

ORDINANCE NO. 2386

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS APPROVING AN ELECTRIC POWER CONTRACT WITH CITIES AGGREGATION POWER PROJECT, INC. ("CAPP") FOR ELECTRIC CAPACITY AND ENERGY, PROVIDING CAPACITY PAYMENTS AS PUBLIC PROPERTY FINANCE CONTRACTUAL OBLIGATIONS OF THE CITY, PLEDGING AND LEVYING AN AD VALOREM TAX TO SUCH PAYMENTS, PROVIDING FOR ENERGY PAYMENTS FOR ELECTRIC ENERGY SUBJECT TO ANNUAL APPROPRIATION BY THE CITY, PROVIDING FOR THE ASSIGNMENT OF SUCH CAPACITY PAYMENTS TO SUPPORT DEBT ISSUED BY CAPP INCURRED TO ACQUIRE ELECTRIC CAPACITY RIGHTS FROM LUMINANT GENERATION COMPANY AND RELATED ENTITIES PURSUANT TO A 24-YEAR POWER PURCHASE AGREEMENT ("PPA"); AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR EMPLOYEE TO EXECUTE AND DELIVER THE MEMBER CONTRACT; FURTHER AUTHORIZING THE CITY MANAGER OR OTHER APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN ADDITIONAL AGREEMENTS ARRANGED BY CAPP FOR ELECTRIC POWER NEEDED BY THE CITY IN THE PERIOD 2009-2013 IN EXCESS OF THE AMOUNT OBTAINED UNDER THE MEMBER CONTRACT; ACKNOWLEDGING, AUTHORIZING AND DIRECTING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR CITY EMPLOYEE TO SIGN AND RETURN CAPP'S DISCLOSURE LETTER; FURTHER AUTHORIZING THE CITY MANAGER OR APPROPRIATE CITY OFFICER OR OTHER CITY EMPLOYEE TO ACCEPT CONFORMING CHANGES TO THE MEMBER CONTRACT DEPENDENT ON THE FINAL TERMS OF THE CAPP PPA; ACKNOWLEDGING THAT THE MEMBER CONTRACT REQUIRES CERTAIN CAPACITY PAYMENTS PAYABLE BY THE CITY WILL BE PUBLIC PROPERTY FINANCE CONTRACTUAL OBLIGATIONS PURSUANT TO TEXAS LOCAL GOVERNMENT CODE CHAPTER 271, SUBCHAPTER A, SECURED BY A PLEDGE OF THE CITY'S AD VALOREM TAXES; PROVIDING FOR VALIDITY AND SUFFICIENCY OF CITY EMPLOYEE'S OR CITY OFFICER'S SIGNATURE IF THE OFFICER OR EMPLOYEE LEAVES OFFICE OR EMPLOYMENT PRIOR TO THE DELIVERY OF THE MEMBER CONTRACT; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT.

WHEREAS, the City of Terrell, Texas must purchase electricity in order to perform its proprietary and governmental functions; and

WHEREAS, the price of power sold in the deregulated retail market in Texas has been directly linked to the daily fluctuations for natural gas futures prices, regardless of the type of generation fuel; and

WHEREAS, natural gas prices are extremely volatile, resulting in an upward cost trend and significant electric price instability; and

WHEREAS, the City is a member of the non-profit political subdivision corporation Cities Aggregation Power Project, Inc. (“CAPP”), which has the legal authority to contract for the purchase of electricity on behalf of more than 100 political subdivision members; and

WHEREAS, CAPP has endeavored to provide its members with the most favorable energy pricing available in the market, delivering more than \$100 million in savings for its members since 2002; and

WHEREAS, the CAPP Board of Directors is a voluntary ten-member board comprised entirely of city employees and city officials that directs the activities of CAPP’s legal and energy advisors; and

WHEREAS, the CAPP Board of Directors has investigated potential long-term contracting options to both lower and stabilize electric prices for member political subdivisions that must prepare annual budgets and require cost predictability for essential services like electricity; and

WHEREAS, CAPP negotiated a Purchase Power Agreement (“PPA”) with owners of non-gas fired generation for the long-term, fixed price supply of power, which will allow participating CAPP members to meet a portion of energy needs (approximately 60 percent) at a stable, known price for a 24-year period; and

WHEREAS, the PPA calls for CAPP to contract with Luminant Generation Company LLC, Big Brown Power Company, LLC and Oak Grove Management Company, LLC (collectively, “Luminant”) for approximately 150 MW of baseload power supplied by seven different units over 24 years and pre-paying a portion of the capacity costs associated with power purchased pursuant to the long-term contract; and

WHEREAS, the City wishes to acquire a portion of its future electric energy pursuant to the PPA between CAPP and Luminant; and

WHEREAS, to acquire power pursuant to the PPA, the City must enter into an electric power contract with CAPP (the “Member Contract”), substantially in the form attached hereto; and

WHEREAS, CAPP will issue general revenue bonds, with the bond proceeds used to pre-pay a portion of the 24-year capacity commitment pursuant to the PPA on behalf of the City and all participating CAPP members; and

