

ORDINANCE NO. 2013-01-17- 0030

CONSENTING TO AND APPROVING THE ISSUANCE OF REVENUE BONDS BY THE MISSION ECONOMIC DEVELOPMENT CORPORATION ON BEHALF OF NELSON GARDENS ENERGY, LLC TO FINANCE ELECTRIC GENERATION FACILITIES LOCATED WITHIN THE CITY OF SAN ANTONIO; AUTHORIZING AND APPROVING THE ASSIGNMENT BY NELSON GARDENS ENERGY, LLC OF CERTAIN LEASEHOLD INTERESTS AND RIGHTS UNDER A POWER PURCHASE AGREEMENT IN CONNECTION WITH SUCH BONDS; AND AUTHORIZING AND APPROVING OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of San Antonio, Texas (the “City”) owns the Nelson Gardens Landfill (the “Landfill”) located at 8963 and 8967 Nelson Road, San Antonio, Bexar County, Texas 78252; and

WHEREAS, by Ordinance 2010-01-21-0072 approved on January 21, 2010, the City has authorized and approved a landfill-gas-to-electricity facility, as more fully described in **Exhibit A** attached hereto (the “Project”), to be constructed, equipped and operated at the Landfill by Nelson Gardens Energy, LLC (the “Company”) pursuant to the Nelson Gardens Landfill Gas Beneficial Reuse Project 2009 Landfill Lease and Agreement (as amended, the “Lease”), entered into between the City and the Company as of November 5, 2010; and

WHEREAS, the City, acting by and through the City Public Service Board d/b/a/ CPS Energy, has entered into a Power Purchase Agreement with the Company (the “Power Purchase Agreement”) providing for the purchase by the City of the electric energy generated by, and certain energy and environmental credits from, the Project; and

WHEREAS, the Company has requested Mission Economic Development Corporation (the “Issuer”) to issue its Taxable Power Purchase Agreement Revenue Bonds (Nelson Gardens Energy, LLC Project) Series 2013 (or similarly captioned bonds) in one or more series (the “Bonds”) to finance the Project, such Bonds to be issued pursuant to a Trust Indenture (the “Indenture”) to be entered into between the Issuer and a bank with trust powers serving as trustee for the Bonds (the “Bond Trustee”); and

WHEREAS, the Issuer will loan the proceeds derived from the sale of the Bonds to the Company pursuant to a Loan Agreement to be entered into between such parties (the “Loan Agreement”) providing for loan payments to be made by the Company sufficient to pay when due the principal of, premium, if any, and interest on the Bonds and related expenses; and

WHEREAS, the Company’s repayment obligations under the Loan Agreement will be evidenced by a promissory note from the Company to the Issuer and assigned to the Bond Trustee, and secured by a Leasehold Deed of Trust, Security Agreement and Assignment of Rents and Leases from the Company for the benefit of the Bond Trustee (the “Leasehold Deed of Trust”) assigning, among other things, the Company’s interest in the Lease to the Bond Trustee; and

WHEREAS, the City desires hereby to authorize and approve such assignment of the Lease pursuant to the Leasehold Deed of Trust and the taking of any action and the execution and delivery by the City of any documents necessary or convenient in connection therewith; and

WHEREAS, the Company's rights under the Power Purchase Agreement will be assigned to the Bond Trustee, and the City desires hereby to approve such assignment (the "*PPA Assignment*") and to authorize the taking of any action and the execution and delivery by the City of any documents necessary or convenient in connection therewith; and

WHEREAS, the Project is located outside the boundaries of the Issuer's sponsoring governmental unit and within the boundaries of the City; and

WHEREAS, pursuant to Section 501.159 of the Development Corporation Act, Texas Local Government Code, Chapter 501, as amended (the "*Act*"), the Issuer may finance projects outside the boundaries of its sponsoring governmental unit subject to request from the governmental unit in which the Project is located; and

WHEREAS, the City desires hereby to make such a request of the Issuer in order to enable the Issuer to issue the Bonds to be used to finance the Project. Now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS:

SECTION 1. Assignment of Lease. The assignment of the Lease to the Bond Trustee pursuant to the Leasehold Deed of Trust is hereby approved, the provisions of Section 11.1 of the Lease prohibiting the filing of any liens against the Company's leasehold interest in the leasehold estate described in the Lease being hereby expressly waived by the City, and the City Manager of the City or his designee is hereby authorized and directed to take any action and negotiate, execute and deliver, and the City Clerk is hereby authorized to attest, any agreements, consents, orders, certificates or other documents deemed by the City Manager and the City Attorney of the City to be necessary or convenient in connection with such assignment. This Ordinance shall constitute the City's prior written consent to the assignment of the Lease pursuant to the Leasehold Deed of Trust as required by the provisions of Section 22.1 of the Lease.

SECTION 2. Assignment of Rights under Power Purchase Agreement. The City hereby approves the assignment to the Bond Trustee of the Company's rights under the Power Purchase Agreement, and the City Manager or his designee is hereby authorized and directed to take any action and negotiate, execute and deliver, and the City Clerk is hereby authorized to attest, any consents, orders, certificates or agreements containing customary and reasonable terms and conditions as are deemed by the City Manager or his designee and the City Attorney of the City to be necessary or convenient in connection with such assignment.

SECTION 3. Third Party Financing. In order that the Project may be financed with proceeds of the Issuer's Bonds, the City hereby consents to the issuance of the Bonds by the Issuer to finance the Project, and the Issuer is hereby requested to exercise its powers within the City for the purpose of issuing the Bonds in one or more series to finance the Project. This request is intended to satisfy the requirements of the Act as set forth in the recitals to this Ordinance.

