

ORDINANCE NO. 2011-10-20-0845

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS AUTHORIZING THE CREATION OF A SPECIAL PROJECT PURSUANT TO AND IN ACCORDANCE WITH THE PROVISIONS OF THE VARIOUS ORDINANCES OF THE CITY COUNCIL BY WHICH REVENUE OBLIGATIONS OF THE CITY PAYABLE FROM AND SECURED BY A LIEN ON AND PLEDGE OF THE REVENUES OF THE CITY'S COMBINED WATER, WASTEWATER AND CHILLED WATER SYSTEM WERE ISSUED AND NOW REMAIN OUTSTANDING; AMENDING CERTAIN TERMS AND PROVISIONS OF THE AUTHORIZING DOCUMENTS BY WHICH CERTAIN DEBT OBLIGATIONS ASSUMED BY THE CITY HAVE BEEN ISSUED AND REMAIN OUTSTANDING; PROVIDING FOR THE MANAGEMENT AND OPERATION OF THE NEWLY CREATED SPECIAL PROJECT; ADDRESSING OTHER MATTERS RELATING TO THE FOREGOING; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council (the *City Council*) of the City of San Antonio, Texas (the *City*) has heretofore issued, and there are currently outstanding, revenue bonds (as further described and defined herein, the *City System Senior Lien Obligations*) supported by a first and prior lien on and pledge of certain revenues of the City's combined water, wastewater, and chilled water systems (as further described and defined herein, the *City System*), which City System Senior Lien Obligations were issued and remain outstanding by separate ordinances adopted from time to time by the City Council (the *City System Senior Lien Ordinances*); and

WHEREAS, the City Council has heretofore issued, and there are currently outstanding, revenue bonds (as further described and defined herein, the *City System Junior Lien Obligations*) supported by a lien on and pledge of certain revenues of the City System subordinate to the lien securing the payment of the currently outstanding City System Senior Lien Obligations, which City System Junior Lien Obligations were issued and remain outstanding by separate ordinances adopted from time to time by the City Council (the *City System Junior Lien Ordinances*); and

WHEREAS, the City Council has heretofore issued, and there are currently outstanding, revenue obligations (as further described and defined herein, the *City System Subordinate Lien Obligations*) supported by a lien on and pledge of certain revenues of the City System subordinate to the respective liens securing the payment of the currently outstanding City System Senior Lien Obligations and the currently outstanding City System Junior Lien Obligations, which City System Subordinate Lien Obligations were issued and remain outstanding by separate ordinances adopted from time to time by the City Council (the *City System Subordinate Lien Ordinances*); and

WHEREAS, the City has heretofore issued, sold, and delivered, and there are currently outstanding, a series of commercial paper notes (the *City System Commercial Paper Notes*) which are equally and ratably secured by a lien on and pledge of certain revenues of the City

System subordinate to the respective liens securing the payment of the currently outstanding City System Senior Lien Obligations and the currently outstanding City System Junior Lien Obligations, and on parity with the lien securing the payment of the City System Subordinate Lien Obligations, which City System Commercial Paper Notes are from time to time issued and remain outstanding pursuant to an ordinance heretofore adopted and amended by the City Council (the *City System Commercial Paper Ordinance* and, collectively with the City System Senior Lien Ordinances, the City System Junior Lien Ordinances, and the City System Subordinate Lien Ordinances, the *City System Ordinances*); and

WHEREAS, pursuant to the authority contained in applicable Texas law, including Chapter 1502, as amended, Texas Government Code (the *Act*), and the provisions of the City System Ordinances, the complete management and control of the City System is vested in a City agency known as the San Antonio Water System Board of Trustees (the *Board*), during the period of time any of the City System Senior Lien Obligations are outstanding and unpaid; and

WHEREAS, on June 17, 2011, Senate Bill 341 (*SB 341*), enacted by the 82nd Regular Texas Legislature, became law; and

