

Date: November 19, 2019

To: Audit and Accountability Committee — Chairman John Courage

cc. Councilman Roberto Trevino, Councilwoman Dr. Adriana Garcia, Citizen Member Priscilla Soto, Citizen Member Judy Trevino

From: Ellen Berky, AIA, CCS, LEED-AP

Thank you, Chairman Courage for allowing your Committee to hear testimony from concerned citizens who have a keen interest in your mission — holding City agencies accountable. I also want to thank those who spoke at the City Council Special Session on October 31. For three hours Council grappled with some hard questions regarding decisions made by SAWS and subsequently approved by City Council. SAWS CEO Robert Puente was repeatedly questioned by Council Members regarding whether independent audits had been conducted on the multi-billion dollar Vista Ridge Project. For those who were not present and have not watched the video, Mr. Puente's responses were sometimes dismissive, even derisive.

My name is Ellen Berky. As a licensed professional architect for the past 40 years, I have prepared contract documents for building projects large and small. I have cycled into a public role as a board member of the League of Independent Voters which is a founding member of the Vista Ridge Resolution Coalition.

A key part of our Draft Resolution is a call for an independent audit of the Vista Ridge Project. I trust that Council members on this Committee have read this Draft Resolution, first submitted to City Council in March. I also hope the Council members here have read Section 32 of Ordinance #75686 in which San Antonio's City Council created SAWS in 1992 and defined its administrative and fiduciary duties. I trust that Council Committee members are now familiar with your recently-revealed power to hold SAWS accountable for deviations from its ordained powers and duties. I second Stan Mitchell's comments in this regard.

I am happy to also second Coleen Warings's excellent suggestions for setting audit priorities. Appropriate audits can function as cost-effective damage control for the City and other Vista Ridge stakeholders.

Various spokespersons for SAWS, a public utility acting as an agent of the City, have made representations about the cost of the Vista Ridge Project and the Project's "risks" to the City and its ratepayers. These assertions must have been

based, in part, on “expert analyses” from professionals advising SAWS.¹ An undisciplined retention of professional consultants for the largest groundwater transfer project in Texas history may explain SAWS’ public announcements immediately prior to the 2014 Council vote initiating the Vista Ridge Project — that rates would increase a mere 19 per cent on account of Vista Ridge, an estimate upped to a more believable 52 per cent figure the very next year when a national consultant was retained to redo the entire rate structure. By 2018, SAWS CFO Evanson reported a revenue shortfall of \$4.00 per month per average residential customer in response to “price signals”. This major revenue shortfall would have to be smoothed out by rate increases distributed among SAWS’ half million customers — rate increases disproportionately impacting customers of marginal means, and the council districts in which they reside.

The City may be able recoup damages from mistakes by SAWS consultants, contractors, and vendors. Errors and Omissions insurance could be tapped to benefit the City if, for example, a professional consultant neglected to advise the City of pre-existing evidence that the planned wellheads into the source aquifer were not likely to produce the desired output, resulting in direct and/or indirect damage. Any entity which contracted with SAWS could have over-billed or failed to perform in accordance with contract provisions related to the nearly-completed construction portion of the combined VR Project. Such an audit should be conducted now before the Project is turned over to the Operating and Maintenance contractor.² Armed with evidence of deception or undisclosed conflict of interest encountered in the course of an independent audit, the City attorney would be able to advise Council on appropriate action which would benefit the City.”³

Timely performance audits conducted by independent third parties are not novel or unusual ideas, especially for projects where payments made for construction alone are approaching the billion dollar mark.

Logic and experience support the wisdom of identifying patterns of error and misrepresentation as quickly as possible, equipping the Owner in this case the City Council, to identify a course of actions which will minimize damage going forward.

Please consider carefully the testimony you are hearing today. The next time the full Council meets to hear from SAWS, I fervently hope Council will be armed with a well-considered and prioritized audit plan for the Vista Ridge Project, compliments of this Committee.

1 The Audit and Accountability Committee is empowered to investigate the scope of these consulting contracts to determine whether the timing and nature of professional advice relied upon by City Council damaged the City. SAWS entered into many consulting contracts related to Vista Ridge, some of them embedded in complex Design-Build arrangements . Vista Ridge-related contracts appear to have focused on project management, conceptual design, risk and cost analyses of water supply project options, rate-setting mechanisms, and developing and negotiating contract terms. See the September 30, 2014 article, https://www.texastribune.org/2014/09/30/san-antonio-one-step-closer-controversial-pipeline/?_ga=2.34712673.1171821445.1573226866-543120649.1573226866

2 The type of audit with which architects and engineers are most familiar is the construction audit. Private entities often include provisions in the Contract allowing the Owner to examine the details of the large, complex construction payment arrangements in relationship to other details of the Contract such as Change Orders and other Contract amendments. The financial specialists who perform sophisticated construction audits justify their fees to Owners by recapturing substantial sums of money for the Owner. If such an audit provision exists in the Vista Ridge Contract, it might be prudent for City Council to activate it on behalf of the City. If provisions for a detailed construction audit do not exist in a Contract which included over a billion dollars of transfer payments for construction costs alone, it would be reasonable for your Committee to ask, "Why Not?" See footnote 1 and consider: Epcor, the Vista Ridge O&M contractor, is a Canadian company which presumably will be relied upon to fix or cover the design and construction mistakes of its predecessors out of the sight of City Council and the Texas Board of Engineering Examiners.

3 According to Section 32H of Ordinance 75686, "...the City attorney shall be the chief legal advisor of the (SAWS) board".... Texas law provides for damages where "deceptive trade practices" were employed by a licensed professional, or any other entity in performance of their work. Failure of licensed professionals to disclose conflicts of interest to the appropriate authorities may constitute deception. Although representatives of public entities can choose to waive such conflicts, it is possible that the waivers were not recorded and a thoroughgoing management and legal audit by an Independent Inspector General could clarify whether there is cause for action. The licensing boards for professional engineers consider these matters so important that they require engineers to complete continuing education every year on the topic of professional ethics. These types of claims are usually settled out of court to protect the reputation of the professionals involved.