2014-12-11-1027

AN ORDINANCE AMENDING ORDINANCE NO. 2012-06-14-0445 ESTABLISHING A REVOLVING FINANCE PROGRAM FOR THE SPECIAL PROJECT OF THE CITY OF SAN ANTONIO, TEXAS, ACTING BY AND THROUGH THE SAN ANTONIO WATER SYSTEM, KNOWN AS THE DISTRICT SPECIAL PROJECT AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO NOTE PURCHASE AGREEMENT IN CONNECTION THEREWITH; ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE SUBJECT AND PURPOSE OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, pursuant to authority granted by the 82nd Regular Texas Legislature through its enrollment of Senate Bill 341 (*SB 341*), the City Council (the *Council*) of the City of San Antonio, Texas (the *City*) adopted Ordinance No. 2011-10-20-0845 (the *DSP Ordinance*) for the purpose of creating and prescribing the terms of operation of the District Special Project (the *District Special Project* or the *DSP*), being a "special project" under the terms of the respective City ordinances authorizing the heretofore issued and now outstanding series of City debt obligations secured by and payable from the revenues resultant from the City's ownership of its combined water and wastewater system (the *City System*), such special project being named the District Special Project (the *District Special Project* or the *DSP*), to accommodate and accomplish the assumption by the City, acting by and through the San Antonio Water System (*SAWS*), of the Bexar Metropolitan Water District (the *District*) upon its dissolution; and

WHEREAS, District voters approved the dissolution of the District and its assumption by SAWS at an election held within the District on November 8, 2011; and

WHEREAS, by operation of law, the City, acting by and through SAWS, assumed the responsibility of operating and maintaining the District on January 28, 2012; and

WHEREAS, the DSP is operated as a component unit and a department of SAWS, under the management and control of the SAWS Board of Trustees (the *Board*), and no revenues of the City System shall be used in support of the combined waterworks system comprising the DSP (the *DSP System*) until such time as the DSP System and the City System are integrated in accordance with the terms SB 341 and the DSP Ordinance; and

WHEREAS, for the benefit of the DSP, the City has, acting by and through the Board, established a revolving finance program known as the "City of San Antonio, Texas District Special Project Waterworks System Flexible Rate Revolving Note Private Placement Program" (the *Program*) for the purpose of providing the City with ready access to capital as necessary to improve, operate, and maintain the DSP System, which Program was established, and has since been maintained, pursuant to the provisions of Chapter 1371, as amended, Texas Government Code, Chapter 1502, SB 341, the City's Home Rule Charter, the DSP Ordinance, and City Ordinance No. 2012-06-14-0445 (authorizing and establishing the Program; referred to herein as the *Program Ordinance*); and

WHEREAS, under the Program, the City is permitted to issue notes (*Program Notes*) in an aggregate principal amount at any one time outstanding not to exceed $100,000,000; and

WHEREAS, at the Program's inception, the City entered into a Note Purchase Agreement (the *Purchase Agreement*), dated as of June 28, 2012, with Wells Fargo Bank, National Association (the *Bank*), pursuant to which the Bank is obligated to purchase Program Notes, in a principal amount up to the amount authorized to be outstanding at any one time under the Program Ordinance, until the Purchase Agreement's expiration date of May 1, 2015; and

WHEREAS, the City has issued, and there now remain outstanding, Program Notes known as "City of San Antonio, Texas District Special Project Waterworks System Tax-Exempt Flexible Rate Revolving Notes, Series A" in an aggregate amount of $78,700,000, and which Program Notes have been sold (from time to time) to, and are currently held by, the Bank pursuant to the Purchase Agreement; and

WHEREAS, under applicable Texas law (including SB 341) and the DSP Ordinance, the City anticipates maintaining the DSP until January 28, 2017 (unless, as authorized by SB 341, earlier integrated into and made a part of the City System); and

WHEREAS, the Program has served as a beneficial financial tool by providing the City with ready access to capital as necessary to improve, operate, and maintain the DSP System; and

WHEREAS, given projected capital needs of the DSP System until integration with the City System, the Board has determined the need to increase the maximum amount of Program Notes that may be issued and outstanding at any time under the Program Ordinance to $115,000,000; and

WHEREAS, to provide for the purchase of Program Notes from time to time issued under the Program, the Board has determined to extend the termination date of the Purchase Agreement and to increase the amount of Program Notes that the Bank is authorized to purchase thereunder; and

WHEREAS, the City's ability to increase the maximum amount of Program Notes that may be issued and outstanding at any one time under the Program Ordinance requires certain amendments thereto; and

WHEREAS pursuant to 7.01 of the Program Ordinance, the City is permitted to amend the Program Ordinance without the consent of the Holders of the Program Notes or make such other changes in the provisions thereof as the City may deem necessary or desirable and which shall not materially adversely affect the interests of the Holders of the Program Notes and the adoption of this Ordinance will not adversely affect the interest of the Holders of the Program Notes.

