

LOH
6/24/10
ITEM #62A

RESOLUTION NO. **2010-06-24-0036R**

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, AND 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 (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, in 1999 the Issuer issued and delivered \$15,055,000 in principal amount of its *City of San Antonio, Texas Higher Education Authority, Inc. Higher Education Revenue and Refunding Bonds (St. Mary's University Project), Series 1999* (the "**Series 1999 Bonds**"), the proceeds of which were loaned to and used by the University to defease outstanding bonds issued in 1990 by the Issuer for the benefit of the University and to finance the construction of an Athletic Convocation Center and a new residence hall, the renovation of the Charles Francis Residence Hall into an administrative and faculty office facility, and the construction of various technology improvements and related infrastructure improvements relating to educational facilities (collectively, the "**Project**"); and

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WHEREAS, the Series 1999 Bonds currently are outstanding in the aggregate principal amount of \$8,650,000; and

WHEREAS, the University applied to the Issuer for a loan to be used to refinance the Project by providing funds sufficient to redeem the outstanding principal of the Series 1999 Bonds and pay costs of issuance; and

WHEREAS, the University asked, and has received a commitment from, **BANK OF AMERICA, N.A.** (the "**Bank**") to make a loan to the Issuer for the purpose of providing funds to enable the Issuer to make a loan to the University to refinance the Project and to pay costs of issuance; and

WHEREAS, the Bank has committed 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 by and among the University, the Issuer and the Bank, a substantially final form of which is attached hereto as Exhibit A (the "**Loan Agreement**"); and

WHEREAS, the loan being provided by the Bank through the Issuer will be beneficial to the University by reducing the University's interest cost related to financing the Project; and

WHEREAS, the Board of Directors of the Issuer is expected to adopt on June 25, 2010, a resolution approving and authorizing the Loan Agreement and all other documents related to providing the loan being requested by 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 Bank to make or pay, or cause to be made or paid, without set-off, recoupment, or counterclaim, to the Bank 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 Bank 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)" be approved by the governing body of the City after a public hearing following reasonable public

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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 June 23, 2010, a public hearing was held by a representative of the Issuer with respect to the aforementioned subject matter and notice of such public hearing was published in a newspaper of general circulation in the City at least 14 days prior to such public hearing; 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, the Loan Agreement and the Project, all as described in the Public Notice. This approval shall take effect immediately. The City shall have no liability in connection with the financing of the Project 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 (10th) day following passage thereof.

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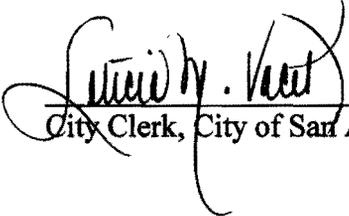
EXHIBIT A
LOAN AGREEMENT

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PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS ON THE 24TH DAY OF JUNE, 2010.


MAYOR
Julián Castro

ATTEST:

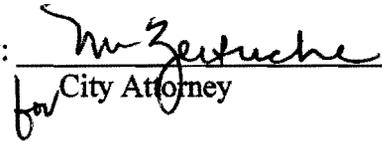


City Clerk, City of San Antonio, Texas

(CITY SEAL)



APPROVED AS TO FORM:

By: 

for City Attorney

** ** * * *

[EXECUTION PAGE TO CITY RESOLUTION]



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 62A

Name:	7, 8, 9, 10, 11, 12, 13, 14, 16, 19, 20, 21, 22, 25, 26A, 26B, 26C, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42A, 42B, 43, 44, 47, 49, 51, 52, 53, 54, 55, 57, 58, 59, 61, 62A, 62B, 63, 64, 66						
Date:	06/24/2010						
Time:	03:30:59 PM						
Vote Type:	Motion to Approve						
Description:	A Resolution authorizing St. Mary's to refinance \$8.65 million in revenue bonds with tax exempt financing.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				