Additionally, initial fees would be eliminated for Equipment Revenue Note Program and financings for terrorist preparedness projects mandated by the New Jersey Domestic Security Task Force and annual fees would be reduced to 7.5 basis points and 5 basis points respectively. The initial fee for the CAP program would be reduced from \$5,000 to \$500 and the annual fees would remain unchanged. Finally, the proposed new fee structure would eliminate the reimbursement from Authority borrowers of the fee charged by the Attorney General's office. Mr. Escher moved to approve the proposed new fee structure, pending the approval of the Commissioner of Health and Senior Services as Chairman of the Authority<sup>1</sup>. Ms. Phillips seconded. The vote was unanimous and the motion carried.

As there was no further business, Mr. Escher made a motion to exit the session; Ms. Phillips seconded. The vote was unanimous and the motion carried.

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<sup>1</sup> On Monday, December 19, 2005, the Commissioner of Health and Senior Services approved the proposed new fee structure.

## **EXECUTIVE SESSION II AUTHORITY MEETING**

**ATTENDEES:** Ed Tetelman, designee of the Commissioner of Health and Senior Services; Gus Escher, Public Member; Freida Phillips, designee of the Commissioner of Human Services; Maryann Kralik, designee of the Commissioner of Banking and Insurance; Mark Hopkins, Dennis Hancock, Steve Fillebrown, Susan Tonry, staff; and, Clifford T. Rones, Deputy Attorney General.

### **CONTRACTUAL MATTERS:**

Members discussed the following distressed credits:

- Passaic Beth Israel Regional
- Barnert Hospital
- St. Mary's Hospital, Passaic
- St. Joseph's Wayne Hospital
- Pascack Valley Hospital
- Individually: St. Michaels, St. James and Columbus (Cathedral Health System)
- Jersey City Medical Center
- East Orange General Hospital
- Bayonne Hospital

As there was no further business, Ms. Phillips made a motion to exit the session; Mr. Escher seconded. The vote was unanimous and the motion carried.

**AB RESOLUTION NO. FF-42**

**A RESOLUTION AUTHORIZING THE  
IDENTIFICATION OF A SWAP AGREEMENT TO  
BE ENTERED INTO BY AHS HOSPITAL CORP.  
AND GOLDMAN SACHS & CO. TO FIX THE  
INTEREST RATE TO BE BORNE ON AUCTION  
BONDS ANTICIPATED TO BE ISSUED IN 2006**

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**WHEREAS**, the New Jersey Health Care Facilities Financing Authority (the “**Authority**”) was duly created and now exists under the New Jersey Health Care Facilities Financing Authority Law, P.L. 1972, c29, as amended (N.J.S.A. 26:2I-1, et seq.) (the “**Act**”), for the purpose of ensuring that all health care institutions have access to financial resources to improve the health and welfare of the citizens of the State of New Jersey (the “**State**”); and

**WHEREAS**, the Authority is authorized under the Act to make loans to “health care organizations” for the construction of “projects” (as such terms are defined in the Act) and to issue its bonds for the purpose of carrying out its powers under the Act; and

**WHEREAS**, AHS Hospital Corp. (“**AHS**”) is a nonprofit corporation organized under the laws of the State and a health care organization; and

**WHEREAS**, pursuant to the provisions of the Act, the Authority anticipates issuing auction rate securities bearing a variable rate of interest on behalf of AHS during 2006 or at such later time that is agreeable to the Authority and AHS (the “**AHS Auction Bonds**”); and

**WHEREAS**, to hedge the variability in interest rate cost of the AHS Auction Bonds, AHS desires to enter into an interest rate swap agreement on a forward basis (the “**Swap Agreement**”) with Goldman Sachs & Co. (“**Goldman Sachs**”); and

**WHEREAS**, Treas. Reg. 1.148-4(h)(2) and Treas. Reg. 1.148-4(h)(5) (together, the “**Treasury Regulations**”) requires the issuer of bonds to identify on its books and records an interest rate swap agreement as being applicable to a certain series of bonds issued by it; and

**WHEREAS**, the Authority desires to identify the Swap Agreement as being applicable to the AHS Auction Bonds;

**NOW THEREFORE, BE IT RESOLVED**, by the Authority, as follows:

**Section 1. Identification of the Swap Agreement.** In accordance with the Treasury Regulations, the Authority hereby authorizes and directs the Chairman, Vice Chairman, Secretary, Treasurer, Assistant Treasurer, Executive Director or Deputy Executive Director of the Authority to identify on the books and records of the Authority the Swap Agreement as being applicable to the AHS Auction Bonds, and as such, for purposes of the Treasury Regulations, the AHS Auction Bonds are identified as the “Hedged Bonds” and Goldman Sachs is identified as

the "Hedge Provider." The Swap Agreement will be entered into to allow AHS to pay a fixed rate of interest to the Hedge Provider and receive a variable rate of interest based upon a percentage of LIBOR.

**Section 2. Incidental Action.** The Authorized Officers of the Authority are hereby authorized and directed to execute and deliver such other documents and to take such other action as may be necessary or appropriate in order to effectuate the actions contemplated by this Resolution, all in accordance with the foregoing sections hereof.

**Section 3. Prior Resolutions.** All prior resolutions of the Authority or portions thereof inconsistent herewith are hereby replaced.

**Section 4. Effective Date.** This Resolution shall take effect ten (10) days, exclusive of Saturdays, Sundays and public holidays, after delivery (and not including the day of delivery) to the Acting Governor of the minutes of the meeting of the Authority at which this Resolution is adopted or such earlier time as the Acting Governor signs a statement of approval, all in accordance with the subsection (i) of Section 4 of the Act.