WHEREAS, pursuant to Section 1.9 of the Purchase Agreement, the extension thereof in the manner herein contemplated requires consent of the Bank upon written request of the City; and

WHEREAS, the City has submitted a written request and obtained the requisite consent from the Bank necessary to effectuate the amendment to extend and expand the terms and provisions of the Purchase Agreement; and

WHEREAS, the Board has, by resolution thereof adopted on December 2, 2014 (the *Resolution*), found that the amendment of the Program Ordinance and the Purchase Agreement as heretofore described is in the best interests of the System ratepayers; and

WHEREAS, by virtue of the authority and power vested in the Board with reference to the expenditure and application of the revenues of System, the Board has, in the Resolution, formally requested the Council to adopt an ordinance amending the terms of Program Ordinance to permit the City to issue Program Notes in an amount not to exceed $115,000,000 and authorizing the amendment of the Purchase Agreement to extend and expand the provisions thereof; and

WHEREAS, the 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. Amendment of the Program Ordinance. To accommodate the increase of the maximum amount of Program Notes that may be issued and outstanding at any one time under the Program Ordinance, the Council hereby approves the hereinafter-specified amendments to the Program Ordinance:

(a) Section 2.01 of the Program Ordinance is hereby amended and restated in its entirety as follows:

> Pursuant to authority conferred by and in accordance with the provisions of the Constitution and laws of the State of Texas, including particularly Chapter 1371, Chapter 1502, and SB 341, and the City's Home Rule Charter, and in accordance with this Ordinance, Program Notes, having the characteristics as herein specified, shall be and are hereby authorized to be issued in an aggregate principal amount not to exceed ONE HUNDRED FIFTEEN MILLION DOLLARS ($115,000,000) at any one time Outstanding for the purpose of financing Project Costs of Eligible Projects for the DSP System and to refinance, renew, or refund other Program Notes issued pursuant to the provisions hereof and other DSP Debt Obligations which qualify as "obligations" under Chapter 1371. For purposes of this Section 2.01, any portion of outstanding Program Notes to be paid from money on deposit in the Program Note Payment Fund and/or from the available proceeds of other debt obligations of the City, including additional Program Notes and other Additional DSP Debt, issued for the purpose of refinancing, renewing, or refunding such outstanding Program Notes, on the day of calculation shall not be considered Outstanding. Notwithstanding any provision hereof to the contrary, no Program Notes shall be issued unless there exists and is then in effect one or more Note Purchase Agreements, and then, Program Notes shall never be issued in a principal amount that exceeds the "commitment amount", "available commitment", or such other term or concept indicating the principal of Program Notes that the Program Note Purchaser(s) are obligated to purchase from time to time under such Note Purchase Agreement(s).

(b) The portion of Section 2.03 of the Program Ordinance entitled 'Form of Remainder of all Program Notes' is hereby amended and restated in its entirety as follows:

> This Program Note is one of a series of notes authorized under the "City of San Antonio, Texas District Special Project Waterworks System Flexible Rate Revolving Note Private Placement Program" (the *Program*), pursuant to which the City may issue additional notes, bearing interest at fixed, variable, or floating rates (and which interest may or may not, dependent upon form, be excludable from gross income for federal tax purposes), in an aggregate principal amount at any one time outstanding not to exceed ONE HUNDRED FIFTEEN MILLION DOLLARS ($115,000,000) (such notes, the *Program Notes*). The Program, as well as the issuance of Program Notes thereunder, has been duly authorized in accordance with the provisions of an ordinance (the *Ordinance*) adopted by the City Council of the City for the purpose of financing Project Costs of Eligible Projects for the DSP System and to refinance, renew, or refund certain obligations described in the Ordinance; all in accordance and in strict conformity with the provisions of the Constitution and laws of the State of Texas, including but not limited to, Chapters 1371 and 1502, as amended, Texas Government Code, SB 341, and the City's Home Rule Charter.

(c) Section 5.01 of the Program Ordinance is hereby amended and restated in its entirety as follows:

> Unless this Ordinance is amended and modified by the City Council in accordance with the provisions of Section 7.01 hereof, the City covenants that there will not be issued and Outstanding at any time more than $115,000,000 in principal amount of Program Notes. For purposes of this Section 5.01, any portion of Outstanding Program Notes to be paid on the day of calculation from money on deposit in the Program Note Payment Fund and/or the proceeds of other Program Notes or other City Obligations issued for the purpose of refinancing, redeeming, or refunding then-Outstanding Program Notes shall not be considered Outstanding.

SECTION 2. Surviving Provisions. All provisions of the Program Ordinance, a copy of which is attached hereto as Exhibit A, that are not specifically amended pursuant to Section 1 hereof are hereby ratified and confirmed for all purposes.

SECTION 3. Necessary Consent to Amendment of Purchase Agreement. As specified in the preamble of this Ordinance, the effectiveness of the amendment to the Purchase Agreement (the *Purchase Agreement Amendment*) is conditioned upon the City's written request for, and prior receipt from the Bank of its consent to such extension. The City has, in compliance with Section 1.9 of the Purchase Agreement submitted a written request for the extension of the Commitment Expiration Date under the Purchase Agreement to not later than May 1, 2017 and an increase in the Bank's purchase obligations thereunder to equal the amount of Program Notes that may be issued and at any one time outstanding under the Program Ordinance, as amended pursuant to the terms hereof, and has received the requisite consent from the Bank.

