CALIFORNIA SCHOOL FINANCE AUTHORITY

Meeting of the Board

Wednesday, May 30, 2012
10:30 a.m.

915 Capitol Mall, Room 587
Sacramento, California 95814

Deputy State Treasurer Tricia Wynne, serving as Chair, called the meeting to order.

Roll Call

Members Present: Patricia Wynne, designee for Bill Lockyer, State Treasurer
Pedro Reyes, designee for Ana Matosantos, Director of Finance
Kathleen Moore, designee for Tom Torlakson, Superintendent of Public Instruction

Staff Present: Katrina Johantgen, Executive Director
Terri Kizer, Program Analyst
Steven Theuring, Program Analyst

The Chair declared a quorum present.

Approval of Minutes

The minutes for the April 25, 2012 Authority Board meeting were approved as submitted.

Executive Director's Report

Ms. Johantgen reported on the following items:

CSFA Fund Balances: The members were advised of the status of the remaining funds available for allocation under the Qualified School Construction Bonds (QSCBs) program. If the two requests for allocations being presented at this meeting for High Tech High, North County and the Alliance for College Ready Public Schools are approved, all available funds will have been allocated. It is anticipated that the Authority will act as issuer for the allocation to High Tech High and possibly the Alliance for College Ready Public Schools.

Charter School Facilities Program Update: The current funding round is on track to be presented for funding determinations at the June board meeting. The applicants have been advised of their assigned preference points and have been given a week to provide any additional information related to their points.

Legislative Update: Ms. Johantgen reported she has been advised of further amendments in the trailer bill currently before the Legislature; amendments that would allow the Authority greater flexibility in the type of transactions that are issued through the Authority for charter schools.

<u>Resolution No. 12-23 – Authorizing the Issuance of Revenue Bonds in an Aggregate Amount Not to Exceed $40,000,000 for Livermore Valley Charter School and Livermore Valley Charter Preparatory High School Each Operated as Tri-Valley Learning Corporation, located in Alameda County, California, and Entering Into Leases and Certain Other Agreements in Connection with the Revenue Bonds and Educational Facilities</u>

Ms. Johantgen introduced the members of the financing team present at the meeting. These included: Mr. Eugene Clark-Herrera and Ms. Chris Chavez, of Orrick, Herrington & Sutcliffe; Mr. Mark Holmstedt, of Westhoff, Cone & Holmstedt; and Mr. Bill Batchelor, representing Tri-Valley Learning Corporation.

Ms. Johantgen presented for the record a public comment received by email that morning. The comments were in opposition to this proposed financing and the project as a whole.

The project consists of the acquisition, construction, improvement, and equipping of one complex that will house two schools. Phase I includes the acquisition, lease, and tenant improvements of 15 buildings totaling approximately 98,400 sq. ft. on 9.88 acres and improvements to classrooms, and office space including a music room, a state-of-the-art science classroom, uniquely designed special education facilities, a library, a computer lab, a general-purpose classroom, and centralized office space for the school's administration to operate a K-12 grade Charter School. Phase II includes the acquisition of 12.4 acres for athletic and playing fields.

Mr. Clark-Herrera provided a detailed and lengthy description of the proposed financing structure and bond transaction. He addressed the transaction that was approved by the Authority in March compared to the project being presented at this time. He explained the development of a large campus for two schools utilizing senior and subordinate financings. In doing so, a fundamental problem was encountered. In the original version, it was not possible to acquire the land because there was no way to remove the existing mortgages. Mr. Clark-Herrera advised that the Authority, under the CSFA Act, is empowered to both issue bonds and loan money and will be able to sublease property for the purpose of developing charter school facilities and Tri-Valley will be able to lease the land. All leases have the same expiration date which is the maximum maturity date of the QSCB. At the end of this transaction the school will own the land. Mr. Clark-Herrera described and explained this very detailed and complicated transaction comparing the original request and the current changes and the senior and subordinate details of the bond financing transaction. Lastly, Mr. Clark-Herrera explained the different forms and documents presented for authorization, two separate packages (senior and subordinate) the related senior leases I & II, bond indenture and loan agreements, the restrictions and requirements that relate to this authorization and the QSCB lease II, sublease II and payment agreement.

Mr. Holmstedt added information pertaining to the advantages of the transaction's structure and any potential cash flow issues that may arise. He stated that there is clear subordination of the QSCB payment, debt service, and a sinking fund that has been set up and is in place for the $15 million QSCB payment.

Mr. Holmstedt gave a brief history of the school's credit characteristics and indicators, credit and investment ratings and the credit quality of Tri-Valley. He stated that Tri-Valley possesses a strong investment rating picture. He discussed in detail the problems encountered with securing a credit rating. Tri-Valley then decided to move forward with a non-rated financing and a limited bond sale to Accredited Investors and Qualified Institutional Buyers.

Mr. Batchelor spoke regarding student retention, student enrollment growth projections, debt service coverage, school facility capacity and waitlists at TVLC. Lastly, he responded to concerns expressed in an emailed public comment in opposition to the proposed project and planned financing.