WHEREAS, SB 341 requires that an election (the *Election*) be held within the boundaries of the Bexar Metropolitan Water District, a conservation and reclamation district and political subdivision of the State of Texas created and existing pursuant to and in accordance with Texas law (as further described and defined herein, the *District*), to determine if the District should be dissolved and the ownership of the District's waterworks system (as further described and defined herein, the *District System*), along with the responsibility of operating and maintaining the same and utilizing such assets to provide water service to those customers within the territory encompassed by any District certificate of convenience and necessity issued by the Texas Commission on Environmental Quality (the *Commission*), be transferred to the City, acting by and through the Board (the *SAWS Transfer*); and

WHEREAS, the Election has been ordered and will be conducted within the District boundaries on November 8, 2011 in accordance with the provisions of SB 341 and other applicable law (including, but not limited to, the Voting Rights Act of 1965) that may affect the effective date of the Election results; and

WHEREAS, SB 341 specifies that on the date the results of the Election favoring the SAWS Transfer are certified to the Texas Secretary of State, the City assumes control of the operation and management of the District and, within 90 days thereafter, all rights, duties, and obligations as the same relate to any existing asset or obligation of the District, inure to and become the responsibility of the City, acting by and through the Board; and

WHEREAS, SB 341 specifies that, to lessen the immediate impact upon the existing ratepayers of the City System, the City, acting by and through the Board, may take immediate possession of the District System and operate the same as a "Special Project", as such term is defined and described in the City System Ordinances, so long as complete integration of the District System into the City System occurs within the period of time specified in Section 52 of SB 341; and

WHEREAS, in addition to its intent to completely and fully comply with the other provisions of SB 341 concerning the assumption of ownership, management, operation of the District System, and the integration of the District System with the City System, the City, acting by and through the Board, intends to assume ownership of and operate the District System as a Special Project as permitted by and in accordance with the provisions of SB 341, the City System Ordinances, and other applicable law; and

WHEREAS, because the City System provides water service in a geographic area that does not overlap geographic area in which the District System provides water service, along with the requirement of SB 341 to integrate the two utility systems, the City hereby finds and determines that operating the District System as a Special Project as described herein does not result in the City's grant of an impermissible franchise under the City System Ordinances and the maintenance of the District System as a Special Project as described herein does not result in prohibited competition under any City System Ordinance; and

WHEREAS, the District has heretofore issued, and there remains outstanding as of the effective date of the SAWS Transfer, certain debt obligations payable from and secured by a lien on and pledge of revenues derived from the ownership and operation of the District System (as further described and defined herein, the *District Debt Obligations*); and

WHEREAS, notwithstanding the intent of the City, acting by and through the Board, to assume ownership and control of the District System in such a manner that will preserve the current credit quality of the City System and the level of service enjoyed by City System ratepayers, as well as to permit continued compliance with the operational covenants relating to the District System imposed upon and agreed to by the District for the benefit of the holders of the District Debt Obligations, the transfer of the ownership and control of the District System to the City, by and through the Board (which transfer is only accomplished by the 82nd Texas Legislature's exercise of the police power of the State of Texas to protect the health, safety, and welfare of its citizens through its enactment of SB 341 and by popular vote of District ratepayers cast at the Election favoring the SAWS Transfer), necessitates the amendment of certain covenants made by the District Board (hereinafter defined) in the District Debt Authorization (hereinafter defined) concerning ownership and operation of the District System; and

WHEREAS, the requisite amendment of the District Debt Authorization represents an administrative necessity resulting from the implementation of SB 341 and is not meant to harm or to materially adversely affect the credit position of any District Debt Obligation holder, which credit position is in fact maintained (and likely enhanced) by the City's prospective operation of the District System as the District Special Project and its assumption and affirmation under this Ordinance of the District's operational covenants relating to the District System that are included in and made a part of the District Debt Authorization; and