SECTION 4. DISCLAIMER OF LIABILITY. THE CITY, THE CITY COUNCIL, THE MAYOR AND ALL OTHER CITY OFFICIALS MAKE NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OR THE ISSUANCE, CREDITWORTHINESS OR REPAYMENT OF THE BONDS TO BE ISSUED BY THE ISSUER WITH RESPECT TO THE PROJECT. UNDER NO CIRCUMSTANCES SHALL THE CITY HAVE ANY LIABILITY, FINANCIAL OBLIGATION OR RESPONSIBILITY OF ANY KIND WITH RESPECT TO THE PAYMENT OF BONDS ISSUED FOR THE PROJECT

VZ
1/17/13
Item No. 16

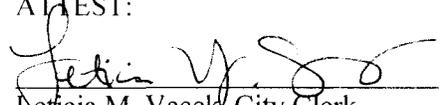
OR FOR THE CONSTRUCTION, MAINTENANCE, OPERATION OR ANY OTHER ASPECT OF THE PROJECT.

SECTION 5. Effective Date. This Ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

PASSED AND APPROVED this 17th day of January, 2013.

By:  _____
MAYOR
Julián Castro

ATTEST:

 _____
Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

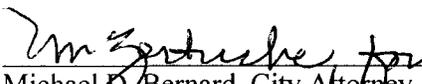
 _____
Michael D. Bernard, City Attorney

EXHIBIT A

THE PROJECT

The Project will consist of the acquisition, construction, rehabilitation, development, improvement, installation and equipping of certain capital improvements, infrastructure and equipment relating to a landfill gas-to-electricity facility to be located at the Nelson Gardens Landfill at or about 8963 and 8967 Nelson Road, San Antonio, Bexar County, Texas 78252. The Project will be located on land owned by the City and leased to Nelson Gardens Energy, LLC.

CERTIFICATE FOR ORDINANCE

THE STATE OF TEXAS §
COUNTY OF BEXAR §
CITY OF SAN ANTONIO §

We, the undersigned officers of the City Council of the City of San Antonio, Texas, hereby certify as follows:

1. The City Council of the City of San Antonio, Texas convened in regular meeting on January 17, 2013, at the regular meeting place thereof, within said City, and the roll was called of the duly constituted officers and members of said City Council, to wit:

Julián Castro	Mayor
Diego M. Bernal	Councilmember
Ivy R. Taylor	Councilmember
Leticia Ozuna	Councilmember
Rey Saldana	Councilmember
David Medina, Jr.	Councilmember
Ray Lopez	Councilmember
Cris Medina	Councilmember
W. Reed Williams	Councilmember
Elisa Chan	Councilmember
Carlton Soules	Councilmember

and all of said persons were present except for ELISA CHAN, thus constituting a quorum. Whereupon, among other business, the following was transacted at said meeting: a written

ORDINANCE NO. 2013-01-17-0030

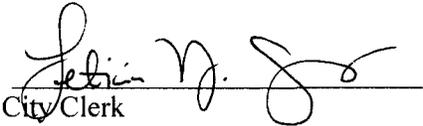
CONSENTING TO AND APPROVING THE ISSUANCE OF REVENUE BONDS BY THE MISSION ECONOMIC DEVELOPMENT CORPORATION ON BEHALF OF NELSON GARDENS ENERGY, LLC TO FINANCE ELECTRIC GENERATION FACILITIES LOCATED WITHIN THE CITY OF SAN ANTONIO; AUTHORIZING AND APPROVING THE ASSIGNMENT BY NELSON GARDENS ENERGY, LLC OF CERTAIN LEASEHOLD INTERESTS AND RIGHTS UNDER A POWER PURCHASE AGREEMENT IN CONNECTION WITH SUCH BONDS; AND AUTHORIZING AND APPROVING OTHER MATTERS IN CONNECTION THEREWITH

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

AYES: 10
NOES: 0 ;
ABSTENTIONS: 0 .

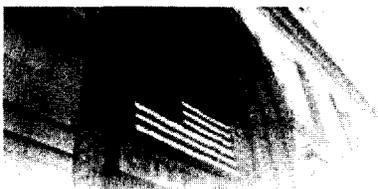
2. A true, full and correct copy of the aforesaid ordinance adopted at the meeting described in the above and foregoing paragraph is attached to and follows this certificate; said ordinance has been duly recorded in said City Council's minutes of said meeting; the above and foregoing paragraph is a true, full and correct excerpt from said City Council's minutes of said meeting pertaining to the adoption of said ordinance; the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said City Council as indicated therein; each of the officers and members of said City Council was duly and sufficiently notified officially and personally, in advance, of the date, hour, place and purpose of the aforesaid meeting, and that said ordinance would be introduced and considered for adoption at said meeting, and each of said officers and members consented, in advance, to the holding of said meeting for such purpose; and said meeting was open to the public as required by law; and public notice of the date, hour, place and subject of said meeting was given as required by the Texas Open Meetings Act.

SIGNED AND SEALED this 17th day of January, 2013.


for City Clerk

(SEAL)





Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 16

Name:	4, 5, 6, 7, 8, 10A, 10B, 10C, 10D, 12A, 12B, 13, 15, 16, 17						
Date:	01/17/2013						
Time:	09:25:30 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance consenting to and approving the issuance of revenue bonds by the Mission Economic Development Corporation on behalf of Nelson Gardens Energy, LLC to finance electrical generation facilities located within the City of San Antonio; authorizing and approving the assignment by Nelson Gardens Energy, Inc. of certain leasehold interests and rights under a power purchase agreement in connection with such bonds; and authorizing and approving other matters in connection therewith. [Carlos Contreras, Assistant City Manager; Rene Dominguez, Director, Economic Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9	x					
Carlton Soules	District 10		x				