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Item No. 11B

A RESOLUTION 2016-09-15-0029R

**REGARDING APPROVAL, FOR PURPOSES OF SECTION 147(f) OF THE INTERNAL REVENUE CODE, OF A TAX-EXEMPT LOAN AGREEMENT BY AND AMONG THE CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION, ST. MARY'S UNIVERSITY OF SAN ANTONIO, TEXAS, AND BANC OF AMERICA PUBLIC CAPITAL CORP (AN AFFILIATE OF BANK OF AMERICA, N.A.)**

* * * * * *

**WHEREAS,** the **CITY OF SAN ANTONIO, TEXAS** (the "***City***"), pursuant to Section 53.35(b), Texas Education Code (now amended and recodified as Section 53A.35(b), Texas Education Code, as amended), approved and created the **CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION** (the "***Issuer***") as a nonprofit corporation to exercise the powers enumerated and provided in Chapter 53, Texas Education Code (now amended and recodified as Chapter 53A, Texas Education Code, as amended - the "***Act***"), for and on behalf of the City; and

**WHEREAS, ST. MARY'S UNIVERSITY OF SAN ANTONIO, TEXAS** (the "***University***") is a Texas non-profit corporation and operates as an "institution of higher education" (within the meaning of the Act) within the corporate limits of the City; and

**WHEREAS**, Section 53A.34 of the Act authorizes the Issuer to issue and execute revenue bonds or other obligations to loan or otherwise provide funds to an institution of higher education, such as the University, to enable the University to acquire, construct, enlarge, extend, repair, renovate, or otherwise improve an "educational facility" or "housing facility" (as such terms are defined in the Act) or any facility incidental, subordinate, or related to or appropriate in connection with an educational facility or housing facility, or for acquiring land to be used for those purposes, or to create operating and debt service reserves for and to pay issuance costs related to the bonds or other obligations; and

**WHEREAS**, Section 53A.331 of the Act further authorizes the Issuer to refinance any educational facility or housing facility acquired, constructed, or improved; and

**WHEREAS**, the University has determined that it is necessary and appropriate to acquire, construct and equip a new student dormitory containing approximately 233 beds and renovate certain other existing dormitories and educational facilities, including specifically Chaminade Hall, all on its campus located in the City (the "***Projects***"); and

**WHEREAS**, the University has applied to the Issuer for a loan of up to $25,000,000.00 to finance a portion of the costs of the Projects; and

**WHEREAS**, the University has asked **BANC OF AMERICA PUBLIC CAPITAL CORP**, a Kansas corporation (the "***Lender***"), to make a loan of up to $25,000,000.00 to the Issuer for the purpose of providing funds to enable the Issuer to make a loan to the University to finance a portion of the costs of the Projects; and

**WHEREAS,** the Lender is willing to make such loan to the Issuer for the benefit of the University on the terms and conditions as set forth in a Loan Agreement, dated as of September 1, 2016 (the "***Loan Agreement***"), by and among the Issuer, the University, and the Lender; and

**WHEREAS**, the University has represented to the Issuer and the City that it is reasonably expected that the loan being provided by the Lender through the Issuer will be beneficial to the University by enabling the University to finance the Projects at a tax-exempt interest rate, which will reduce the borrowing costs for the University; and

**WHEREAS,** as provided in the Loan Agreement, the University will agree and acknowledge that it shall be unconditionally obligated to the Issuer and the Lender to make or pay, or cause to be made or paid, without set-off, recoupment, or counterclaim, to the Lender the "Borrower Loan Payments" required by the Loan Agreement in amounts sufficient to pay the principal of and interest on the "Borrower Loan," when due, and all other amounts required to be paid by the Loan Agreement; and

**WHEREAS,** the limited obligations of the Issuer under the Loan Agreement, including its obligation to assign to the Lender its right to receive the Borrower Loan Payments from the University, which assignment is provided for in the Loan Agreement, are not the obligations of the City or its officers or employees, shall never constitute a pledge of the City's faith and credit, and shall never impose any liability on the City in respect thereof; and

**WHEREAS,** the University is a "501(c)(3) organization," within the meaning of Section 145 of the Internal Revenue Code of 1986, as amended (the "***Code***"); and

**WHEREAS,** Section 147(f) of the Code requires that the issuance of any "qualified 501(c)(3) bonds" be approved by the governing body of the City, or a designee of the City, after a public hearing following reasonable public notice, and the Issuer Loan is considered a "qualified 501(c)(3) bond" for purposes of Section 147(f) of the Code; and

**WHEREAS,** on August 30, 2016, the Issuer published notice of a public hearing relating to financing the Projects (the "***Public Notice***") in a newspaper of general circulation in the jurisdiction of the City as required by Section 147(f) of the Code, and such public hearing as held on September 14, 2016, by the representative of the Issuer ratified and approved by this Resolution; and

