

RESOLUTION # 20-2002

RESOLUTION CONFIRMING A HEARING OFFICER, APPROVING A FINANCING BY THE STAMFORD HIGHER EDUCATION FACILITIES CORPORATION FOR THE BENEFIT OF ABILENE CHRISTIAN UNIVERSITY, AUTHORIZING THE MAYOR OF THE CITY OF ABILENE TO APPROVE CERTAIN RELATED MATTERS.

THE STATE OF TEXAS §
COUNTY OF TAYLOR §
CITY OF ABILENE §

WHEREAS, the Stamford Higher Education Facilities Corporation ("*Corporation*") is a nonprofit corporation created by the City of Stamford, Texas pursuant to Section 53.35(b) of the Higher Education Authority Act (Chapter 53, Texas Education Code, as amended);

WHEREAS, the City of Abilene, Texas (the "*City*") has been informed by officers of the Corporation that the Corporation has been requested by Abilene Christian University (the "*Borrower*") to assist it in financing and/or refinancing, on a tax-exempt basis, certain education facilities, including the construction and renovation of such facilities;

WHEREAS, the Corporation is authorized by the provisions of Chapter 53 of the Texas Education Code and the Texas Non-Profit Corporation Act, Article 1396, Tex. Rev. Civ. Stats. Ann. (collectively, "*State Law*"), to enter into contractual obligations in order to finance and/or refinance the acquisition, purchase, or lease, or the construction, renovation or other improvement of education facilities;

WHEREAS, the Corporation is authorized by State Law to provide education facilities by lease or other contractual arrangement, and the Loan Agreement (the "*Loan Agreement*"), dated as of July 16, 2002, by and between the Borrower, as borrower, and the Corporation, as lender, the Lender Loan Agreement (the "*Lender Loan Agreement*"), dated as of July 16, 2002, by and between the Corporation, as borrower, and Bank of America, N.A., (the "*Bank*"), as lender, and the Assignment Agreement (the "*Assignment*") by and between the Corporation, as assignor, and the Bank, as assignee, constitutes contractual arrangements in which the Corporation is authorized by State Law to participate (the transactions set forth in the Loan Agreement, the Lender Loan Agreement and the Assignment, by which the Corporation will assist the Borrower in financing and/or refinancing the education facilities, as aforesaid, are hereinafter referred to as the "*Financing*");

WHEREAS, section 147(f) of the Internal Revenue Code of 1986, as amended (the "*Code*") requires that the issuance of any qualified 501(c)(3) obligations be approved by either the governing body of the City or the chief elected executive officer of the City after a public hearing following reasonable public notice;

WHEREAS, attached hereto as Exhibit A-1 is a Notice of Public Hearing (the "*Public Notice*") which was published in a newspaper of general circulation in the City as required by section 147(f) of the Code;

WHEREAS, the publication of the Public Notice is evidenced by a Publisher's Affidavit (a copy of which is attached hereto as Exhibit A);

WHEREAS, the comments received from the public at the Public Hearing referenced in the Public Notice are summarized in the Certificate of Public Hearing attached as Exhibit B hereto; and

WHEREAS, attached hereto as Exhibit C is the approval of the highest elected official of the City of the Financing and the public hearing.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS THAT:


Section 1. The City hereby specifically approves the Financing and the Project (as defined in the Public Notice) solely for the purpose of satisfying the requirements of section 147(f) of the Code. The City shall have no liabilities for the payment of any of the obligations constituting the Financing nor shall any of the City's assets be pledged to the payment of such obligations.

Section 2. The Mayor is hereby authorized to execute and deliver the approval of the highest elected official of the City (attached hereto as Exhibit C) after the public hearing is held.

Section 3. This Resolution shall become effective immediately upon its passage.

ADOPTED AND APPROVED this the 11th day of July, 2002.

ATTEST:



City Secretary, City of Abilene

(City Seal)



Mayor, City of Abilene

APPROVED:



City Attorney, City of Abilene

EXHIBIT A-1

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Stamford Higher Education Facilities Corporation (the "*Corporation*"), a nonprofit corporation created by the City of Stamford, Texas pursuant to Chapter 53 of the Texas Education Code, will hold a public hearing (a) on July 15, 2002, commencing at 5:30 p.m., in the City Council Chamber of the Stamford City Hall, 201 E. McHarg Street, Stamford, Texas 79553, and (b) on July 11, 2002, commencing at 9:30 a.m. on the campus of Abilene Christian University (the "*Borrower*"), 1600 Campus Court, Hardin Administration Building, Room 208, Abilene, Texas, to provide an opportunity for all interested persons to be heard with respect to the consent and approval of the City of Stamford, Texas and the City of Abilene, Texas, respectively, of the proposed loan under a Loan Agreement by and between the Corporation and the Borrower and a simultaneous loan to be made to the Corporation by Bank of America, N.A. (collectively, the "*Loans*").

