

**CITY OF SAN ANTONIO  
FINANCE DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council

**FROM:** Milo Nitschke, Director, Finance Department

**SUBJECT:** Approves the Form, Content, and Distribution of the Preliminary Official Statement

**DATE:** April 14, 2005

**SUMMARY AND RECOMMENDATIONS**

This Ordinance Approves the Form, Content, and Distribution of the Preliminary Official Statement Pertaining to the Issuance, Sale and Delivery of Approximately \$42,895,000 in Principal Amount of City of San Antonio, Texas Passenger Facility Charge and Subordinate Lien Airport System Revenue Improvement Bonds, Series 2005; Complying with the Requirements Contained in Securities and Exchange Commission Rule 15c2-12; and Authorizing the City's Staff, Co-Financial Advisors and Bond Counsel to Take All Actions Deemed Necessary in Connection with the Sale of Such Bonds.

Staff recommends approval of this Ordinance.

**BACKGROUND INFORMATION**

The City is issuing approximately \$42,895,000 in principal amount of "City of San Antonio, Texas, Passenger Facility Charge and Subordinate Lien Airport System Revenue Improvement Bonds, Series 2005 (the "PFC Bonds") for the purpose of (i) acquiring and constructing certain improvements to the International Airport which qualify and have been approved by the Secretary of the United States Department of Transportation as "eligible airport-related projects" under 49 U.S.C. § 40117 and (ii) paying costs of issuance.

These improvements represent a portion of the implementation of a ten-year Capital Improvement Plan ("CIP") pursuant to the Master Plan for the International Airport. The CIP addresses both terminal and airfield improvements. The CIP includes the removal of the existing Terminal 2, which is over 40 years old, and the addition of two concourses with corresponding terminal space, public parking facilities, roadway improvements, and extension and improvement to two runways along with supporting taxiways and aircraft apron.

The CIP over the next five years addresses primarily terminal-related improvements, parking, roadway improvements, and airfield improvements. The anticipated sources of funding for the next five years are as follows:

<b>Funding Sources</b>	<b>Anticipated Funding</b>
<b>Federal Grants</b>	
Entitlements	\$ 27,054,000
General Discretionary	45,105,000
Noise Discretionary	20,867,000
<b>Passenger Facility Charges</b>	
Pay-As-You-Go	23,301,000
PFC Secured Bonds	103,156,000
<b>Other Funding</b>	
Airport Funds	29,596,000
Airport Revenue Bonds	<u>91,526,000</u>
<b>Total – All Sources</b>	<u>\$340,605,000</u>

The CIP includes capital improvements, which are generally described as follows:

<b>Improvement</b>	<b>Amount</b>
<b>International Airport</b>	
Terminal/Gate Expansion	\$121,389,000
Airfield Improvements	86,695,000
Cargo Facilities	11,368,000
Roadway Improvements	21,855,000
Parking Improvements	46,865,000
Aircraft Apron	22,504,000
Other (Building Imp., Drainage, etc.)	20,818,000
<b>Stinson Airport</b>	<u>9,111,000</u>
<b>Total</b>	<u>\$340,605,000</u>

The Federal Aviation Administration has approved funding for a portion of the planned capital improvements through Passenger Facility Charge ("PFC") Revenues, with PFC collection authority becoming effective on August 29, 2001. Subsequently, the City has received approval from the FAA for another PFC application and PFC amendment application. The City is issuing the PFC Bonds payable from the PFC Revenues and the City intends to use a portion of the PFC Revenues to pay for capital improvements on a current basis and to support other debt for eligible projects. The City also anticipates submitting an application to the FAA in the Spring of 2006 for Letter of Intent ("LOI") grant funds to pay for a portion of the CIP that are eligible under the FAA's Airport Improvement Grant Program ("AIP"). It is estimated that the remaining CIP funding will be derived from operations and deposits to the Capital Improvement Fund.

In connection with the issuance and sale of the bonds, documents will be mailed to the rating agencies on April 15, 2005 and rating agency presentations will be made in the City on April 18 and 19. It is expected that the ratings for the bonds will be received on or before April 25, 2005.

The bonds have also been submitted to bond insurance firms for qualification for municipal bond insurance. In the event the City selects to have the bonds insured, the bonds would be assigned the rating of "AAA", "Aaa" and "AAA" by Fitch, Moody's and Standard & Poor's respectively. Whether the bond insurance will be utilized will be determined the week the bonds are priced by

comparing the interest cost on the bonds without insurance versus the interest cost with bond insurance plus the cost of insurance. Bond insurance bids are due Monday, April 25, 2005.