WHEREAS, the City and the Board have heretofore determined that the manner in which the City's assumption, control, and integration of the District System, acting by through the Board, should now be specified to provide clarity to District ratepayers, the Texas Attorney General, other stakeholders, and the capital marketplace in advance of the Election; and

WHEREAS, the Board has, pursuant to Resolution No. 11-308 adopted on October 4, 2011 (the *Special Project Resolution*), recommended and requested that the City Council adopt this Ordinance; and

WHEREAS, the City Council hereby finds and determines that the establishment of the Special Project pursuant to the terms of this Ordinance, by authority made available to the City under SB 341 and the City System Ordinances, and addressing other matters in connection therewith, in anticipation of the District ratepayers approving the SAWS Transfer at the Election, is in the best interests of the citizens of the City; and now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO THAT:

SECTION 1: Definitions. For all purposes of this Ordinance, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms used herein shall have the meanings assigned to them in this Section.

A. *Accountant*, which term has substantially the same meaning as defined and described in the District Senior Lien Ordinances, means an independent certified public accountant, or an independent firm of certified public accountants, in either case, with demonstrative experience and competence in public accounting.

B. *Act* has the meaning ascribed thereto in the preamble of this Ordinance.

C. *Additional DSP Debt* means any Additional DSP Senior Lien Obligations, Additional DSP Subordinate Lien Obligations, or DSP Inferior Lien Obligations issued by the City after the date of the SAWS Transfer.

D. *Additional DSP Senior Lien Obligations*, which term has substantially the same meaning as *Additional Parity Bonds* defined and described in the District Senior Lien Orders, means the additional obligations which the District has reserved the right, and which right by reservation now inures to the benefit of the City, to issue in the future, as provided in the District Senior Lien Orders and in Section 4.C(i) of this Ordinance, and which obligations are equally and ratably secured by a first lien on and pledge of the DSP Pledged Revenues on a parity with the lien thereon and pledge thereof securing the payment of the Outstanding DSP Senior Lien Obligations.

E. *Additional DSP Subordinate Lien Obligations*, which term has substantially the same meaning as *Additional Subordinate Lien Obligations* defined and described in the District Subordinate Lien Orders, means the additional obligations which the District has reserved the right, and which right by reservation now inures to the benefit of the City, to issue in the future, as provided in the District Subordinate Lien Orders and in Section 4.C(ii) of this Ordinance, and which obligations are equally and ratably secured by a lien on and pledge of the DSP Pledged Revenues that is subordinate and inferior to the lien thereon and pledge thereof securing the DSP Senior Lien Obligations and on parity with the lien on and pledge of DSP Pledged Revenues securing the payment of the Outstanding DSP Subordinate Lien Obligations.

F. *Advisory Committee* means a committee created by the Board for the purpose of advising the Board prior to System Integration with respect to the matters specified in Section 8 hereof.

G. *Amortization Installment*, which term has substantially the same meaning as defined and described in the District Senior Lien Orders, means with respect to DSP Senior Lien Obligations, or DSP Subordinate Lien Obligations, as applicable, the amount of money which is required for mandatory redemption of such DSP Senior Lien Obligations or DSP Subordinate Lien Obligations, as applicable (whether at maturity or by mandatory redemption calls and including redemption premium thereon, if any) provided that the total amortization installments for such DSP Senior Lien Obligations or DSP Subordinate Lien Obligations, as applicable, shall be sufficient to provide for retirement of the aggregate principal amount of such DSP Senior Lien Obligations or DSP Subordinate Lien Obligations, as applicable, and redemption premium, if any.