SECTION 4. Approval of the Amended Purchase Agreement. The form of First Amendment to Note Purchase Agreement (the *Amendment*), attached hereto as Exhibit B, that effectuates the amendments to the Purchase Agreement extending its term and the purchase capacity of the Bank in the manner described in the recitals hereof above, is hereby approved, and the Chairman of the Board, Vice Chairman of the Board, the SAWS Chief Executive Officer, and/or the SAWS Senior Vice President/Chief Financial Officer (each, a *Designated Financial Officer*) or any of them, are hereby authorized to execute the Amendment on behalf of the City, as the act and deed of the Council, and to deliver it to the Bank and other parties with interest therein.

SECTION 5. Inconsistent Provisions. All ordinances and resolutions, 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 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 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. Further Proceedings. The officers and employees of the City and the Board, in consultation with the Board's co-financial advisors (being Public Financial Management, Inc. and Estrada Hinojosa & Company, Inc.) and the Board's bond counsel (being Fulbright & Jaworski LLP), are 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, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance. Specifically, by the adoption of this Ordinance, the City Council hereby authorizes the payment of the fees and expenses incurred and to be paid by the Board in connection with Purchase Agreement Amendment and the execution and delivery of the Purchase Agreement Amendment and all other documents and certificates related thereto. In case any officer of the City or the Board whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless

be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery. In addition, the Council authorizes the payment, from legally available funds of Board, of the professional fees and expenses incurred by the Board in association with this transaction upon the approval of a written invoice approved by the Senior Vice President/Chief Financial Officer of the System or his designee.

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 Council; otherwise, the same shall take effect on the tenth day after the date of its passage by the Council.

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PASSED AND ADOPTED by an affirmative vote of 9 members of the City Council of the City of San Antonio, Texas, this the 11th day of December, 2014.

CITY OF SAN ANTONIO

Mayor

ATTEST:

City Clerk

(CITY SEAL)

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.

Martha G. Sepeda, Acting City Attorney,
City of San Antonio, Texas

Agenda Item:	**30 (in consent vote: 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20A, 20B, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36A, 36B, 37A, 37B, 38A, 38B, 39A, 39B, 41)**
Date:	12/11/2014
Time:	02:45:24 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an extension in the termination date from May 1, 2015 to May 1, 2017 and an increase in the authorized amount from $100,000,000 to $115,000,000 of the City of San Antonio, Texas District Special Project Waterworks System Tax-Exempt Flexible Rate Revolving Note Private Placement Program. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1	x					
Keith Toney	District 2		x				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				
Michael Gallagher	District 10		x			x	

EXHIBIT A

PROGRAM ORDINANCE

EXHIBIT B

FIRST AMENDMENT TO NOTE PURCHASE AGREEMENT

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 11th day of December, 2014, City Council (the *Council*) of the City of San Antonio, Texas (the *City*) convened in regular session at its regular meeting place in the City Hall of the City (the *Meeting*), the duly constituted members of the Council being as follows:

Ivy R. Taylor	Mayor
Ray Lopez	Mayor Pro Tem
Roberto Treviño	Councilmember
Keith Toney	Councilmember
Rebecca J. Viagran	Councilmember
Rey Saldana	Councilmember
Shirley Gonzales	Councilmember
Mari Aguirre-Rodriguez	Councilmember
Ron Nirenberg	Councilmember
Joe Krier	Councilmember
Mike Gallagher	Councilmember

and all of such persons were present at the Meeting, except the following: Treviño; Medina , thus constituting a quorum. Among other business considered at the Meeting, the attached resolution (the *Resolution*) entitled:

> AN ORDINANCE AMENDING ORDINANCE NO. 2012-06-14-0445 ESTABLISHING A REVOLVING FINANCE PROGRAM FOR THE SPECIAL PROJECT OF THE CITY OF SAN ANTONIO, TEXAS, ACTING BY AND THROUGH THE SAN ANTONIO WATER SYSTEM, KNOWN AS THE DISTRICT SPECIAL PROJECT AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO NOTE PURCHASE AGREEMENT IN CONNECTION THEREWITH; ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE SUBJECT AND PURPOSE OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE

was introduced and submitted to the Council. After presentation and due consideration of the Resolution, a motion was made by Councilmember Gallagher that the Resolution be finally passed and adopted in accordance with the City's Home Rule Charter. The motion was seconded by Councilmember Toney and carried by the following vote:

9 voted "For" 0 voted "Against" 0 abstained

all as shown in the official Minutes of the Council for the Meeting.

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

IN WITNESS WHEREOF, I have signed my name officially and affixed the seal of the City, this 11th day of December, 2014.

(SEAL)

Leticia Vacek
City Clerk
City of San Antonio, Texas