

ORDINANCE NO. 2019-10-17-0856

AUTHORIZING EXECUTION OF A FINANCING AGREEMENT BY AND BETWEEN THE CITY OF SAN ANTONIO, TEXAS AND THE CITY OF SAN ANTONIO, TEXAS MUNICIPAL FACILITIES CORPORATION, PURSUANT TO WHICH THE CITY WILL ASSIGN CERTAIN LAWFULLY AVAILABLE REVENUES TO THE CORPORATION FOR THE PURPOSE OF SECURING THE REPAYMENT OF A LOAN, IN AN AMOUNT OF UP TO \$6,100,000, TO PAY CERTAIN COSTS RELATED TO FINANCING PROJECTS AT BROOKS CITY BASE; AUTHORIZING THE CORPORATION'S ISSUANCE OF DEBT OBLIGATIONS RELATED TO THE FOREGOING PROJECT AND THE PLEDGE OF CERTAIN REVENUES AS SECURITY THEREFOR; AUTHORIZING OTHER MATTERS INCIDENT AND RELATED THERETO; AND PROVIDING AN EFFECTIVE DATE

* * * * *

WHEREAS, the City of San Antonio, Texas (the *City*) is home-rule City operating pursuant to a home-rule charter, and a political subdivision, duly organized and existing pursuant to the Constitution and general laws of the State of Texas (the *State*); and

WHEREAS, the City Council of the City (the *Council*), the board of directors of Brooks Development Authority (the *Authority*), a political subdivision of the State created under Chapter 379B, Texas Local Government Code, as amended, and the board of directors of Tax Increment Reinvestment Zone Number Sixteen (Brooks City-Base TIRZ), City of San Antonio, Texas (the *TIRZ*), and collectively with the Council and the Authority, the *Contract Parties*) have, pursuant to the respective authority cited therein, entered into an Economic Development Interlocal Agreement (the *Agreement*) pursuant to which the Contract Parties, among other related matters, agreed to facilitate construction, including major renovations (collectively, the *Improvements*), to the property specifically identified within the Agreement and generally referred to as Brooks Buildings 167 and 176 (together, the *Project Property*) located at Brooks City Base, a mixed-use development site at the former Brooks Air Force base (collectively, *Brooks*) for the purpose of generating economic development in the form of attracting employers or expansion of current Brooks' tenants to the Project Property (the *Project Goals*), as more fully described in the Agreement; and

WHEREAS, due to a shortage of funds available to the TIRZ to complete the Project Goals, the City, pursuant to the terms of the Agreement, is obligated to issue debt obligations in an amount not to exceed \$6,000,000 (excluding costs of issuance), for transfer to the Authority to improve the Project Property in accordance with the Project Goals; and

WHEREAS, the hereinafter-defined Project is a project included in the "project plan" and "finance plan" of the TIRZ, meaning the costs thereof represent an authorized use and expenditure of TIRZ funds; and

WHEREAS, the TIRZ, pursuant to the terms of the Agreement, is required to transfer to the City, from its available funds at the times and amounts specified in the Agreement, funds sufficient to allow the City make payments on the hereinafter-defined Loan; and

WHEREAS, in order for the City to meet its obligations as set forth in the Agreement, the City intends to utilize the City of San Antonio, Texas Municipal Facilities Corporation (the *Corporation*), a local government corporation duly existing and created under Chapter 431 of the Texas Transportation Code, as amended (*Chapter 431*), for the purpose of aiding and acting on behalf of the City to accomplish certain governmental purposes of the City, including the acquisition, construction, equipping, financing, operation, and maintenance of land and other municipal facilities for the City (which includes prior projects located at Brooks), and the Corporation is vested with all powers and privileges of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (currently codified under Chapter 22, Texas Business Organizations Code, as amended (*Chapter 22*)); and

WHEREAS, the Corporation is obtaining a loan, in an amount of \$6,065,000 (the *Loan*), to (i) finance the costs of construction of, including the Improvements to, the Project Property to prospectively lease such facilities to a private entity for commercial activity (collectively, the *Project*) and (ii) pay legal and fiscal fees in connection with such Project; and

WHEREAS, to obtain the Loan, the Corporation intends to enter into a Loan Agreement, dated as of October 17, 2019 (but effective as of October 29, 2019, the date of Loan closing; such agreement, in the form attached hereto as Exhibit A, the *Loan Agreement*), with Frost Bank, San Antonio, Texas (the *Bank*), pursuant to which the Bank will make the Loan to the Corporation, who will use the proceeds therefrom for the purposes specified therein; and