Ms. Moore asked about any risk factors for the Authority that haven't been covered and should be addressed before taking action on this item. She also asked about best practices for non-rated financings in California.

Mr. Paxson advised the members that the financing authorities affiliated with the State Treasurer's Office do occasionally issue un-rated debt and there are typically sales restrictions put in place, primarily to protect bondholders downstream.

Mr. Paxson identified sales and transfer restrictions that have been incorporated into this financing. The restrictions agreed to with the financing team will increase the minimum denomination to $250,000. Another restriction is the original and subsequent purchasers must meet the official definition of a Qualified Institutional Buyer or an Accredited Investor and must certify to complying with the sales restrictions. The bonds will be sold electronically in book entry form with the sales restrictions flagged to the book entry. Additionally, any potential litigation expenses are to be covered by Tri-Valley and not the Authority. Mr. Paxson noted that initially the Authority staff and counsel proposed a Litigation Reserve Fund; however, Tri-Valley is now proposing the Authority be added to their insurance policy.

Mr. Haytayan noted that the details of the insurance policy have not yet been provided, however, the board members may wish to consider the options of either a cash fund or an insurance policy or other instrument. By including the option in the documents, Authority staff and counsel will have the opportunity to review the particular policy or letter of credit or whatever is offered and negotiate the specific terms at that time.

In response to a question, Mr. Clark-Herrera confirmed the method for disposing of the bond proceeds with the first $7.4 million being designated as rent, for purposes of securing control of the property through a leasehold. Mr. Clark- Herrera explained the bond proceeds will be used for both phase 1 and phase 2. The project has been split as a practical matter for purposes of explanation; however, the financing will result in improvement of the whole campus for use by both schools operated by Tri-Valley.

Mr. Reyes requested clarification of the status of the $15 million QSCB subsidy in the event of a default and whether the U. S. Treasury had any claw-back provisions. Mr. Clark-Herrera advised that the paying agent agreement is a controlled account with a security interest in favor of the landlord. Into it will be deposited the annual sinking fund payments, accumulating up to $15 million by year 20. The semi-annual interest payments by the U.S. Treasury would be deposited but would not accumulate as they would be wired immediately to the landlord. Mr. Clark-Herrera also advised there are no claw-back provisions by the U.S. Treasury to the interest payments in the event of a default.

The members asked several questions about the default terms and the automatic extension of five years for any shortfall to be made up by the school. The interest subsidy by the U.S.

Treasury will cease at year 20. If the five-year extension is exercised, Tri-Valley would be responsible for future interest payments and the remaining debt. If in default after the five-year extension, the owner would be able to exercise its remedies under the lease to evict Tri-Valley, take back the land, and then sell it. The playing field is the security in the event of a default; but would be accessible only in the event Tri-Valley is in default after 25 years.

Mr. Reyes requested clarification regarding the status of the interest payments from the U.S. Treasury and whether the Treasury could require a portion of the interest payments be returned in the event any portion of the $15 million is in default.

Mr. Clark-Herrera stated the U.S. Treasury is subsidizing a $15 million QSCB allocation. If the obligor has trouble repaying the full $15 million, it does not affect the amount of the obligation that the Treasury is subsidizing.

In response to questions by the members, Mr. Batchelor described the project as consisting of tenant improvements. They have not encountered neighborhood opposition and have had conditional use permits from the county in place for more than a year.

Mr. Haytayan proposed amending the resolution to include a clause at the end of Section 3. Mr. Clark-Herrera read through the proposed clause to ensure the members were in agreement with the wording. The proposed wording: The agreements may provide for a fund available to pay indemnity obligations to public indemnities in the amount of $200,000 funded either in cash or a credit instrument issued by a bank, insurer, or other financial institution, such fund requirement to apply for so long as the bonds and leases are outstanding. If the foregoing fund is required under the agreements, the investor letter appended to the indenture may exclude the bond purchaser obligation to indemnify and hold harmless and may exclude willful misconduct of the Authority or its members from the bond purchaser's waiver of claims, actions or causes of action. The members were in support of the proposed amendment to the resolution.

Mr. Batchelor advised that should this financing be approved, their planned timeline included a preliminary offering memorandum to investors by electronic mail within a day. The sale of bonds would be planned for next week, with the closing in two weeks or about June 21. He confirmed they have been talking to a number of investors and providing information about this unusual financing.

Mr. Reyes requested additional clarification concerning liability insurance coverage for both litigation costs and liability risk. Mr. Clark-Herrera advised the liability issue is covered by the terms of the sublease. The tenant in both subleases is required by its terms to maintain policies in place. Under the default scenario, the leasehold would be given over to the senior bond holders and potentially to a new tenant. Both the bondholders and the new tenant are required to maintain policies.

