

**CITY COUNCIL
AGENDA MEMORANDUM**

February 14, 2006

AGENDA ITEM:

A. Public hearing in connection with the issuance by the Colorado Educational and Cultural Facilities Authority of its tax exempt obligation for the benefit of the Educational Media Foundation in the aggregate principal amount of approximately \$16,500,000.

B. Resolution of the City of Corpus Christi, Texas approving the issuance of tax exempt obligation by the Colorado Educational and Cultural Facilities Authority for the benefit of Educational Media Foundation as required by Section 147 (f) of the Internal Revenue Code of 1986, as amended.

ISSUE: The Educational Media Foundation has requested that the City of Corpus Christi authorize a resolution approving the issuance of tax-exempt obligation in the amount of \$16,500,000 by the Colorado Educational and Cultural Facilities Authority for the benefit of Educational Media Foundation. Section 147(f) of the Internal Revenue Code requires, as a condition to receiving tax-exempt treatment on the obligation, that each governmental unit having jurisdiction over the area in which any facility with respect to which financing is to be provided from the net proceeds of an issue is located, approve the issue after a public hearing following reasonable public notice. Approximately \$350,000 of the proceeds will be used for the benefit of local non-commercial radio station KKLM-FM which is operated by Educational Media Foundation. Approval of this issuance is done solely for the purpose of complying with the requirements of the Internal Revenue Code pertaining to tax-exempt status of the issuance, and in no way obligates, or creates or establishes any liability on the part of the city of Corpus Christi with respect to the facility or the obligation.

REQUIRED COUNCIL ACTION: Approval of the Resolution as presented.

FUNDING: None

PREVIOUS COUNCIL ACTION: None.

CONCLUSION AND RECOMMENDATION: Approval of the Resolution.



(Department Head Signature)

Attachments: Letter from law firm of Peck, Shaffer & Williams, bond counsel, Resolution approving issuance.

Peck, Shaffer & Williams LLP
Attorneys At Law

SUITE 845 555 17TH STREET DENVER, COLORADO 80202
TELEPHONE 303-296-3996 1 877-296-0333 FAX 303-296-0344 WWW.PECK-SHAFFER.COM

December 16, 2005

Corpus Christi, Texas
City Hall – Council Chambers
1201 Leopard
Corpus Christi, Texas
Attention: Lisa Aguilar, Assistant City Attorney
Email: lisaa@cctexas.com

Re: Educational Media Foundation

Ladies and Gentlemen:

Our firm is acting as bond counsel in connection with the proposed issuance of a tax-exempt obligation (the "Obligation") by the Colorado Educational and Cultural Facilities Authority, an independent public body public and corporate of the State of Colorado (the "Authority") for the benefit of Educational Media Foundation, a California non profit corporation (the "Borrower") which operates a non-commercial radio station (KKLM-FM) that is licensed to operate in your City. This letter is in response to the request for some background information on the role of City in the transaction.

The proceeds of the Obligation will be used for the purposes of: (a) refinancing the cost of acquiring an FCC non-commercial license to operate a radio station that offers contemporary Christian music, public affairs programming, public service announcements and personal counseling by phone to listeners, (b) equipping the radio station which the Borrower will operate, and (c) paying certain costs of issuance of the Obligation, (collectively, the "Project").

You requested we provide a discussion regarding the power of the Authority to issue the Obligation. The Borrower operates nine non-commercial radio stations located in Colorado. The Borrower is an organization described in Section 501(c)(3) of the Internal Revenue Code, based on its educational mission. The Authority is empowered to issue the Obligation for the Project pursuant to C.R.S. 23-15-101 et seq (2004) (the "Act") and specifically is empowered under 23-15-103 (7)(b) to issue the Obligation for the benefit of an educational institution for projects located outside the state, if the Borrower operates educational facilities (as defined in the Act) in Colorado. Since the Borrower is an educational institution (within the meaning of the Act) that operates nine Colorado stations, the Authority can finance a project located outside of Colorado. The Authority, therefore, has the power to issue the Obligation for the Project.

