

DELAWARE HEALTH FACILITIES AUTHORITY

MINUTES OF SPECIAL MEETING

of

September 10, 2009

A special meeting of the Delaware Health Facilities Authority (the "Authority"), was held on September 10, 2009, commencing at 12:08 p.m., at the offices of Potter Anderson & Corroon LLP at 1313 N. Market Street, Wilmington, Delaware 19801. The meeting and the public hearings to be conducted at the meeting were duly noticed and advertised in The News Journal on August 26, 2009, and the hearings are open to the public for comment. The following Authority Members attended in person: Rolf F. Eriksen, Chair, Desmond A. Baker, George W. Forbes, III, William G. Neaton, Howard A. Palley, Ph.D., and William J. Riddle. Authority Member Lisa More joined the meeting by telephone connection at 1:25 p.m. Also participating in the meeting from Potter Anderson & Corroon LLP were John J. Quinn, III, Esq., the Authority's Counsel, and Margaret M. Grillet. In attendance at the meeting in connection with the *Bayhealth* Medical Center, Inc. (the "Hospital") Application for Revenue Bond Financing (the "Application") were Emilie R. Ninan, Esq., Ballard Spahr LLP, Bond Counsel; Dennis E. Klima, President, Terry M. Murphy, Executive Vice President and COO, and Earl P. Tanis, Senior Vice President and CFO, representing the Hospital; Walter P. McEvelly, Jr., Esq., Stevens & Lee, P.C., Borrower's Counsel; Donald J. Persinski, PNC, Underwriter; and Jeremy Bass, Public Financial Management, Inc. ("PFM"), Financial Advisor to the Authority.

At the invitation of the Authority, Peter Kennedy, CPA, CVA, Cover & Rossiter, was present. No members from the general public were in attendance.

Mr. Eriksen called the meeting to order.

Consideration of Cover & Rossiter Proposal for Auditing Services

Mr. Quinn reminded the Members that they had requested a personal interview with a representative from Cover & Rossiter, certified public accountants ("C&R"), to better understand C&R's proposal for auditing services. Mr. Quinn introduced Peter Kennedy from Cover & Rossiter and asked Mr. Kennedy to briefly summarize his firm's proposal. Mr. Quinn advised Mr. Kennedy that this interview was for informational purposes only and that no decision would be made by the Members at this meeting.

Mr. Kennedy distributed his firm's proposal for auditing services, which the Members also had received at a prior Authority meeting. Mr. Kennedy introduced his firm as a regional accounting firm that has been in practice since 1939. C&R specializes in auditing non-profit organizations, including some with tax exempt bond issues. After his introduction, the Members discussed the proposal. Mr. Baker expressed interest in determining the estimated number of man-hours each firm anticipates spending on an audit of the Authority.

Mr. Kennedy pointed out that the proposal reflects a discount in his firm's normal hourly rate, but did not provide a man-hour estimate. Mr. Quinn agreed to follow up on Mr. Baker's request.

Mr. Quinn noted that the Authority's legal counsel historically has had relatively little direct involvement in the audit process but did spend time reviewing the financial statements produced by the audit. Mr. Kennedy confirmed Mr. Quinn's assessment regarding the level of involvement of legal counsel and assured the Members that he expects to have significant direct interaction with the hospitals and little attorney involvement. When asked, Mr. Kennedy confirmed that he is familiar with the procedures previously undertaken with Authority audits, has seen the audits and related statements, and is confident that his firm's proposal is reasonable both for the Authority and his firm.

Related to Authority auditing issues and timing, a brief discussion ensued regarding a possible change of the fiscal year for the Authority from a calendar year to a year ending June 30. Mr. Quinn advised the Members that it would be feasible to amend the applicable Delaware statute to change the fiscal year. Mr. Kennedy agreed that changing the fiscal year end to June 30 would be worth of further consideration by the Authority.

Mr. Eriksen and Mr. Quinn thanked Mr. Kennedy for his presentation. Mr. Kennedy was invited to stay for the remainder of the meeting and he accepted the invitation.

Consideration of the Bayhealth Medical Center, Inc. Application for Revenue Bond Financing

Mr. Eriksen greeted those in attendance representing the Hospital. Mr. Eriksen reminded the Members and those in attendance of the Authority's authority to serve as a conduit issuer for bonds for the purpose of assisting in the acquisition, construction, financing and refinancing of projects for health care, hospital and other related facilities located in Delaware.

Mr. Neaton, who is a member of the Hospital's Business and Investment Committee, announced that he was abstaining from deliberation, action, and vote. Considering Mr. Neaton's recusal, a quorum of the Members was still physically present at the meeting.