The Loans are being made for the purpose of financing and/or refinancing the cost of acquiring, constructing, renovating, and equipping education facilities, and facilities incidental, subordinate, or related thereto or appropriate in connection therewith, including The Williams Performing Arts Center, an approximate 92,000 square foot three-story building, including a three-story theatre, a recital hall, lobby area, dressing rooms, faculty offices, kitchen, administrative offices, faculty studios, choral and instrumental rehearsal halls and music library, all located at 1725 ACU Drive, Abilene, Texas 79601 and paying certain expenses in connection with the issuance of the Loans (collectively, the "*Project*"). The Project is, or will be, owned by the Borrower. The maximum amount of the costs of the Project to be financed with proceeds of the Loans is anticipated to be \$10,000,000. The Loans are not payable out of taxes and are secured by and payable solely from funds provided by the Borrower.

All interested persons are invited to attend the hearing to express their views, both orally and in writing, with respect to the Loans and the Project. Any interested persons unable to attend the hearing may submit their views in writing to the President of the Board of Directors of the Corporation c/o Winstead Sechrest & Minick P.C., Attn: Todd Brewer, 910 Travis Street, Suite 2400, Houston, Texas 77002, prior to the date scheduled for each hearing.

STAMFORD HIGHER EDUCATION FACILITIES CORPORATION

EXHIBIT A

PUBLISHER'S AFFIDAVIT

**THE STATE OF TEXAS §
 §
COUNTY OF TAYLOR §**

_____, being duly sworn on his/her oath states that he/she is an authorized representative of the "*The Abilene Reporter News*" a newspaper of general circulation in Taylor County, Texas (the "*County*") and the area encompassing the City of Abilene, Texas (the "*City*") and further state as follows:

- 4. This Affidavit is given pursuant to Section 2051.044 of the Texas Government Code.
- 5. The newspaper devotes not less than 25% of its total column line inch to general interest items.
- 6. The newspaper is published at least once a week.
- 7. The newspaper is entered as second class postal matter in the County, its county of publication, and within the area of the City.
- 8. The newspaper has been published regularly and continuously for at least 12 months before the publishing of a notice entitled "*Notice Of Public Hearing.*"
- 9. The attached Legal Notice appeared in the newspaper in a conspicuous form and place on _____, 20__.

Subscribed and sworn before me this ___ day of _____, 2002.

Authorized Representative

**THE STATE OF TEXAS §
 §
COUNTY OF TAYLOR §**

THIS INSTRUMENT was acknowledged before me on _____, 2002, by _____.

Notary Public, State of Texas

(SEAL)

EXHIBIT B

CERTIFICATE OF PUBLIC HEARING

I, the undersigned, hereby certify in connection with a series of loan transactions to be entered into by the Stamford Higher Education Facilities Corporation (the "*Corporation*"), Abilene Christian University ("*Borrower*") and Bank of America, N.A. in the maximum principal amount of \$10,000,000 (the "*Loans*") for the benefit of Borrower, as follows:

1. I served as Hearing Officer for the Corporation and the City Council of the City of Abilene, Texas for the purpose of conducting a public hearing on the Loans and the use of the proceeds thereof to provide financing and/or refinancing for a project to be owned and operated by Borrower and including The Williams Performing Arts Center, an approximate 92,000 square foot three-story building, including a three-story theatre, a recital hall, lobby area, dressing rooms, faculty offices, kitchen, administrative offices, faculty studios, choral and instrumental rehearsal halls and music library, all located at 1725 ACU Drive, Abilene, Texas 79601 and paying certain expenses in connection with the issuance of the Loans (collectively, the "*Project*").

2. Such hearing was conducted commencing at 9:30 a.m. on July 11, 2002, 1600 Campus Court, Hardin Administration Building, Room 208G, Abilene, Texas, which building and office was open to the public for purposes of the hearing.

3. At the time for the commencement of the hearing, comments, either orally or in writing, were publicly requested on the Project to be financed with proceeds of the Loan and on the making of the Loans.

4. At the hearing,

no persons presented comments orally or in writing.

the comments summarized in Exhibit B-1 were made orally by the persons listed therein.

the written comments attached hereto were presented.

5. No time limitations were imposed on any public comments.

IN WITNESS WHEREOF, I have hereunto set my hand this July 11, 2002.

