

AN ORDINANCE 2014 - 10 - 30 - 0818

**AUTHORIZING CERTAIN ACTIONS RELATING TO THE APPROVAL
OF THE WATER TRANSMISSION AND PURCHASE AGREEMENT
WITH VISTA RIDGE CONSORTIUM; ADDRESSING OTHER
MATTERS RELATING TO THE FOREGOING; AND PROVIDING FOR
AN EFFECTIVE DATE**

* * * * *

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

WHEREAS, the City Council (the *City Council*) of the City previously established a component unit of the City known as the San Antonio Water System (the *System*) for the purpose of operating and maintaining the City's water and wastewater utility system, which component unit is under the management and control of the Board of Trustees (the *Board*) established and created pursuant to the provisions of Ordinance No. 75686 (the *Creation Ordinance*) adopted by the City Council on April 30, 1992; and

WHEREAS, pursuant to State law and the Creation Ordinance, the City has, on behalf and for the benefit of the System and at the request of the Board, from time to time heretofore issued and will hereafter issue, and there are currently outstanding, revenue obligations secured solely by System revenues (collectively, the *System Obligations*); and

WHEREAS, for so long as System Obligations (whether heretofore or hereafter issued) remain outstanding, operational management and control of the System (with the exception of limited approvals concerning the issuance of System Obligations, imposition of System rates, and exercise of the powers of condemnation, reserved exclusively to the jurisdiction of the City Council) is vested with the Board, pursuant to applicable State law and the provisions of the Creation Ordinance (which provisions are perpetuated in each City ordinance authorizing the issuance of any series of System Obligations); and

WHEREAS, the City and the Board have long been aligned in the belief that diversification of the City's water supply is essential for the continued preservation of the health, safety, and welfare of the residents of the City; and

WHEREAS, in an effort to achieve significant diversification of the City's water supply, the Board, on January 14, 2011, solicited requests for competitive sealed proposals for the provision and delivery of alternative water supplies for the purpose of meeting the System's water supply needs (the *Solicitation*); and

WHEREAS, in response to the Solicitation, the Board received nine responses, from which three finalists were selected and reviewed prior to determining that the proposal of the Vista Ridge Consortium presented the most advantageous possibility for the City obtaining an alternative water source; and

WHEREAS, on July 1, 2014, the Board formally selected the water supply proposal of the Vista Ridge Consortium as the most advantageous to the System, subject to negotiation of an acceptable contract and receipt of City Council support; and

WHEREAS, at the conclusion of a series of publically-held negotiation meetings of a committee of the Board, a final Water Transmission and Purchase Agreement, between Abengoa Vista Ridge, LLC and the City, acting by and through the Board (the *WTPA*), was approved by the Board by resolutions adopted on September 29, 2014 and October 15, 2014 (together, the *Board Resolution*) and, in the Board Resolution, which is included as **Exhibit "B"**, the Board requested the City Council's approval of the WTPA; and

WHEREAS, the WTPA will authorize commencement of the exploration, design, and development of a wellfield and pipeline from the Carrizo and Simsboro Aquifers located in Burleson County to Bexar County (the *Project*), to transport and deliver up to 50,000 acre-feet of water per year to San Antonio residents and, thereby, decreasing the region's reliance on the Edwards Aquifer and providing an additional source of water for System customers generally over a 30-year time span; and

WHEREAS, the WTPA requires the System to pay, solely from System revenues as a maintenance and operating expense of the System, for the amount of acceptable water made available to the System; and

WHEREAS, the System desires to enter into the WTPA pursuant to and in accordance with the applicable provisions of Chapter 1502, as amended, Texas Government Code; Chapter 252, Subchapter I of Chapter 271, and Chapter 552, as amended, Texas Local Government Code; the City's Home Rule Charter; and the Creation Ordinance and each City ordinance heretofore or hereafter adopted authorizing the issuance of System Obligations (collectively, *Applicable Law*); and

WHEREAS, the City Council hereby finds and determines that 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 THAT:

SECTION 1. Approval of WTPA. Pursuant to, in accordance with, and under authority provided by Applicable Law, and in accommodation of the request of the City Council made by the Board in the Board Resolution, the WTPA and the terms contained therein, by and between the City, acting by and through the System at the direction of the Board, and Abengoa Vista Ridge, LLC, in substantially the form attached hereto as **Exhibit A**, is hereby approved. Notwithstanding Ordinance No. 93760 and Administrative Directives related to the City's

purchasing procedures and execution of contracts, and consistent with this Ordinance, the Mayor of the City is hereby authorized to execute the WTPA on the City's behalf as the act and deed of the City.

SECTION 2. Essentiality of WTPA Water. The Board has represented and determined in the Board Resolution, and the City Council hereby represents and determines, that the water made available to the System under the WTPA is absolutely necessary and essential to the present and future operation of the System and the City, acting by and through the Board, entering into the WTPA represents a long-term plan for making available potable water to meet current and projected needs of the present and future customers of the System. Accordingly, the payments required by the WTPA to be made by the System to Abengoa Vista Ridge, LLC shall constitute reasonable and necessary operating expenses of the System, with the effect that such payments from System revenues shall be deducted from gross revenues of the System in the same manner as other operating expenses for purposes of determining net revenues available to pay bonds or other similar obligations heretofore or hereafter issued by the City for the benefit of the System (which obligations are payable from and secured by a pledge of the revenues of the System after deduction of its operating expenses).

