

A DRAFT RESOLUTION

CLARIFYING THE POLICYMAKING ROLE OF SAN ANTONIO WATER SYSTEM AND ITS NEED FOR MORE OPENNESS AND TRANSPARENCY; REQUIRING AN INDEPENDENT MANAGERIAL, LEGAL, AND FINANCIAL REVIEW OF THE VISTA RIDGE PROJECT; AND PROVIDING FOR THE OPEN AND EXPEDITIOUS REPLACEMENT OF OUTGOING BOARD MEMBERS.

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WHEREAS, pursuant to Ordinance No. 75686 dated April 30, 1992 (“Ordinance”), the San Antonio City Council created San Antonio Water System, (“SAWS”) and established that the System be administered by a Board of Trustees on behalf of the City Council; and

WHEREAS, SAWS, led by its Chairman of the Board, its Trustees, and its CEO, has exceeded its authority by making City water policy decisions independent of City Council direction and in direct contradiction with Section 32 of the Ordinance; and

WHEREAS, SAWS has become improperly influenced by vested interests, seeking to profit both directly and indirectly from its management and policy decisions; and

WHEREAS, SAWS’s management decisions have eroded the public trust in the utility’s commitment to prudent management of the City’s water supply portfolio; and

WHEREAS, SAWS does not conduct its business on behalf of ratepayers with the utmost openness and transparency; and

WHEREAS, the actions of the utility surrounding the Vista Ridge Project (“Project”) are emblematic of the problems stated above; and

WHEREAS, in 2010 SAWS, seeking to diversify its water supply portfolio, issued a Request for Competitive Sealed Proposals for 50,000 acre-feet of water each year for 30 years at a fixed price; and

WHEREAS, in February 2014 SAWS stated that it was rejecting all responsive proposals, including a proposal by Spanish firm Abengoa, in favor of incrementally expanding its local brackish groundwater desalination program on an “as needed” basis; and

WHEREAS, weeks later, SAWS abruptly reversed its decision after receiving immense pressure from the San Antonio special interests, including a professional civil engineer who had been an advisor to SAWS in prior years and whose numerous conflicts of interest became clear when he subsequently became a beneficiary of the multi-billion dollar deal; and

WHEREAS, the SAWS Trustees subsequently approved a \$3.4 billion “take and pay” contract (“Contract”) with Abengoa for what became known as the Vista Ridge Project to deliver 50,000 acre-feet of water per year from wellfields located in communities 143 miles away; and

WHEREAS, due to the financial implications of the Project and the vast amount of excess water that it would deliver, the Board’s approval of the Contract was inextricably connected to the question of whether SAWS should become a regional water supplier - a major water policy decision that should have been explicitly made by City Council prior to any such action; and

WHEREAS, despite warnings from financial experts that SAWS’s private partner, Abengoa, was unstable and facing imminent bankruptcy, testimony by water law expert Amy Hardberger that 50,000 acre feet per year was far in excess of the City’s needs, and information, including scientific studies, showing the detrimental impacts of the Project on the wellfield communities: the San Antonio City Council quickly passed within the same year, a resolution giving SAWS sole authority to manage and modify the Contract; and

WHEREAS, within a year of signing the Contract with SAWS, Abengoa declared the Spanish version of bankruptcy, causing SAWS to negotiate a massive contract restructuring that included hundreds of pages of amendments that awarded most of Abengoa’s interest to Garney Construction, a former subcontractor to Abengoa; and

WHEREAS, the restructured Contract increased the price of Vista Ridge water by including a 120-million-dollar bridge loan, originally intended to buy project materials that were in fact never purchased, as a debt obligation of the Project; and

WHEREAS, the Contract requires SAWS and its ratepayers to absorb an enormous amount of additional costs, including those attributable to oversized infrastructure, to purchase excess water when cheaper water is available from other sources; and

WHEREAS, SAWS has not demonstrated that it can meet its obligation to market Vista Ridge water to other cities and governmental entities in a manner that would completely or even substantially account for the additional costs that the utility and its ratepayers are obligated to assume, regardless of whether the water they receive is needed; and

WHEREAS, SAWS’s lack of transparency has kept the public and elected officials in the dark about the full consequences of the Vista Ridge Project; and