Federal tax law also plays a large role in any tax-exempt financing, including this one for the

Peck, Shaffer & Williams LLP

City of Corpus Christi, Texas
December 13, 2005
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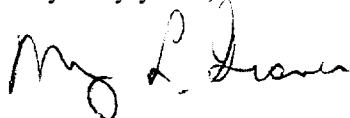
Borrower. The Borrower needs the assistance of the City to meet one of the tax law requirements. Section 147(h) of the Internal Revenue Code of 1986, as amended (the "Code") requires that a public hearing for bonds issued for the benefit of non-profit corporations be held in the local area where the project being financed with tax-exempt obligation is located, after the publication of notice in accordance with the Code requirements. Further, the Code requires that a public body like the City Council formally approve the issuance of the Obligation. Thus, the Borrower requests the City to cause the notice to be published, hold a public hearing and pass a resolution approving the Obligation. The public hearing mandated by the Code only requires the City to give interested parties the right to make statements about the Project or the Obligation, and does not require the City to conduct a debate or make a determination on the merits of the Project. The approval given by the City is to merely meet the Code requirements. Further, such actions by the City Council do not obligate the City to make any payments with respect to the Obligation, nor will the Obligation become the indebtedness of the City.

We will provide the form of the public notice and the City Council resolution are included with this letter.

You asked me to comment on what would occur if Corpus Christi did not hold the hearing. If Corpus Christi does not hold the hearing, the financing costs for EMF will remain at a higher, taxable rate which will limit the Company's ability to provide educational programming to the City.

Thank you for your assistance and we are available to answer any questions you might have. We look forward to completing this with you.

Very truly yours,



Mary L. Groves

MLG:lrw

Peck, Shaffer & Williams LLP
Attorneys At Law

SUITE 845 555 SEVENTEENTH STREET DENVER, COLORADO 80202-5402
TELEPHONE 303-296-3996 877-296-0333 FAX 303-296-0344 WWW.PECK-SHAFFER.COM

February 9, 2006

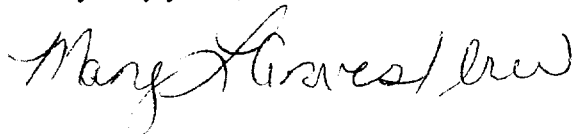
City of Corpus Christi, Texas
City Hall – Council Chambers
1201 Leopard
Corpus Christi, Texas
Attention: Lisa Aguilar, Assistant City Attorney
Email: lisaa@cctexas.com

Re: Colorado Educational and Cultural Facilities Authority Tax-Exempt Obligation
(Educational Media Foundation)

Ladies and Gentlemen:

We have acted as bond counsel with respect to the above-captioned Obligation and have rendered our unqualified opinion as bond counsel of even date herewith. You may rely on such opinion as if it were addressed to you.

Very truly yours,



DRAFT
01/06/06

Suite 845 555 17th Street Denver, Colorado 80202
Telephone 303-296-0344 1-877-296-0333 Fax 720-904-9149 www.peck-shaffer.com

February _____, 2006

Colorado Educational and Cultural
Facilities Authority
1981 Blake Street
Denver, CO 80202

Re: Colorado Educational and Cultural Facilities Authority Tax-Exempt Obligation
(Educational Media Foundation)

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by the Colorado Educational and Cultural Facilities Authority (the "Issuer") of its Colorado Educational and Cultural Facilities Authority Tax-Exempt Obligation, in the principal amount of \$ _____ (the "Obligation").

We have examined the law and such certified proceedings and other papers as deemed necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the Issuer and of Educational Media Foundation, a California nonprofit corporation (the "Corporation"), contained in the Master Financing Agreement described below, the Issuer's certified proceedings and other certifications of its officials furnished to us, and certifications by the Corporation (including certifications as to the use of Obligation proceeds which are material to the paragraph numbered 4 below), without undertaking to verify the same by independent investigation. We have also relied on continued compliance by the Issuer and the Corporation with their respective covenants contained in the Master Financing Agreement described below relating to the issuance of the Obligation and pertaining to those sections of the Internal Revenue Code of 1986, as amended (the "Code") that affect the exclusion from gross income of interest on the Obligation for Federal and Colorado income tax purposes. Our examination was necessarily limited to the foregoing as they exist or are in effect as of the date hereof.

The Obligation is issued pursuant to Article 15, Title 23 of the Colorado Revised Statutes and the Supplemental Public Securities Act, Part 2, Article 57, Title 11 of the Colorado Revised Statutes, a Master Financing Agreement (the "Agreement") between the Issuer, the Corporation and GE Capital Public Finance, Inc. (the "Lender"), and a resolution of the Issuer authorizing the execution and delivery of the Obligation (the "Obligation Resolution"). Proceeds of the Obligation are to be loaned to the Corporation pursuant to the provisions of the Agreement.