WHEREAS, the City acknowledges the Corporation's entry into and execution of the Loan Agreement and consents to the Corporation's undertaking of such obligations thereby memorialized to meet the City's contractual obligation, as required under the provisions of the Agreement; and

WHEREAS, the City hereunder pledges the hereinafter-defined Pledged Revenues to secure its obligations to the Corporation arising under the financing agreement, dated as of October 17, 2019 (but effective as of October 29, 2019; such agreement, in the form attached hereto as Exhibit B, the *Financing Agreement*) between the City and the Corporation, which Pledged Revenues to be received by the Corporation pursuant to the Financing Agreement shall be pledged by the Corporation to the Bank as security for the repayment of the Loan; and

WHEREAS, the Council is now approving this Ordinance to (i) authorize the City's execution of the Financing Agreement and all documentation necessary or incidental thereto (such documentation, as further defined in the Financing Agreement and as used herein, the *Borrower Documents*), (ii) authorize its pledge of the Pledged Revenues as a source of payment of its obligations owed to the Corporation under the Financing Agreement, (iii) approve the Corporation's entering into the Loan Agreement with the Bank and acceptance of the Loan therefrom, and (iv) approving the Corporation's pledge of Pledged Revenues to be received thereby from the City pursuant to the Financing Agreement to the Bank as security for the repayment of the Loan; and

WHEREAS, the Council hereby finds and determines the adoption of this Ordinance is in the best interests of the residents of the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS THAT:

SECTION 1. Authorization to Enter into Financing Agreement; Pledge of Pledged Revenues; City Covenants Relating to Pledge of Pledged Revenues.

(a) As authorized by and pursuant to the provisions of Applicable Law, the Council hereby approves the Financing Agreement.

(b) As security for the payment of its obligations owed to the Corporation under the Financing Agreement, the City hereby pledges, grants, and hypothecates a first and prior lien on and pledge of the Pledged Revenues, which lien and pledge shall be on parity with the lien thereon and pledge thereof securing the Outstanding Parity Obligations and any Additional Parity Obligations that may hereafter be issued or incurred by, or on behalf of, the City (the right to issue or incur the City hereby reserves); provided, however, that no lien on or pledge of all or any portion of the Pledged Revenues shall be senior and superior to the lien on and pledge of Pledged Revenues that secures the payment of the Parity Obligations.

(c) For so long as the City's obligations under the Financing Agreement and the Corporation's obligations under the Loan Agreement, respectively, remain outstanding, the City shall adhere to, enforce, and comply with the City's covenants regarding the operation and maintenance of the Systems, the rates charged for the use thereof, and the use, expenditure and distribution of the revenues therefrom for the benefit of the Corporation and the Bank and as assurance of the City's satisfaction of its obligations under the Financing Agreement and the Corporation's satisfaction of its obligations under the Loan Agreement.

SECTION 2. Acknowledgement and Approval of Corporation Loan Secured by Pledged Revenues. The City hereby acknowledges and approves the Corporation: (i) entering into the Loan Agreement with and acceptance of the Loan from the, and (ii) pledging the Pledged Revenues to be received from the City pursuant to the Financing Agreement as security for the repayment of the Loan and other obligations of the Corporation arising under the Loan Agreement.

SECTION 3. Authorization to Execute Documentation. The Council hereby authorizes the City Manager of the City, the City's Chief Financial Officer, and the Deputy Chief Financial Officer (each, an *Authorized Official*) to execute, on behalf of and as the act and deed of the City, the Financing Agreement, any Borrower Document, any other document, instrument, or certificate to evidence, provide notice of, or perfect the pledge of Pledged Revenues as security for the City's obligations under the Financing Agreement, any approvals, consents, certificates, notices, or other instruments pertaining to the Corporation's entering into the Loan Agreement with and accepting the Loan from the Bank, and amendments to any of the foregoing determined by an Authorized Official to be in the best interests of the City, and any other documentation

determined by an Authorized Official to be necessary or incidental to any matter that is the subject of this Ordinance. Each Authorized Official, from time to time and after consultation with Norton Rose Fulbright US LLP, is authorized to approve any modifications or amendments to such documentation to effectuate the transactions hereunder or thereunder contemplated without further action of the Council being necessary or required.

SECTION 4. Additional Findings. The City hereby finds that the Project, including the Improvements to the Project Property, constitute construction within the meaning of, and as authorized by, Chapter 1509, permitting the construction of facilities for the purposes of subsequently leasing the foregoing to private and public parties. The City hereby affirms the Project will include either the lease of facilities for public use or the lease of facilities for use in manufacturing or other commercial activities, as further described in Chapter 1509.