Ms. Chavez confirmed the Authority has one obligation under the ground leases, which is to make the upfront payment. The ground lease stays in place and all of the obligations are then passed to the sublease with Tri-Valley mortgaging its sublease-hold interest for the benefit of the trustee. In the event of a default, the bond trustee has the ability to step in and foreclose the leasehold mortgage and take possession of the leasehold, and then find a new operator for the school. Since it is a school facility, it is likely the bond trustee will locate another operator. The ground lease is still intact and the Authority still has the same protections against any further responsibilities.

Mr. Reyes proposed the word ‘may’ be amended to ‘shall’ in the proposed amendment to the resolution in Section 3. Mr. Haytayan advised the clause had initially been considered permissive because it is an alternative. The members delegated to Ms. Johantgen to consult with legal counsel and to determine how to best word the amendment to best provide protection for the Authority under this clause.

There were no public comments other than the email mentioned earlier.

After some discussion, is was moved, seconded and passed unanimously to adopt Resolution No. 12-23 with the inclusion of the proposed amendments, authorizing the issuance of revenue bonds in an aggregate amount not to exceed $43,000,000 for Livermore Valley Charter School and Livermore Valley Charter Preparatory High School each operated as Tri-Valley Learning Corporation, as amended.

Ms. Moore requested a status report after the financing has closed and then periodically.

<u>Resolution No. 12-24 – Approving the Allocation of Qualified School Construction Bond (QSCB) Borrowing Authority to Alliance College Ready Public Charter School in an Amount Not to Exceed $10,500,000 under the Charter School QSCB Program and Authorizing the Taking of Necessary Actions in Connection Therewith located in Los Angeles County, California</u>

Ms. Johantgen advised that in April 13, 2011, the Authority members allocated $22,000,000 to Alliance College-Ready Public Schools (Alliance) to finance the construction of two school sites, Alliance College-Ready Middle Academy #5 and Alliance College-Ready Academy High #14. The QSCBs were sold on November 2011, in the amount of $15,012,675. At this time, Alliance is seeking another QSCB allocation in the amount of $10,500,000 for Alliance College-Ready Middle Academy #8 (also known as Alliance Media Arts Middle School).

It is anticipated that the financing for Alliance College-Ready Middle Academy #8 will be structured with $10,500,000 in QSCB allocation to cover $8,500,000 for land and construction costs, $990,000 for capitalized interest, and $1,101,000 for cost of issuance and reserves. The project consists of new construction of a 24,000 square-foot 2-story facility with 20 classrooms plus administrative space at 113 S. Rowan, Los Angeles. The construction schedule has been projected to begin in June 2012 and finish December 2012.

Ms. Johantgen recommended approval of this QSCB allocation of $10,500,000 to Alliance.

It was moved, seconded, and passed unanimously to adopt Resolution No. 12-24 approving the allocation of $10,500,000 of QSCB borrowing authority to Alliance College Ready Public Charter Schools and Alliance Media Arts Middle School.

<u>Resolution No. 12-25 – Approving the Additional Allocation of Qualified School Construction Bond (QSCB) Borrowing Authority to High Tech High North County in an Amount Not to Exceed $5,253,325* under the Charter School QSCB Program and Authorizing the Taking of Necessary Actions in Connection Therewith located in San Diego County, California</u>

Ms. Johantgen reported that at a previous board meeting the members approved a QSCB allocation of $6,500,000 million for High Tech High North County. As High Tech High was not able to secure new market tax credit allocation, they are seeking additional QSCB allocation. Given the credit characteristic and other indicators of the High Tech High organization, staff recommended that the board approve additional QSCB allocation of $5,253,325 for High Tech High. The combined QSCB allocation for High Tech High, North County will be $11,753,325.

The project consists of building a new elementary school (K-5) on the same campus as the middle and high schools. Plans include constructing a 38,000 square foot LEEDS certified facility on a 5.6 acre parcel, containing approximately 22 classrooms. The facility is expected to accommodate up to 460 students, with a consistent enrollment level of 420 students at any given time. The site will also include a playground, athletic fields, and other site improvements. The projected opening date for the new facility is set for August 2013.

Ms. Johantgen recommended approval of this increase of $5,253,325 for the QSCB allocation for the High Tech High, North County project. *It was noted that this allocation, if approved by the board, would exhaust all of CSFA's QSCB allocation for charter schools.*

It was moved, seconded, and passed unanimously to adopt Resolution No. 12-25 approving the allocation increase of $5,253,325 of QSCB borrowing authority to High Tech High North County.

<u>Resolution No. 12-26 – Determination Regarding Financial Soundness for the Charter School Facilities Program for Final Apportionment for Camino Nuevo Charter School Located in Los Angeles County, California.</u>

This agenda item was held over until a future board meeting.

<u>Resolution No. 12-27 – Determination Regarding Financial Soundness for the Charter School Facilities Program for Final Apportionment for CHIME Charter School located in Los Angeles County, California.</u>

This agenda item was held over until a future board meeting.

<u>Public Comment</u>:

There being no additional public comments or other business to conduct, the meeting was adjourned.

Respectfully submitted,

Katrina Johantgen
Executive Director