Operation of the assets financed with proceeds of the Obligation will be subject to certain covenants contained in the Agreement. Pursuant to the Agreement, the Corporation has agreed to make payments sufficient to pay when due the principal of and interest on the Obligation. The rights of the Issuer under the Agreement (except certain rights to indemnification, reimbursements, administrative fees and notices and the right to perform certain discretionary acts) are pledged and assigned by the Issuer to the Lender as security for the Obligation. The Obligation is payable solely from such revenues and funds as are pledged and assigned to the payment thereof pursuant to the Agreement.

The Obligation bears interest at the rates and matures on the date set forth in the Agreement. The Obligation is subject to prepayment upon certain circumstances, terms and conditions described in the Agreement.

Based on our examination described above and in reliance upon the opinion referred to below, we are of the opinion as follows:

1. The Issuer is duly created and validly existing as a public body corporate and politic and instrumentality of the State of Colorado, with the power to enter into and perform its Obligation under the Agreement and to issue the Obligation.

2. The Agreement has been duly authorized, executed and delivered by the Issuer and is the valid and binding obligation of the Issuer enforceable against the Issuer.

3. The Obligation has been duly authorized, executed and delivered by the Issuer and is the valid, binding, enforceable, special, limited obligation of the Issuer, payable solely from the revenues pledged and assigned to the payment thereof pursuant to the Agreement.

4. Interest on the Obligation is excludable from gross income for federal income tax purposes under existing law. The Obligation is a "qualified 501(c)(3) Obligation" within the meaning of the Code, and interest on the Obligation is not subject to the alternative minimum tax on individuals and corporations, except that interest on the Obligation will be included in the "adjusted current earnings" of a corporation (other than any S corporation, regulated investment company, REIT, REMIC or FASIT) for purposes of computing its alternative minimum tax. The opinion set forth above is subject to the condition that the Corporation comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Obligation in order that interests thereon be (or continue to be) excluded from gross income for Federal income tax purposes. The Corporation has covenanted to comply with all such requirements. Failure to comply with certain of such requirements could cause the interest on the Obligation to

be included in gross income retroactive to the date of issuance of the Obligation. We express no opinion regarding other Federal tax consequences arising with respect to the Obligation.

5. Interest on the Obligation is excludable from taxable income for Colorado income tax purposes and from Colorado alternative minimum taxable income under existing law.

6. The Obligation and the interest thereon shall never constitute a general obligation, debt or indebtedness of the Issuer within the meaning of any provision or limitation of the Constitution or statutes of the State of Colorado and shall not constitute or give rise to a pecuniary liability of the Issuer or charge against its general credit or taxing powers, but are payable solely from the revenues pledged and assigned to the payment thereof.

In providing such opinions, we have relied on representations of the Issuer, the Corporation, and Coughlin and Company, Inc. (the "Underwriter") with respect to matters solely within the knowledge of the Issuer, the Corporation and the Underwriter, respectively, which we have not independently verified, and have assumed continuing compliance with the covenants in the Agreement pertaining to those sections of the Code that affect the exclusion from gross income of interest on the Obligation for federal income tax purposes. We have further relied on the opinion of The Law Offices of David E. Frank, Auburn, California, counsel to the Corporation, to the effect that the Corporation is exempt from tax pursuant to section 501(a) of the Code by virtue of being an organization described in section 501(c)(3) of the Code. If such representations are determined to be inaccurate or incomplete, or the Issuer or the Corporation fails to comply with the foregoing covenants of the Agreement, interest on the Obligation could become includable in gross income from the date of its original delivery, regardless of the date on which the event causing such inclusion occurs.

Certain requirements and procedures contained or referred to in the Agreement and other relevant documents may be changed and certain actions may be taken or omitted under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with an approving opinion of nationally recognized bond counsel. No opinion is expressed herein as to the Obligation or the interest thereon on or after such change that occurs or action that is taken or omitted upon the advice or approval of counsel other than ourselves.

Except as stated above, we express no opinion as to any federal, state or local tax consequences resulting from the receipt or accrual of interest on, or acquisition, ownership or disposition of, the Obligation.

Owners of the Obligation should be aware that the ownership of tax-exempt bond may result in collateral federal income tax consequences to financial institutions, life insurance and property and casualty insurance companies, certain S corporations with Subchapter C earnings and profits, individual recipients of Social Security or Railroad Retirement benefits, taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt bonds, taxpayers owning an interest in a FASIT that holds tax-exempt bonds and individuals otherwise qualifying for the earned income credit. In addition, certain foreign corporations doing business in the United States may be subject to the "branch profits tax" on their effectively-connected earnings and profits (including tax-exempt interest such as interest on the Obligation).