SECTION 3. Financial Obligation of the System; Limited Source of Payment. The City Council hereby recognizes that entering into the WTPA results in a commitment of the financial resources of the System. Accordingly, the City Council hereby acknowledges, and recognizes as an authorized expenditure of System revenues or funds on hand, any termination payment owed by the System as a result of its terminating the WTPA subsequent to its effective date but prior to Financial Close (as such term is defined in the WTPA). Further, the City Council hereby recognizes, confirms, and memorializes, as the owner of the property that comprises the System, the commitment of the City and the Board to account for the financial liability represented by the WTPA for purposes of rate setting and solving for the administrative test of the Texas Attorney General known as the "bond allowable" (the purpose of which is an entity's demonstration of its ability to satisfy its financial obligations) not later than Financial Close (as such term is defined in the WTPA). For the avoidance of doubt, such "solving" shall take into account the WTPA's financial obligations of the System only in the years in which payments in satisfaction of such obligations are actually or expected to be paid by the System (and not before).

The source of payment in satisfaction of any and all obligations of the System assumed by or imposed on it by or arising under the WTPA shall be limited to the revenues derived from ownership and operation of the System, with such payment constituting an "operating expense" (as such term is used in Section 1502.056, as amended, Texas Government Code) and a "maintenance and operating expense" (as such term is defined in the Creation Ordinance and in each City ordinance heretofore or hereafter adopted authorizing the issuance of System Obligations) of the System. As a result, Abengoa Vista Ridge, LLC (including its successors in legal interest, assigns, or affiliates) shall have no recourse to the general fund or general credit of the City (including the right to require the levy and collection of any tax, whether ad valorem or otherwise), or any other fund (including other enterprise funds), source of revenue, asset, instrument or property of the City, in satisfaction of the payment of any amount due Abengoa Vista Ridge, LLC under the WTPA, whether on account of the monthly water purchase payment, any termination payment, or for any payment or claim of any nature arising from the

performance or non-performance of the System's obligations thereunder. For purposes of clarity (and for the avoidance of doubt), the sole recourse of Abengoa Vista Ridge, LLC for the payment of all such amounts shall be to the revenues derived from the operation of the System pursuant to the Creation Ordinance and in each City ordinance heretofore or hereafter adopted authorizing the issuance of System Obligations, under which the Board is established and pursuant to which revenue bonds are issued from time to time to finance the System's capital improvements. The payment of all such amounts is subject to the terms and conditions of the Creation Ordinance and each City ordinance heretofore or hereafter adopted authorizing the issuance of System Obligations. No such amount shall ever be payable from any City ad valorem taxes.

SECTION 4. WTPA Amendment; Further Actions. So long as the amendments do not involve an increase in the amount of water to be delivered (and for which the System is obligated to accept and pay) under the WTPA or the manner in which the System's payment for delivered water is calculated (and such change in calculation methodology results in an increase in the amount paid by the System for delivered water), amendments to terms and provisions of the WTPA shall be reserved to the sole discretion of the Board or any authorized representative or designee thereof. In the event that certain provisions of the WTPA require amendment, the City Council hereby delegates, to the extent necessary under Applicable Law, the ability to the Board to enact, approve, and effectuate such amendments to the WTPA without further action or approval by the City Council.

The City Council hereby recognizes, as well, the Board's authority, from time to time and at any time, to do and perform all such acts and things and to execute, acknowledge and deliver all such instruments, certificates and ancillary agreements or contracts, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the WTPA, including those that are specifically contemplated and/or required under and pursuant to the provisions of the WTPA.

SECTION 5. Notwithstanding any conflicting or inconsistent ordinances or resolutions that may now exist, the provisions of this Ordinance shall be and remain controlling as to the matters ordained herein.

SECTION 6. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 7. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 8. 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 City Council.

SECTION 9. 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, as amended, Texas Government Code.

SECTION 10. Further Proceedings. The Mayor, Mayor Pro-Tem, City Manager of the City or City Attorney of the City (each, an *Authorized Representative*) are each hereby authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, agreements, consents, and disclosures, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance. In case any officer of the City whose signature shall appear on any certificate shall cease to be such officer before the delivery of such instrument, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 11. 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 the affirmative vote of at least eight members of the City Council, otherwise the same shall take effect on the tenth day after the date of its passage by the City Council.

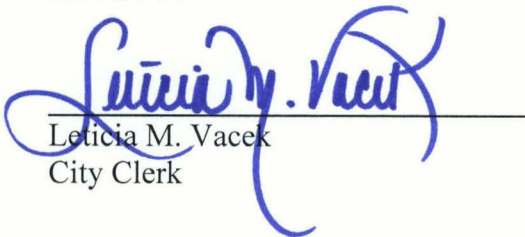
PASSED AND APPROVED, this 30th day of October 2014.



M A Y O R

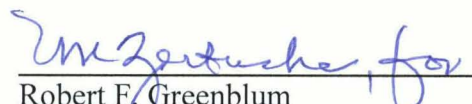
Ivy R. Taylor

ATTEST:



Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:



Robert F. Greenblum
City Attorney

Agenda Item:	5						
Date:	10/30/2014						
Time:	01:11:54 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing approval of the proposed water supply agreement between the Vista Ridge Consortium and the San Antonio Water System. [Ben Gorzell, Chief Financial Officer; Robert Puente, President and CEO, San Antonio Water System]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				x