SECTION 5. Defined Terms. For the purposes of this Ordinance, the following terms have the meanings ascribed thereto:

(a) *Additional Parity Obligations* means any additional obligations incurred by or on behalf of the City, that the City hereby reserves the right to incur, that are equally and ratably secured by a first and prior lien on and pledge of the Pledged Revenues on a parity with the lien thereon and pledge thereof securing the Parity Obligations.

(b) *Applicable Law* means the Constitution and general laws of the State, including Section 1502.059, Chapter 431, Chapter 22, Texas Business Organizations Code, as amended, and Subchapter A of Chapter 1509.

(c) *Chapter 1509* means Chapter 1509, Texas Government Code, as amended.

(d) *CPS Bond Ordinances* means those City ordinances authorizing the issuance, from time to time, of evidences of indebtedness secured by and payable from Net Revenues.

(e) *CPS Energy* means City Public Service Board of San Antonio, Texas.

(f) *CPS Revenues* means 14% of the Gross Revenues, less the value of gas and electric services of the Systems used by the City for municipal purposes and the amounts expended for additions to the City's street lighting system, which portion of Gross Revenues is transferred to the City, for use thereby for any lawful purpose (including the pledge thereof hereunder granted) pursuant to the applicable terms of the CPS Bond Ordinances and Section 1502.059.

(g) *Gross Revenues* means the revenues derived by CPS Energy from the operation and management of the Systems.

(h) *Net Revenues* means the Gross Revenues less the costs of operating and maintaining the Systems.

(i) *Outstanding Parity Obligations* means (i) the City's obligations arising under the Economic Development Contract, dated as of June 19, 2003, between the City and Starbright and pursuant to whose terms the City transfers to Starbright from CPS Revenues amounts sufficient to pay (and which right to receive such payments Starbright has pledged as security for the payment of) debt service on the "City of San Antonio, Texas, Starbright Industrial Development Corporation Contract Revenue Refunding Bonds, Taxable Series 2013 (Starbright Project)", and (ii) the City's obligations arising under that certain Loan Agreement between the City and JPMorgan Chase Bank, N.A., dated as of June 18, 2015 (but effective as of June 25, 2015) and as amended from time to time, to which the City has pledged CPS Revenues as security therefor.

(j) *Parity Obligations* means the Outstanding Parity Obligations, the City's obligations under the Financing Agreement, and any Additional Parity Obligations, as each or any of the foregoing are outstanding at the time of determination.

(k) *Pledged Revenues* means (i) the CPS Revenues, and (ii) any additional revenues, incoming receipts or other resources including without limitation, any grants, donations or income received or to be received from the United States Government or any other public or private source whether pursuant to an agreement or otherwise, which hereafter may be pledged to the payment of the Parity Obligations.

(l) *Section 1502.059* means Section 1502.059, Texas Government Code, as amended.

(m) *Starbright* means the City of San Antonio, Texas Starbright Industrial Development Corporation.

(n) *Systems* means the City's municipally-owned electric and gas utilities systems, the management, operation, and maintenance of which is the responsibility of CPS Energy.

SECTION 6. Amendments. For so long as the Corporation's obligations under the Loan Agreement remain outstanding and unpaid, the City shall not amend or modify the terms and provisions of this Ordinance or the Financing Agreement without receipt of the prior written consent of the Bank.

SECTION 7. Inconsistent Provisions. All resolutions and ordinances, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

SECTION 8. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State and the United States of America.

SECTION 9. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid by a court of competent jurisdiction, the remainder of this Ordinance and the application of such provision to other persons and

circumstances shall nevertheless be valid, and the Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 10. Incorporation of Preamble Recitals. The recitals contained in the preamble hereof are hereby found to be true, and such recitals and other statements therein are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

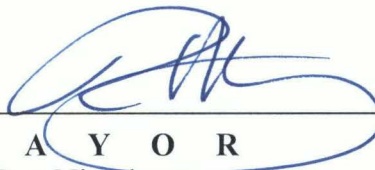
SECTION 11. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, Texas Government Code, as amended.

SECTION 12. Effective Date. The effective date of this Ordinance shall be governed by the provisions of Section 1-15 of the City Code of San Antonio, Texas. This Ordinance shall take effect immediately if passed by eight (8) affirmative votes; otherwise, this Ordinance shall take effect ten (10) days from the date of passage.

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PASSED AND ADOPTED by an affirmative vote of 11 members of the City Council of the City of San Antonio, Texas, this the 17th day of October, 2019.