**WHEREAS**, on September 15, 2016, the Board of Directors of the Issuer adopted a resolution approving and authorizing the Loan Agreement and all other documents related to providing the loan being requested by the University; and

**WHEREAS,** it is hereby officially found and determined that the meeting at which this Resolution was adopted 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; and

**WHEREAS,** it is hereby deemed necessary and advisable that this Resolution be adopted; **NOW THEREFORE:**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1. DEFINITIONS.** Terms not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

**SECTION 2. SECTION 147(f) APPROVAL.** The City hereby approves, solely for the purposes of satisfying Section 147(f) of the Code, the Issuer Loan in the principal amount of *$25,000,000*, the Loan Agreement and the financing of the Projects, all as described in the Public Notice. The City shall have no liability in connection with the financing of the Projects and shall not be required to take any further action with respect thereto.

**SECTION 3. INCORPORATION OF RECITALS** The City hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and the City hereby incorporates such recitals as a part of this Resolution.

**SECTION 4. SEVERABILITY.** If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Resolution would have been enacted without such invalid provision.

**SECTION 5. EFFECTIVE DATE.** This Resolution shall become effective immediately upon passage by eight (8) affirmative votes. If passed by less than eight (8) affirmative votes, then this Resolution shall become effective on the tenth ($10^{th}$) day following passage thereof.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS ON THE 15TH DAY OF SEPTEMBER, 2016.**

**M A Y O R**
Ivy R. Taylor

**ATTEST:**

Leticia M. Vacek, City Clerk

(City Seal)

**APPROVED AS TO FORM:**

City Attorney

| | |
|---|---|
| **Agenda Item:** | **11B ( in consent vote: 5, 6, 7A, 7B, 7C, 7D, 8, 9, 10, 11A, 11B )** |
| **Date:** | 09/15/2016 |
| **Time:** | 09:26:46 AM |
| **Vote Type:** | Motion to Approve |
| **Description:** | A Resolution by the City Council of the City of San Antonio, Texas regarding approval, for purposes of Section 147(f) of the Internal Revenue Code, of a tax-exempt Loan Agreement by and among the City of San Antonio, Texas Education Facilities Corporation, St. Mary's University of San Antonio, Texas, and Banc of America Public Capital Corp. (an affiliate of Bank of America, N.A.) |
| **Result:** | Passed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Ivy R. Taylor | Mayor | | x | | | | |
| Roberto C. Treviño | District 1 | | x | | | | |
| Alan Warrick | District 2 | | x | | | x | |
| Rebecca Viagran | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | | x |
| Cris Medina | District 7 | | x | | | | |
| Ron Nirenberg | District 8 | | x | | | | |
| Joe Krier | District 9 | | x | | | | |
| Michael Gallagher | District 10 | | x | | | | |

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**CERTIFICATE FOR RESOLUTION**

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

I, the undersigned City Clerk of the **CITY OF SAN ANTONIO, TEXAS** (the "***City***"), hereby certify as follows:

1. The City Council of the City (the "***City Council***") convened in Regular Meeting on September 15, 2016 (the "***Meeting***"), at the City Hall, and the roll was called of the duly constituted officers and members of the City Council, to wit:

| | |
|---|---|
| Ivy R. Taylor | Mayor |
| Roberto C. Treviño | Councilmember, District 1 |
| Alan E. Warrick, II | Councilmember, District 2 |
| Rebecca J. Viagran | Councilmember, District 3 |
| Rey Saldana | Councilmember, District 4 |
| Shirley Gonzales | Councilmember, District 5 |
| Ray Lopez | Councilmember, District 6 |
| Cris Medina | Councilmember, District 7 |
| Ron Nirenberg | Councilmember, District 8 |
| Joe Krier | Councilmember, District 9 |
| Mike Gallagher | Councilmember, District 10 |

and all of said officers and members of the City Council were present, except the following absentees: NONE, thus constituting a quorum. Whereupon, among other business, the following was transacted at the Meeting: a written Resolution No. **2016-09-15-0029R** (the "***Resolution***") entitled

**RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS REGARDING APPROVAL, FOR PURPOSES OF SECTION 147(f) OF THE INTERNAL REVENUE CODE, OF A TAX-EXEMPT LOAN AGREEMENT BY AND AMONG THE CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION, ST. MARY'S UNIVERSITY OF SAN ANTONIO, TEXAS, AND BANC OF AMERICA PUBLIC CAPITAL CORP (AN AFFILIATE OF BANK OF AMERICA, N.A.)**

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

AYES: 11 NOES: 0 ABSTENTIONS: 0

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

SIGNED AND SEALED the 15th day of September, 2016.

(SEAL)

City Clerk
City of San Antonio, Texas