It is anticipated that the PFC Bonds will be priced on April 26, 2005 by an underwriting syndicate including Siebert Brandford Shank & Co. as Senior Book Running Manager and Morgan Stanley as Co-Senior Manager. The PFC Bonds with delivery on or before May 24, 2005. The final results of the pricing and sale will be detailed in a memorandum which will be provided on Thursday, April 28, 2005.

### **POLICY ANALYSIS**

The aforementioned transactions are consistent with the Airport Master Plan, Debt Management Plan and the Approved Capital Budget.

### **FISCAL IMPACT**

Any costs pertaining to the proposed bond transactions will be paid from the proceeds derived from the issuance and sale of such obligations. Therefore, there is no impact on the City's Operating Budget.

### **COORDINATION**

This action was coordinated with the City Manager's Office, City Attorney's Office, the Department of Aviation, the City's Underwriting Syndicate, Co-Financial Advisors and Co-Bond Counsel.

**SUPPLEMENTAL COMMENTS**

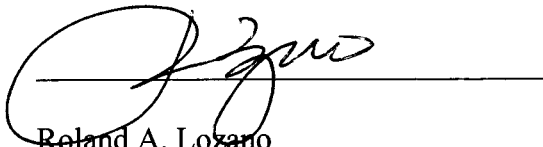
The disclosures required by the City's Ethics Ordinance for each of the firms are attached.



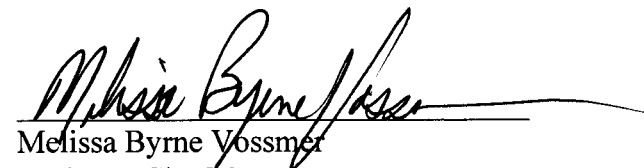
Milo D. Nitschke  
Director, Finance Department



Kevin Dolliole  
Director, Aviation Department



Roland A. Lozano  
Assistant to the City Manager



Melissa Byrne Vossmer  
Assistant City Manager



J. Rolando Bono  
Interim City Manager

## City of San Antonio Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Napoleon Brandford  
Erlinda Cortez Dimas  
Peter Wong  
David Thomson  
Levi Davis  
Lou Lasaath

(2) the identity of any business entity that would be a party to the discretionary contract:

Siebert Brandford Shank & Co., LLC

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract:

Not Applicable

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

Suzanne Shank  
Muriel Siebert & Co., Inc.

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Not Applicable


#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Not Applicable		

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: Chairman Company: Napoleon Brandford	Date: February 28, 2005

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**LITIGATION DISCLOSURE**

**Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.**

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One

YES

☒ NO

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Circle One

YES

☒ NO

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One

YES

☒ NO

**If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.**

**TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS TRUE AND CORRECT.**

Company Name: Siebert Brandford Shank & Co., LLC

*Napoleon Brandford*  
Signature of Principal:

Napoleon Brandford  
Printed Name of Principal:

Chairman  
Title of Principal

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Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

None

(2) the identity of any business entity<sup>1</sup> that would be a party to the discretionary contract:

Morgan Stanley & Co. Incorporated

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract;

None

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity; of any individual or business entity who would be a party to the discretionary contract;

Morgan Stanley is the parent company of Morgan Stanley & Co. Incorporated. Morgan Stanley & Co. Incorporated's subsidiaries are Graystone Wealth Management Services LLC, Morgan Stanley Flexible Agreements Inc., MS Securities Services Inc. and Prime Dealer Services Corp. Neither the parent company nor any of these subsidiaries will be involved in the provision of any services in connection with this engagement.

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

None

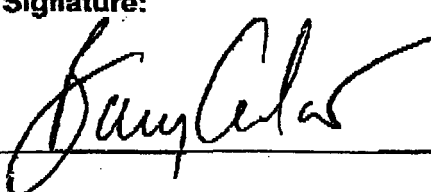
#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
To the best of our information, knowledge and belief, none.		

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

To the best of our information, knowledge and belief, we are not aware of any known facts that would raise a question as to whether any city official or employee would violate such law by participating in official action relating to the discretionary contract.		
Signature: 	Title: Executive Director  Company: Morgan Stanley & Co. Incorporated	Date:  4/11/05

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

## LITIGATION DISCLOSURE

Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One

YES

NO \*\*

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Circle One

YES

NO \*\*

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One

YES \*\*

NO

If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS TRUE AND CORRECT.

Company Name: Morgan Stanley & Co. Incorporated

  
Signature of Officer:

Barry Adair

Printed Name of Officer:

Executive Director

Title of Principal:

\*\*Please see the attached Exhibit for an explanation of our responses.

**Exhibit to Form "Litigation Disclosure" – City of San Antonio****Note to Item 1**

With respect to our answer to Item 1, no member of the Public Finance Department of Morgan Stanley & Co. Incorporated who would be assigned to this engagement has been indicted or convicted of a felony or misdemeanor in the last five years.