WHEREAS, bonds issued by CAPP will be backed by the individual Member Contracts of each participating CAPP city committing to pay a proportionate amount of the debt service obligation associated with CAPP's prepayment of PPA capacity costs; and

WHEREAS, the Member Contract requires that certain capacity payments payable by each participating CAPP member will be public property finance contractual obligations pursuant to Texas Local Government Code Chapter 271, Subchapter A, secured by a pledge of such member's ad valorem taxes, which will be assigned to support debt issued by CAPP to pay the capacity costs of the PPA; and

WHEREAS, the fixed capacity component constitutes a long-term, general obligation tax debt of each participating member that is secured by a pledge of the member's ad valorem taxes; and

WHEREAS, CAPP must secure an additional "wrap" agreement to arrange for power deliveries when needed to meet the remaining portion of the City's energy needs in excess of the baseload power provided under the Member Contract, with said wrap agreement needing ratification/approval of the City; and

WHEREAS, the resulting power supply blend adds to both stability and savings for the City; and

WHEREAS, the total capacity and energy to be purchased under the long-term PPA cannot be known until all CAPP members have acted on their opportunity to participate in the transaction; and

WHEREAS, a change in total capacity and energy obligated under the PPA will change the cost of the transaction and may change the percentage of debt service obligation and energy assigned to participating CAPP members; and

WHEREAS, the PPA is an effort, initiated by CAPP pursuant to direction and support of its participating members, including the City, to diversify fuel sources and minimize the risk associated with complete reliance upon electric pricing linked to natural gas costs that are influenced by unpredictable weather, geo-political and global economic factors, but nonetheless the PPA involves a number of somewhat unique risks and uncertainties; and

WHEREAS, CAPP has prepared and distributed a Disclosure Statement in the form attached hereto that identifies and describes certain risks (but may not describe all risks) associated with the transactions contemplated by the Member Contract and the PPA; and

WHEREAS, the Disclosure Statement is to be acknowledged, signed, and returned to CAPP, prior to pricing of CAPP's bonds, if the Member Contract is approved; and

WHEREAS, it is hereby officially found and determined that the meeting at which this ordinance was passed 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

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS THAT:

1. The CAPP Member Contract, attached hereto and incorporated herein for all purposes is deemed necessary and desirable for the City to meet its proprietary functions and basic governmental responsibilities and is hereby approved. The City hereby confirms the creation of the debt obligation in Article 7 of the CAPP Member Contract and the levy of taxes securing payment of such debt obligation as provided in Section 7.3 therein.

2. The City of Terrell hereby acknowledges that it has reviewed the Member Contract and the Disclosure Statement dated October 7, 2008, and the City Manager, or other appropriate officer or staff person of the City, is authorized and directed to sign, date, and return by October 16, 2008, to CAPP both the Member Contract and such Disclosure Statement.

3. The City Manager, or other appropriate officer or staff person of the City, is authorized to approve modifications and corrections to the Member Contract that are necessary to conform to changes to the assigned cost in the PPA after all CAPP members have made decisions regarding participation in the long-term PPA, so long as no such changes increase the City's capacity payment obligations in any year from the amounts reflected in the Member Contract attached hereto.

4. The City Manager, or other appropriate officer or staff person of the City, is authorized to sign additional agreements arranged by CAPP for the provision of electricity during the period 2009-2013 that are necessary to meet the City's power needs that exceed the power arranged through the Member Contract with CAPP, with the understanding that any agreement for energy beyond 2009 is subject to the right of annual appropriation.

5. The City Manager, or other appropriate officer or staff person of the City, is 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, the Member Contract and the Disclosure.

6. The City Manager, or other appropriate officer or staff person of the City, is hereby authorized and directed to approve any changes or corrections necessary to this ordinance, the Member Contract or any ancillary agreement, certificate or document, prior to the initial delivery of the Member Contract in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this ordinance, (ii) approve any changes to the Member Contract as contemplated in the recitals hereto and Section 3 hereto, or (iii) obtain the approval of the Member Contract (and the debt issued by CAPP relating to the PPA) by the Texas Attorney General's office.

7. The City acknowledges that the Member Contract requires that certain capacity payments payable by the City will be public property finance contractual obligations pursuant to Texas Local Government Code Chapter 271, Subchapter A, secured by a pledge of such member's ad valorem taxes, which will be assigned to support debt issued by CAPP to pay the capacity costs of the PPA; and the City further acknowledges that the fixed capacity component constitutes a long-term, general obligation tax debt of the City that is secured by a pledge of the City's ad valorem taxes.

8. In case any officer of the City whose signature shall appear on the Member Contract shall cease to be such officer before the delivery of such Member Contract, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

9. That if any one or more sections or clauses of this ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this ordinance and the remaining provisions of the ordinance shall be interpreted as if the offending section or clause never existed.

10. The City hereby finds that the statements set forth in the recitals of this ordinance are true and correct, and the City hereby incorporates such recitals as a part of this ordinance.

Passed and Approved on this the 7th day of October, 2008.

Passed and Adopted on this the 21st day of October, 2008.

Hal Richards, Mayor

ATTEST:

John Rounsavall, City Secretary

APPROVED AS TO FORM:

Mary Gayle Ramsey, City Attorney