Hearing Officer

EXHIBIT B-1

PUBLIC COMMENTS

EXHIBIT C

**APPROVAL OF HIGHEST ELECTED OFFICIAL
OF THE CITY OF ABILENE**

WHEREAS, Abilene Christian University (the "*Borrower*"), in connection with a tax-exempt financing in the maximum principal amount of \$10,000,000, has requested the approval of the Financing (as defined below) and the Project (as defined below); and

WHEREAS, the Financing consists of a Loan Agreement between the Borrower and the Stamford Higher Education Facilities Corporation (the "*Corporation*"), and a Lender Loan Agreement between the Corporation and the Bank of America, N.A. (the "*Bank*") through which loan agreements (the "*Financing*") the Bank will provide funds to the Corporation, which in turn will loan these funds to the Borrower for the purpose of acquiring, constructing, renovating, and equipping education facilities, and facilities incidental, subordinate, or related thereto or appropriate in connection therewith, including The Williams Performing Arts Center, an approximate 92,000 square foot three-story building, including a three-story theatre, a recital hall, lobby area, dressing rooms, faculty offices, kitchen, administrative offices, faculty studios, choral and instrumental rehearsal halls and music library, all located at 1725 ACU Drive, Abilene, Texas 79601 and paying certain expenses in connection with the issuance of the Loans (collectively, the "*Project*"); and

WHEREAS, in accordance with certain provisions of the Internal Revenue Code of 1986, as amended (the "*Code*") as described below, notice of a public hearing was published in "*The Abilene Reporter News*," Taylor County, Texas on June 27, 2002, which notice provided that members of the public were invited to a hearing to be held in the City of Abilene, Texas (the "*City*"), on July 11, 2002 at 9:30 a.m., in connection with the Financing and the Project; and


WHEREAS, a public hearing was held in the City on July 11, 2002, by the hearing officer; and

WHEREAS, it is necessary for the undersigned, as the highest elected official of the City, to approve the Financing and the Project solely for the purpose of satisfying the requirements of section 147(f) of the Code;

NOW, THEREFORE, the undersigned Mayor of the City, acting solely in his/her official capacity and on behalf of the City, hereby approves the holding of the hearing in the City by the hearing officer and the Financing for the Borrower, and further approves the Project; provided that such approvals shall be solely for the purposes of section 147(f) of the Code, and neither the City nor the Mayor shall have any responsibility or liability for the Financing or the Project.

IN WITNESS WHEREOF, I have set my hand this July 11, 2002.

CITY OF ABILENE, TEXAS



Mayor

CERTIFICATE FOR RESOLUTION

(Project City)

THE STATE OF TEXAS §
COUNTY OF TAYLOR §
CITY OF ABILENE §

We, the undersigned officers of the City of Abilene, Texas (the "City"), hereby certify as follows:

1. The City Council of said City convened in regular meeting on July 11, 2002 (the "Meeting"), at the designated meeting place, and the roll was called of the duly constituted officers and members of said City Council, to wit:

Grady Barr	Mayor
Norm Archibald	Councilmember
Kris Southward	Councilmember
Anthony Williams	Councilmember
John Hill	Councilmember
Jimmy McNeil	Councilmember
Kay Alexander	Councilmember

and all of said persons were present, except the following: Southward & Hill, thus constituting a quorum. Whereupon, among other business, the following was transacted at said Meeting: a written

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(the "Resolution") was duly introduced for the consideration of said City Council. It was then duly moved and seconded that said Resolution be adopted and, after due discussion, said motion, carrying with it the adoption of said Resolution, prevailed and carried by the following vote:

AYES: All members of the City Council shown present above voted "Aye," except as provided below:

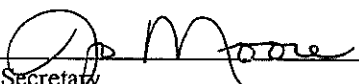
NAYS:

ABSTENTIONS:

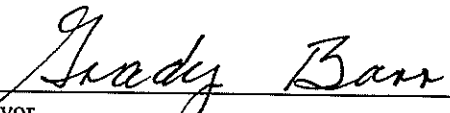
2. That a true, full and correct copy of the aforesaid Resolution adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; that said Resolution has been duly recorded in said City Council's minutes of said Meeting; that the above and foregoing paragraph is a true, full and correct excerpt from said City Council's minutes of said Meeting pertaining to the adoption of said Resolution; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said City Council as indicated therein; that each of the officers and members of said City Council was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the aforesaid Meeting, and that said Resolution would be introduced and considered for adoption at said Meeting, and each of said officers and members consented, in advance, to the holding of said Meeting for such purpose, and that said Meeting was open to the public and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

3. That the Mayor of said City has approved and hereby approves the aforesaid Resolution; that the Mayor and the City Secretary of said City have duly signed said Resolution; and that the Mayor and the City Secretary of said City hereby declare that their signing of this Certificate shall constitute the signing of the attached and following copy of said Resolution for all purposes.

SIGNED AND SEALED July 11, 2002.



City Secretary



Mayor

(SEAL)