At Mr. Eriksen's request, Mr. Tanis presented a summary of the Hospital's proposed project. Mr. Tanis distributed printed material to those present including the Hospital's Certificate of Public Review Decision dated October 1, 2007. The project will fund an expansion and relocation of the emergency department, expansion of the parking garage and serve as a means of refinancing the existing Series 2002 and 2003 variable rate bond issues, where auctions have been failing since 2007. A discussion regarding the project ensued after Mr. Tanis's presentation.

At Mr. Eriksen's inquiry regarding the Hospital's growth projections, Mr. Klima emphasized that the project is needed to support the growth of the local aging community, but assured the Members that the Hospital considers its growth projections to be very conservative.

In response to Dr. Palley's concerns regarding uniform acceptance of third party payments, Mr. Tanis confirmed that the emergency room physicians are each under contract with the Hospital and that the balance of the staff are employed directly by the Hospital. Dr. Palley expressed his opinion that contract provisions with the physicians should include requiring acceptance of insurance payments for services.

In response to Dr. Palley's question, Mr. Tanis confirmed that Beebe Hospital is an operation independent from the Hospital and that there is minimal overlap of service areas between the regional healthcare facilities.

Mr. Klima added that there is regular collaboration between the staff and the hospitals, especially since all are members of the same group purchasing alliance. He added that all local hospitals are jointly assisting in the funding of an ultrasound training program at DelTech and that many of the doctors are on staff of both hospitals. It also was noted that some overlap does exist at Milford for a relatively small percentage of services.

Dr. Palley requested information regarding the Hospital's relationship and affiliation with University of Pennsylvania Hospital ("UPH"). Mr. Murphy provided a detailed explanation with regard to both cardiac care and cancer care, and noted that UPH has a proton beam therapy unit that is one of only five of its kind in this country and to which the Hospital has access for its patients.

Mr. Riddle inquired about pending plans for the Milford facility, as he saw reference to that facility in a project description. Ms. Ninan noted that the Milford campus was mentioned in the project description so that the Hospital would not be precluded from spending excess funding for the project on that site without holding an additional public hearing. Ms. Ninan added that there are no immediate plans for development of the Milford campus.

Mr. Riddle asked if there is a "JACO" inspection scheduled in 2009. Mr. Tanis explained that those inspections are unannounced and are not scheduled and that he has no knowledge of any upcoming inspections. It was explained that the Milford facility was recently "failed" on an inspection for a sprinkler system that previously had been grandfathered. The failure was corrected within the allotted time frame.

Mr. Riddle asked for clarification of the terms of the covenants for the bond debt and the bank debt. Ms. Ninan explained that often the bank debt is subject to more stringent covenants, as bondholders typically have less stringent requirements. Mr. Bass indicated that PFM based its analysis on the more stringent bank covenants.

Mr. Persinski provided a summary and description of the structure of the proposed financing. The Series A Bonds will be issued at a fixed rate, based on the Hospital's credit rating with no bond insurance. The Series 2002 and 2003 outstanding bonds will be refinanced by the Series B Bonds, supported by a PNC letter of credit, and by the Series C Bonds, supported by a Wachovia Bank letter of credit. There will be no debt service sinking fund.

Mr. Riddle inquired about the Hospital's recent change in accounting firms. Mr. Tanis explained that the Hospital had used Deloitte for 12 years. The change to Grant Thornton was made after a competitive bidding process. Mr. Tanis reported that the Hospital is satisfied with the efficiency and pricing of Grant Thornton's services and added that the firm was retained on a renewable annual basis.

Mr. Tanis advised the Members that there are Hospital subsidiaries that are not part of the Obligated Group under the bond documents, but that in any event these subsidiaries would not provide much in the way of assets or revenues.

Mr. Tanis addressed the Hospital's liability issues, confirming that it is self-insured for the first \$3 million / \$9 million and that there is an additional insurance policy taking the insurance up to \$25 million. Mr. Tanis advised the Members that the Hospital has a strong risk management program that they are proud of.

Mr. Tanis noted in response to a question that the Hospital will invest \$20 million on information technology such as an electronic medical records program and that the Hospital has been investing in this program for several years already.

In response to a question from Mr. Baker, the Hospital's representatives made a clarification that the oncology facility that is currently in a small off-site building would be moved to a new facility and expanded to a full service facility to employ four medical oncologists. The facility will include nutritionists and other holistic health professionals.

At the request of Mr. Quinn, Jeremy Bass from Public Financial Management reviewed the proposed financing in greater detail. Mr. Quinn distributed to those present the PFM Approval Memorandum, which Mr. Bass used as the guideline for his presentation to the Members.