H. *Average Annual Debt Service Requirements*, which term has substantially the same meaning as defined and described in the District Debt Authorization, means the amount equal to the average annual principal and interest requirements (including Amortization Installments) of all DSP Senior Lien Obligations or DSP Subordinate Lien Obligations, as applicable, then Outstanding. With respect to Additional DSP Senior Lien Obligations or Additional DSP Subordinate Lien Obligations, as applicable, that bear interest at a rate which is not established at the time of issuance at a single numerical rate, Average Annual Principal and Interest Requirements shall be calculated by assuming (i) that the interest rate for every 12-month period on such obligations is equal to the rate of interest reported in the most recently published edition of *The Bond Buyer* (or its successor) at the time of calculation as the "Revenue Bond Index" or, if such Revenue Bond Index is no longer being maintained by *The Bond Buyer* (or its successor) at the time of calculation, such interest rate shall be assumed to be 80% of the rate of interest then being paid on United States Treasury obligations of like maturity and (ii) that the principal of such obligations is amortized such that annual debt service is substantially level over the remaining stated life of such bonds.

I. *Board* has the meaning ascribed thereto in the preamble of this Ordinance.

J. *Cause* means a reason for employee termination, as specified by the Board's standard of conduct for all employees (as the same may be amended or changed from time to time at the sole discretion of the Board).

K. *City* means the City of San Antonio, Texas, and where appropriate, the City Council, being its governing body.

L. *City System* means all properties, facilities, and plants currently owned, operated, and maintained by the City and/or the Board for the supply, treatment, and transmission and distribution of treated potable water, chilled water, and steam, for the collection and treatment of wastewater, and for water reuse, together with all future extensions, improvements, purchases, repairs, replacements and additions thereto, whether situated within or without the limits of the City, all water (in any form) owned by the City, and any other projects and programs of the Board; provided, however, that the City has, in the City System Ordinances, expressly retained the right to incorporate (1) a stormwater system as provided by the provisions

of Section 402.041 through 402.054, as amended, Local Government Code, or other similar law, and (2) any other related system as provided by the laws of the State of Texas as a part of the City System. The City System Ordinances specify that the City System shall not and does not include any Special Project, including the District Special Project established, created, and maintained pursuant to this Ordinance, or any water or water-related properties and facilities owned by the City as part of its electric and gas systems.

M. *City System Commercial Paper Notes* has the meaning ascribed thereto in the preamble of this Ordinance.

N. *City System Commercial Paper Ordinance* has the meaning ascribed thereto in the preamble of this Ordinance.

O. *City System Gross Revenues* means *Gross Revenues*, as described and defined in the City System Ordinances.

P. *City System Junior Lien Obligations* means (a) the outstanding and unpaid obligations of the City that are payable, in whole or in part, from and equally and ratably secured by a lien on and pledge of the City System Net Revenues that is junior and inferior to the lien thereon and pledge thereof securing the payment of any City System Senior Lien Obligations, specifically identified as follows:

(i) “City of San Antonio, Texas Water System Junior Lien Revenue Bonds, Series 2001”, dated March 1, 2001, in the original principal amount of \$9,715,000;

(ii) “City of San Antonio, Texas Water System Junior Lien Revenue Bonds, Series 2001-A”, dated March 1, 2001, in the original principal amount of \$15,435,000;

(iii) “City of San Antonio, Texas Water System Junior Lien Revenue Bonds, Series 2002”, dated March 1, 2002, in the original principal amount of \$15,650,000;

(iv) “City of San Antonio, Texas Water System Junior Lien Revenue Bonds, Series 2002-A”, dated March 1, 2002, in the original principal amount of \$12,090,000;

(v) “City of San Antonio, Texas Water System Junior Lien Revenue Bonds, Series 2003”, dated March 1, 2003, in the original principal amount of \$34,000,000;

(vi) “City of San Antonio, Texas Water System Junior Lien Revenue and Refunding Bonds, Series 2004”, dated July 1, 2004, in the original principal amount of \$10,635,000;

(vii) “City of San Antonio, Texas Water System Junior Lien Revenue and Refunding Bonds, Series 2004-A”, dated July 1, 2004, in the original principal amount of \$26,365,000;

(viii) “City of San Antonio, Texas Water System Junior Lien Revenue and Refunding Bonds, Series 2007”, dated December 15, 2006, in the original principal amount of \$8,070,000;