**Note to Item 2**

With respect to our answer to Item 2, no member of the Public Finance Department of Morgan Stanley & Co. Incorporated who would be assigned to this engagement has been terminated from any work being performed for the City of San Antonio or any other Federal, State or local government, or private entity.

**Note to Item 3**

With respect to our answer to Item 3, Morgan Stanley & Co. Incorporated ("MS&Co") is a wholly owned subsidiary of Morgan Stanley ("MS"), a Delaware holding company. MS files periodic reports with the Securities and Exchange Commission as required by the Securities Exchange Act of 1934, which includes current descriptions of all material litigation and material administrative proceedings and investigations, if any, by federal or state regulatory agencies concerning MS and its subsidiaries, including MS&Co. MS&Co contains the institutional securities business of MS, which includes the Public Finance Department. As a consolidated subsidiary of MS, MS&Co does not file its own periodic reports with the SEC. As a result, we are attaching as Appendix A copies of the "Legal Proceedings" section of MS's SEC 10-K filing for 2000-2004.

In addition to the matters described in Appendix A, in the normal course of business, each of MS and MS&Co has been named, from time to time, as a defendant in various legal actions, including arbitrations, class actions, and other litigation, arising in connection with its activities as a global diversified financial services institution. Certain of the legal actions include claims for substantial compensatory and/or punitive damages or claims for indeterminate amounts of damages. Each of MS and MS&Co is also involved, from time to time, in investigations and proceedings by governmental and self-regulatory agencies, certain of which may result in adverse judgments, fines or penalties. The number of these investigations and proceedings has increased in recent years with regard to many financial services institutions, including MS and MS&Co. In some cases, the issuers that would otherwise be the primary defendants in such cases are bankrupt or otherwise in financial distress.

In view of the inherent difficulty of predicting the outcome of such matters, particularly in cases in which claimants seek substantial or indeterminate damages, we cannot predict with certainty the eventual loss or range of loss related to such matters. MS is contesting liability and/or the amount of damages in each pending matter and believes, based on current knowledge and after consultation with counsel, that the outcome of each matter will not have a material adverse effect on the consolidated financial condition of MS, although the outcome could be material to MS's operating results for a particular future period, depending on, among other things, the level of MS's income for such period.

With respect to the municipal securities business of MS& Co, we are also disclosing the following additional matters that may be of interest to you. These matters are publicly disclosed, but are not yet material to MS or MS&Co and therefore do not warrant any description in the periodic reports with the SEC.

1. **IPO Allocation Investigation:** On January 25, 2005, the SEC announced a settlement with MS&Co and Goldman, Sachs & Co. resolving the SEC's investigation relating to initial public offering ("IPO") allocation practices. The SEC filed a settled civil injunctive action in the U.S District Court of the District of Columbia against MS&Co relating to the allocation of stock to institutional customers in IPOs underwritten during 1999 and 2000. Under the terms of the settlement, MS&Co agreed to the entry of a judgment enjoining the firm from violating Rule 101 of Regulation M and the payment of a \$40 million civil penalty. The settlement terms are subject to court approval. The complaint alleges that MS&Co violated Rule 101 of Regulation M by attempting to induce certain customers who received allocations of IPOs to place purchase orders for additional shares in the aftermarket. No allegation of fraud or impact on the market was made.
2. **NASD Municipal Bond Disclosure Investigation:** In December 2004, without admitting or denying any wrongdoing, MS&Co entered into a settlement with the NASD, including signing a Letter of Acceptance, Waiver and Consent ("AWC"), agreeing to pay a \$100,000 fine and offering rescission to affected investors in connection with a failure to disclose the callability of a limited number of municipal bonds.
3. **Municipal Security Fair Pricing Matter:** In June 2004, MS&Co, along with seven other firms, entered into an AWC regarding our practices for obtaining market bids for customers in their municipal finance securities. Without admitting or denying any wrongdoing, MS&Co received a censure and agreed to pay a fine of \$20,000 and pay restitution to four clients in amounts totaling \$18,312. The NASD was investigating allegations that customers were receiving below-market prices when selling their municipal bonds through these eight firms.
4. **Auction Rate Inquiry:** In May 2004, MS&Co received an industry-wide inquiry from the SEC regarding its auction rate securities practices. MS&Co is cooperating with the SEC to provide the requested information.

To the best of our knowledge, information and belief, we are not aware of any threatened or pending litigation, investigations or proceedings concerning MS which could reasonably be expected to have a material adverse effect on MS&Co's ability to perform services of the nature envisioned by the proposal. If you would like any further information about the matters set forth above or in Appendix A, please do not hesitate to contact us.