WHEREAS, the City of San Antonio strives to hold all of its agencies, especially its public utilities, to the highest standards of openness and transparency; and

WHEREAS, the City Council wishes to clarify that it must explicitly authorize all water policy decisions and that all legal and lobbying activities should be consistent with its consent and direction; and

WHEREAS, the City Council recognizes the need for further evaluation of the Project's financial impact on households that struggle to afford basic necessities and seeks to better understand the fiscal impact of the Project on past, present, and future city budgets; and

WHEREAS, the City Council recognizes the need for an independent review of the Project so that any mismanagement, lack of transparency, and negative legal and financial impacts can be remedied and so the City can use any lessons learned in its evaluation of future project proposals, particularly public-private partnerships; and

WHEREAS, the City Council intends to facilitate prompt, orderly, and efficient replacement of outgoing Board members; **NOW THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1: The City Council directs applicable staff within the next thirty days to schedule any required notices and hearings necessary to comply with this resolution.

SECTION 2: Pursuant to Ordinance No. 75686, Section 32, the City Council shall oversee, as part of its regular order of business, the actions of SAWS related to planning for local and regional water supply and conveyance, including comprehensive planning of sanitary wastewater, fire suppression water, stormwater, and water conservation projects and systems.

SECTION 3: Pursuant to Ordinance No. 75686, Section 32(H), the San Antonio City Attorney shall direct all legal activities conducted by SAWS staff.

SECTION 4: Pursuant to Article V, Section 46 of the San Antonio City Charter, the City Manager, in consultation with the City Council, shall assume responsibility for oversight of all SAWS governmental relations activities including, but not limited to, review of the curriculum vitae of persons retained or assigned to perform internal or external lobbying on behalf of the utility. SAWS's biennial state legislative agenda must be approved by its Board and by City Council.

SECTION 5: Pursuant to Article V, Section 48 of the San Antonio City Charter, the City Council resolves to appoint an independent Inspector General and a Financial Advisor, both without any political or financial ties to SAWS or the City Council.

SECTION 6: Pursuant to Article V, Section 48 of the San Antonio City Charter, the Inspector General shall, with assistance from the Financial Advisor, conduct a management review of how the Vista Ridge Project came to be and was managed from 2010 to the current date, including when and how SAWS senior staff, advisors and consultants, internal and external lobbyists, or individual Trustees may have blocked or waived opportunities to withdraw from the Project. The Inspector General shall identify legal and financial liabilities incurred by the City and SAWS customers that warrant immediate action by the City Council in order to reduce or mitigate future damage. The Inspector General and

Financial Advisor will be authorized to look at documents otherwise confidential and to interview those who signed confidentiality agreements with SAWS.

SECTION 7: The Inspector General shall draft a publicly available report containing the review described above and recommendations to the City Council as to necessary reforms, including, but not limited to, how the City should proceed in light of any identified legal or financial liabilities.

SECTION 8: The Inspector General, with assistance from the Financial Advisor, shall be tasked to issue and present the above-described report to the City Council and the public no later than December 31, 2019, to allow for the public to comment in at least two public hearings prior to the City Council election in May of 2021.

SECTION 9: The City Council, recognizing that all City agencies, offices, and departments should err on the side of public disclosure, directs the City Attorney to develop new City open records policies and procedures that provide the public, to the maximum extent allowed by law, with access to all legal, financial, and planning records including, but not limited to, reports, maps, memoranda, and communications.

SECTION 10: Pursuant to Ordinance No. 75686, Section 32, the City Council directs the City personnel officer to advertise on all available City communication media regarding upcoming vacancies for SAWS trustees to be selected and appointed by City Council from among qualified candidates encompassing the entire geographic area served by SAWS. Notices shall include the compensation available for performing as a SAWS trustee and fully describe trustee duties and qualification criteria which the City Council is likely to consider before making appointments.

SECTION 11: The recitations and provisions set out in the preamble of this Resolution are adopted and made a part of the body of this Resolution, as fully as if the same were set forth herein.

SECTION 12: This Resolution becomes effective immediately upon the receipt of six affirmative votes, or in the event six affirmative votes are not received, on the tenth day after passage.

[SIGNATURE BLOCKS OMITTED]