(ix) “City of San Antonio, Texas Water System Junior Lien Revenue and Refunding Bonds, Series 2007A”, dated December 15, 2006, in the original principal amount of \$35,375,000;

(x) “City of San Antonio, Texas Water System Junior Lien Revenue Bonds, Series 2008”, dated May 15, 2008, in the original principal amount of \$30,000,000;

(xi) “City of San Antonio, Texas Water System Junior Lien Revenue and Refunding Bonds, Series 2008A”, dated May 15, 2008, in the original principal amount of \$23,260,000;

(xii) “City of San Antonio, Texas Water System Junior Lien Revenue Bonds, Series 2009”, dated November 1, 2009, in the original principal amount of \$54,300,000;

(xiii) “City of San Antonio, Texas Water System Junior Lien Revenue and Refunding Bonds, Series 2009A”, dated November 1, 2009, in the original principal amount of \$35,000,000;

(xiv) “City of San Antonio, Texas Water System Junior Lien Revenue Refunding Bonds, Series 2010”, dated February 1, 2010, in the original principal amount of \$59,145,000;

(xv) “City of San Antonio, Texas Water System Junior Lien Revenue and Refunding Bonds, Series 2010A”, dated December 1, 2010, in the original principal amount of \$17,930,000;

(xvi) “City of San Antonio, Texas Water System Junior Lien Revenue Bonds, Series 2011”, dated May 15, 2011, in the original principal amount of \$24,550,000;

(xvii) “City of San Antonio, Texas Water System Junior Lien Revenue and Refunding Bonds, Series 2011A”, dated May 15, 2011, in the original principal amount of \$18,095,000; and

(b) obligations hereafter issued to refund any of the foregoing if issued in a manner that provides that the refunding bonds are payable from and equally and ratably secured, in whole or in part, by a junior and inferior lien on and pledge of the City System Net Revenues as determined by the City in accordance with applicable law.

Q. *City System Junior Lien Ordinances* has the meaning ascribed thereto in the preamble of this Ordinance.

R. *City System Maintenance and Operating Expenses* means *Maintenance and Operating Expenses*, as described and defined in the City System Ordinances.

S. *City System Net Revenues* means *Net Revenues*, as described and defined in the City System Ordinances.

T. *City System Ordinances* has the meaning ascribed thereto in the preamble of this Ordinance.

U. *City System Senior Lien Obligations* means (a) the outstanding and unpaid obligations of the City that are payable solely from and equally and ratably secured, primarily, by a prior and first lien on and pledge of the City System Net Revenues (which is identified in the City System Senior Lien Ordinances as a pledge of and lien on the “Pledged Revenues”), identified as follows:

(i) “City of San Antonio, Texas Water System Revenue Refunding Bonds, Series 2002” dated February 1, 2002 in the original principal amount of \$300,510,000;

(ii) “City of San Antonio, Texas Water System Revenue Bonds, Series 2002-A” dated February 15, 2002 in the original principal amount of \$137,820,000;

(iii) “City of San Antonio, Texas Water System Revenue and Refunding Bonds, Series 2004”, dated May 15, 2004 in the original principal amount of \$84,700,000;

(iv) “City of San Antonio, Texas Water System Revenue Refunding Bonds, Series 2005”, dated November 15, 2005 in the original principal amount of \$298,220,000;

(v) “City of San Antonio, Texas Water System Revenue Refunding Bonds, Series 2007”, dated January 15, 2007 in the original principal amount of \$311,160,000;

(vi) “City of San Antonio, Texas Water System Revenue and Refunding Bonds, Series 2009”, dated January 15, 2009 in the original principal amount of \$163,755,000;

(vii) “City of San Antonio, Texas Water System Revenue Bonds, Series 2009A”, dated November 1, 2009 in the original principal amount of \$12,250,000;

(viii) “City of San Antonio, Texas Water System Revenue Bonds, Taxable Series 2009B (Direct Subsidy – Build America Bonds)”, dated November 1, 2009 in the original principal amount of \$102,750,000;