CITY OF SAN ANTONIO, TEXAS



M A Y O R
Ron Nirenberg

ATTEST:



City Clerk

I, the undersigned, City Attorney of the City of San Antonio, Texas, hereby certify that I read, passed upon, and approved as to form the foregoing Ordinance prior to its adoption and passage as aforesaid.



Andrew Segovia, City Attorney
City of San Antonio, Texas

Agenda Item:	22A (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22A, 22B, 23A, 23B, 23C)
Date:	10/17/2019
Time:	10:17:53 AM
Vote Type:	Motion to Approve
Description:	Ordinance approving a finance agreement between the City and the City of San Antonio, Texas Municipal Facilities Corporation under which the City will assign certain revenues to the Corporation for the purpose of securing the repayment of a loan, in an amount not to exceed \$6,100,000.00, to pay costs related to financing projects at Brooks City Base; authorizing the Corporation's issuance of debt obligations related to the foregoing project and the pledge of certain revenues as security therefor.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
Jada Andrews-Sullivan	District 2		x			x	
Rebecca Viagran	District 3		x				
Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5		x				
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

EXHIBIT A
LOAN AGREEMENT

See Tab 3

EXHIBIT B
FINANCING AGREEMENT

See Tab 5

CERTIFICATE OF CITY CLERK

THE STATE OF TEXAS §
 §
COUNTIES OF BEXAR, §
COMAL, AND MEDINA §
 §
CITY OF SAN ANTONIO §

THE UNDERSIGNED HEREBY CERTIFIES that:

1. On the 17th day of October, 2019, the City Council (the *Governing Body*) of the City of San Antonio, Texas (the *Issuer*) convened in regular session at its regular meeting place in the Municipal Plaza Building of the Issuer (the *Meeting*), the duly constituted members of the Governing Body being as follows:

Ron Nirenberg	Mayor
Roberto C. Treviño	Councilmember
Jada Andrews-Sullivan	Councilmember
Rebecca J. Viagran	Councilmember
Dr. Adriana Rocha Garcia	Councilmember
Shirley Gonzales	Councilmember
Melissa Cabello Havrda	Councilmember
Ana Sandoval	Councilmember
Manny Pelàez	Councilmember
John Courage	Councilmember
Clayton Perry	Councilmember

and all of such persons were present at the Meeting, except the following: _____, thus constituting a quorum. Among other business considered at the Meeting, the attached ordinance (the *Ordinance*) entitled:

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS AUTHORIZING EXECUTION OF A FINANCING AGREEMENT BY AND BETWEEN THE CITY OF SAN ANTONIO, TEXAS AND THE CITY OF SAN ANTONIO, TEXAS MUNICIPAL FACILITIES CORPORATION, PURSUANT TO WHICH THE CITY WILL ASSIGN CERTAIN LAWFULLY AVAILABLE REVENUES TO THE CORPORATION FOR THE PURPOSE OF SECURING THE REPAYMENT OF A LOAN, IN AN AMOUNT OF UP TO \$6,100,000, TO PAY CERTAIN COSTS RELATED TO FINANCING PROJECTS AT BROOKS CITY BASE; AUTHORIZING THE CORPORATION'S ISSUANCE OF DEBT OBLIGATIONS RELATED TO THE FOREGOING PROJECT AND THE PLEDGE OF CERTAIN REVENUES AS SECURITY THEREFOR; AUTHORIZING OTHER MATTERS INCIDENT AND RELATED THERETO; AND PROVIDING AN EFFECTIVE DATE

was introduced and submitted to the Governing Body for passage and adoption. After presentation and due consideration of the Ordinance, a motion was made that the Ordinance be finally passed and adopted in accordance with the Issuer's Home Rule Charter. The motion was seconded and carried by the following vote:

All voted "For" — voted "Against" — abstained

all as shown in the official Minutes of the Governing Body for the Meeting.

2. The attached Ordinance is a true and correct copy of the original on file in the official records of the Issuer; the duly qualified and acting members of the Governing Body of the Issuer on the date of the Meeting are those persons shown above, and, according to the records of my office, each member of the Governing Body was given actual notice of the time, place, and purpose of the Meeting and had actual notice that the Ordinance would be considered; and the Meeting and deliberation of the aforesaid public business, was open to the public and written notice of said meeting, including the subject of the Ordinance, was posted and given in advance thereof in compliance with the provisions of Chapter 551, as amended, Texas Government Code.

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IN WITNESS WHEREOF, I have signed my name officially and affixed the seal of the Issuer, this 17th day of October, 2019.



Laura N. Vacker

City Clerk
City of San Antonio, Texas