We express no opinion as to the status of the Obligation under the "Blue Sky" or legal investment laws of any state jurisdiction, or as to any information prepared in connection with the offer or sale of the Obligation.

It is to be understood that the rights of the holders of the Obligation and the enforceability of the Obligation and the Agreement may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable, and that their enforcement may be subject to the exercise of judicial discretion in accordance with general principles of equity, and may be limited by the reasonable exercise of the police power of the State of Colorado and by the exercise of the powers delegated to the United States of America by the Federal Constitution.

The opinions set forth above are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement these opinions to reflect any facts or circumstances that may hereafter come to our attention or to reflect any changes in any law that may hereafter occur or become effective

Very truly yours,

**RESOLUTION OF THE CITY OF CORPUS CHRISTI, TEXAS
APPROVING THE ISSUANCE OF TAX EXEMPT OBLIGATION BY
THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES
AUTHORITY FOR THE BENEFIT OF EDUCATIONAL MEDIA
FOUNDATION AS REQUIRED BY SECTION 147 (F) OF THE
INTERNAL REVENUE CODE OF 1986, AS AMENDED.**

WHEREAS, Educational Media Foundation, a California nonprofit corporation which operates a non-commercial radio station (KKLM-FM) located at 410 S. Padre Island Drive, Suite 207, Corpus Christi, Texas (the "Borrower") has requested the Colorado Educational and Cultural Facilities Authority (the "Issuer") to issue its Tax-Exempt Obligation for the benefit of the Borrower, in the aggregate principal amount of approximately \$16,500,000 (the "Obligation"); and

WHEREAS, the proceeds of the Obligation will be used for the purposes of:
(a) refinancing the cost of acquiring an FCC non-commercial license to operate a radio station assigned to Corpus Christi, Texas by the FCC that offers contemporary Christian music, public affairs programming, public service announcements and personal counseling by phone to listeners. (b) equipping the radio station which the Borrower will operate, and (c) paying certain costs of issuance of the Obligation.

WHEREAS, in order to achieve interest savings, the Borrower desires that the Obligation be issued in compliance with the requirement of the Internal Revenue Code of 1986, as amended (the "Code") so that interest on the Obligation will be excludable from the gross income of the holders; and

WHEREAS, Section 147 (f) of the Code requires, as a condition to receiving tax-exempt treatment of the interest on the Obligation, that an authorized, elected representative approve the Obligation and the City Council of Corpus Christi (the "Council") constitutes such an authorized, elected representative; and

WHEREAS, it is deemed necessary and advisable that this Resolution be adopted; and

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI AS FOLLOWS:

Section 1: The issuance of the Obligation by the Issuer in an aggregate amount not to exceed \$16,500,000 is hereby approved.

Section 2: Such approval shall be solely for the purposes of Section 147 (f) of the Internal Revenue Code of 1986, and the City of Corpus Christi, Texas, shall have no liabilities for the payment of the Obligation nor shall any of its assets be pledged to the payment of the Obligation.

Section 3: In providing this approval, the City makes no representations with respect to any of the projects to be financed with the proceeds of the Bonds, specifically, but not by way of

limitation, with respect to any projects outside the City of Corpus Christi which are to be financed with approximately \$16.150,000 of the proceeds of the Bonds, of which the City has no knowledge.

Section 4: This Resolution shall take effect and be in full force immediately after its adoption by the Council.

THIS RESOLUTION HAVING BEEN DULY CONSIDERED AND VOTED UPON WAS PASSED AND APPROVED THIS ____ DAY OF _____, 2006.

CITY OF CORPUS CHRISTI, TEXAS

ATTEST:

_____, City Clerk

By: _____
_____, Mayor

APPROVED: February 9, 2006.

By: *Lisa Aguilar*
Lisa Aguilar
Assistant City Attorney
for City Attorney

Corpus Christi, Texas
_____ of _____, 2006

The above resolution was passed by the following vote:

Henry Garrett _____

Brent Chesney _____

Melody Cooper _____

Henry Garrett _____

Bill Kelly _____

Rex A. Kinnison _____

John E. Marez _____

Jesse Noyola _____

Mark Scott _____