Mr. Bass emphasized the financial strength of the Hospital and noted that it has over 250 days cash on hand. It was noted that one day's cash on hand is equivalent to \$900,000. The Hospital has no debt service reserve fund because of a strong balance sheet and security in the form of a mortgage on both campuses. Operating income has been steady with strong financials and the total capitalization is relatively strong. Mr. Bass noted that the number of admissions and surgeries has dropped in the past three years, but in total has increased over the past five years. Net patient revenue has increased 30% (6% per year). The Hospital's service area has an aging population. The Hospital owns Kent General Hospital (221 beds) and Milford Memorial (260 beds) and operates an outpatient program as well. As of 2008, the Hospital has an affiliation agreement with University of Pennsylvania to expand the cancer care program. Mr. Bass further discussed, in summary, Medicare, which represents half of the payors (about 65%). The use of the bond proceeds fits into the Hospital's annual plan. As far as the current long term debt, the Hospital has three outstanding issues, two of which will be refinanced with proceeds from this project. The third outstanding issue (1999) is secured by a mortgage.

In response to a question regarding the term of the new bonds, Ms. Ninan explained that the term is tied to the life of the assets and that a 30 year bond is a typical term.

Mr. Bass noted that these bonds will be marketed to retail buyers. Historically, institutional buyers were the market for such bonds. He also commented that the proposed debt is affordable to the Hospital.

Mr. Tanis noted that the estimated 1% population growth is a very conservative estimate and the Hospital is confident that its rate of growth will support the improvements. The growth projections are based on census and local economic development agencies. Low taxes and good healthcare attract retirement populations.

Mr. Tanis noted that the hospital has the ability to maintain a 5% increase in charges. All payors have accepted the past increases.

Regarding Member questions pertaining to the Hospital's deemed status, it was again noted that a recent inspection at the Milford facility determined that the facility was not in compliance on a sprinkler system that had been grandfathered. The Kent facility had a similar determination. The process for correcting the non-compliance was reviewed and the Members were assured that both facilities would have their deemed status restored by the end of the year.

Mr. Bass read PFM's recommendation to the Authority, namely that the proposed debt is affordable for the Hospital and the proposed new money issuance is consistent with its Master Plan. PFM recommends approval.

Mr. Quinn addressed certain necessary changes to the originally proposed resolutions that were distributed to those present, including the need to appoint Wells Fargo as successor trustee to Wilmington Trust. The substitution of trustees was discussed and there was general agreement that this was appropriate and should be addressed by the Authority's resolution.

Ms. Ninan addressed the sale date of the bonds and explained that the fixed rate bonds and the variable rate bonds will be sold on different days for tax reasons. Because of this, there will need to be two Authority Bond Committee meetings, one for each date. All of the bonds will close on the same day. The anticipated dates are Sept 28 or 29 and October 20, 2009.

Messrs. Eriksen, Riddle, and Baker agreed to be members of the bond committee until June 30, 2010, and Mr. Eriksen asked Mr. Quinn to add these names to the proposed resolution. It was agreed by the Members that the Bond Committee would have the additional authority to approve other things in connection with the appointment of the successor trustee and an interest rate exchange (swap) agreement.

Following discussion, Mr. Quinn, Counsel to the Authority, presented the resolution entitled "A BOND RESOLUTION APPROVING A PLAN OF FINANCING AND THE EXECUTION AND DELIVERY OF CERTAIN AGREEMENTS, APPOINTING A COMMITTEE TO APPROVE THE FINAL TERMS OF ONE OR MORE SERIES OF BONDS, AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH", a copy of

which is attached hereto in the form as amended and supplemented and considered by the Members.

Mr. Eriksen moved that the resolution (in the form attached hereto) be approved as presented and discussed. Mr. Forbes seconded the motion and the resolution was unanimously approved by the Authority Members present.

Approval of Authority Minutes of June 18, 2009

Mr. Quinn briefly reviewed the draft Minutes of the meeting of the Members of the Authority held June 18, 2009. Dr. Palley moved that the Minutes be accepted and approved as presented and Mr. Riddle seconded the motion. The Members unanimously approved the Minutes in the form attached.

Old Business

Mr. Quinn led a new discussion regarding the possible change of the Authority's fiscal year. He again explained that the Delaware statute for the Authority would have to be amended but that he had been advised by Ms. Stephanie Scola, Director of Bond Finance, that this should be relatively straightforward to accomplish at proper times of the year. The Members agreed to take this under further consideration upon receiving input from the Authority's current auditors, McBride Shopa.

There being no further business to come before the meeting, the meeting was duly adjourned at approximately 1:45 pm.

CERTIFICATION

I, Desmond A. Baker, hereby certify that the foregoing is a true and correct copy of the Minutes of Special Meeting of the Delaware Health Facilities Authority held on September 10, 2009.

Desmond A. Baker
Secretary-Treasurer

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ATTACHMENT

Authority Resolution, as Approved

ATTACHMENT

Copy of the Authority's Meeting Minutes of June 18, 2009

[in the possession of Authority Counsel]