

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE ADOPTED BY THE CITY OF SAN ANTONIO, TEXAS.**

AN ORDINANCE

AUTHORIZING EXECUTION OF A FINANCE 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 NOT TO EXCEED \$6,070,000, 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*) has, pursuant to the 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 to attract 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 amount of 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, 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*), as a special purpose entity historically utilized to undertake and finance projects at Brooks, to assume the financial obligation of the City as required by the Agreement; and

WHEREAS, the City previously created the Corporation 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, 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 not to exceed \$6,070,000 (the *Loan*), to (i) finance the costs of construction, 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) (the *Loan Agreement*), with _____ (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 entrance into the Loan Agreement and consents to the Corporation's undertaking of such obligation to meet the City's contractual obligation, as required under the provisions of the Agreement; and

WHEREAS, the City will pledge all money derived solely from the hereinafter-defined Pledged Revenues to secure the repayment of the Loan by the Corporation; and

WHEREAS, the City, pursuant to a finance agreement, dated as of October 17, 2019 (but effective as of October 29, 2019) (the *Finance Agreement*) with the Corporation, will assign the Pledged Revenues to the Corporation for the purpose of repaying the obligations created under the Loan Agreement; and

WHEREAS, the Council is now approving this Ordinance to (i) authorize the City's execution of the Finance Agreement and all documentation necessary or incidental thereto (such documentation, as further defined in the Finance Agreement and as used herein, the *Borrower Documents*), (ii) approve the issuance of the Corporation's debt obligations, and (iii) authorize the pledge, and subsequent assignment thereof, of the Pledged Revenues 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 Finance Agreement and Acknowledgement of Corporation Loan. As authorized by and pursuant to the provisions of the Constitution and general laws of the State, including Section 1502.059, Texas Government Code, as amended, and Chapter 431, Subchapter A of Chapter 1509, Texas Government Code, as amended (*Chapter 1509*), and Chapter 22 (collectively, *Applicable Law*), the Council hereby approves the Finance Agreement between the City and the Corporation, and authorizes the City's execution of the Finance Agreement (in substantially the form attached hereto as Exhibit A), the other Borrower Documents, and any other document, certificate, or instrument determined to be necessary to effectuate the transactions contemplated under any of such named documents in accordance with *Applicable Law*. The City hereby acknowledges the Corporation's acceptance of the Loan from the Bank and, in connection therewith, any Authorized Official (defined herein) may approve or authorize any actions related thereto to facilitate and effectuate the Corporation's receipt of the Loan.

SECTION 2. Authorization to Execute Documentation. Any City Manager of the City and the City's Chief Financial Officer, or a designee of any of the foregoing (each, an *Authorized Official*) are hereby individually authorized to execute, on behalf of and as the act and deed of the City, any and all documentation identified in Section 1 hereof (which documentation shall be in substantially the form presented to the Council at the meeting at which this Ordinance is considered and adopted). Each Authorized Official, after consultation with Norton Rose Fulbright US LLP, as special counsel to the City, is authorized to approve any technical modifications or amendments to such documentation to effectuate the transactions thereunder contemplated without further action of the Council being necessary or required.

SECTION 3. Pledge and Subsequent Assignment of Pledged Revenues. In the Loan Agreement, the Corporation will pledge, as security for the Loan, all money derived solely from those net revenues of City Public Service (*CPS*), the City's municipally-owned electric and gas utility systems (the *Utility Systems*), that are transferred by CPS to the City, which include all money derived solely from the CPS net revenues that are transferred by CPS to the City, and assigned to the Corporation pursuant to the Finance Agreement, in an amount not to exceed 14% of the gross revenues of the Utility Systems less the value of gas and electric services of the Utility Systems used by the City for municipal purposes and the amounts expended for additions to the street lighting system, that remain after amounts due and owing (i) by the City to the City of San Antonio, Texas Starbright Industrial Development Corporation (*Starbright*) pursuant to the Economic Development Contract, dated as of June 19, 2003, between such parties (and the proceeds received by Starbright under which such revenues are pledged as security for the repayment of the City of San Antonio, Texas, Starbright Industrial Development Corporation Contract Revenue Refunding Bonds, Taxable Series 2013 (Starbright Project)), and (ii) by the City pursuant to the Loan Agreement between the City and JPMorgan Chase Bank, N.A., dated as of June 18, 2015 (but effective as of June 25, 2015), amended from time to time, under which such revenues are pledged for the repayment of the promissory note evidencing the foregoing obligation, each subject to the flow of funds and other more specific terms of the City's ordinances authorizing bonds, notes, public securities, and credit agreements payable from the net revenues of the Utility Systems (such funds, the *Pledged Revenues*). The Council hereby authorizes the pledge of, and pledges, the Pledged Revenues, as assigned to the Corporation, as

security for the Loan, as prescribed in the Loan Agreement and the Finance Agreement, respectively.

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. 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 6. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State 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 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 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 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. 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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NRF
10/17/19
Item No. __

PASSED AND ADOPTED by an affirmative vote of _____ 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

NRF
10/17/19
Item No. __

EXHIBIT A
FINANCE AGREEMENT

See Tab ____