(ix) “City of San Antonio, Texas Water System Revenue Bonds, Taxable Series 2010B (Direct Subsidy – Build America Bonds)”, dated November 15, 2010 in the original principal amount of \$110,000,000;

(x) “City of San Antonio, Texas Water System Revenue Refunding Bonds, Series 2011”, dated March 15, 2011 in the original principal amount of \$46,555,000;

(xi) “City of San Antonio, Texas Water System Revenue Refunding Bonds, Series 2011A”, dated September 15, 2011 in the original principal amount of \$165,090,000; and

(b) obligations hereafter issued to refund any of the foregoing if issued in a manner so as to be payable from and equally and ratably secured by a first lien on and pledge of the City System Net Revenues of the City System as determined by the City in accordance with any applicable law.

V. *City System Senior Lien Ordinances* has the meaning ascribed thereto in the preamble of this Ordinance.

W. *City System Subordinate Lien Obligations* has the meaning ascribed thereto in the preamble of this Ordinance.

X. *Commission* has the meaning ascribed thereto in the preamble of this Ordinance.

Y. *Commissioner* means the Commissioner of the Commission.

Z. *Covered Employee* means any District employee who, as of June 17, 2011 (being the effective date of SB 341), (A) is vested in any District retirement program and (B) earns an annual base salary of less than \$50,000.

AA. *Credit Agreement*, which term has substantially the same meaning as defined and described in the District Commercial Paper Resolution, means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitments to purchase Debt, purchase or sale agreements, interest rate swap agreements, or commitments or other contracts or agreements authorized, recognized, and existing as of the date of the SAWS Transfer and assumed by the City by operation of law or thereafter approved by the Board and the City, as appropriate, any of the foregoing as a Credit Agreement in connection with the authorization, issuance, security, or payment of Debt.

BB. *Debt*, which term has substantially the same meaning as defined and described in the District Commercial Repair Resolution, means (i) all indebtedness payable from DSP Pledged Revenues and/or DSP Net Revenues incurred or assumed by the City, acting by and through the City, acting by and through the Board, for borrowed money benefiting the District Special Project (including the District Debt Obligations and indebtedness payable from DSP Pledged Revenues and/or DSP Net Revenues arising under Credit Agreements) and all other financing obligations of the District Special Project payable from DSP Pledged Revenues and/or DSP Net Revenues that, in accordance with generally accepted accounting principles, are shown on the liability side of a balance sheet and (ii) all other indebtedness payable from DSP Pledged Revenues and/or DSP Net Revenues (other than indebtedness otherwise treated as Debt hereunder) for borrowed money or for the acquisition, construction, or improvement of property or capitalized lease obligations pertaining to the DSP System that is guaranteed, directly or indirectly, in any manner by the District Special Project, or that is in effect guaranteed, directly or indirectly, by the City, acting by and through the Board on behalf of the District Special Project, through an agreement, contingent or otherwise, to purchase any such indebtedness or to advance or supply funds for the payment or purchase of any such indebtedness or to purchase property or services primarily for the purpose of enabling the debtor or seller to make payment of such indebtedness, or to assure the owner of the indebtedness against loss, or to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether or not such property is delivered or such services are rendered) or otherwise. For the purpose of determining *Debt*, there shall be excluded any particular Debt if, upon or prior to the maturity thereof, there shall have been deposited with the proper depository (a) in trust the necessary funds (or investments that will provide sufficient funds, if permitted by

the instrument creating such Debt) for the payment, redemption, or satisfaction of such Debt or (b) evidence of such Debt delivered for cancellation; and thereafter it shall not be considered Debt unless such item constitutes indebtedness under generally accepted accounting principles applied on a basis consistent with the financial statements of the District Special Project in prior Fiscal Years.

CC. *Depository*, which term has substantially the same meaning as defined and described in the District Commercial Repair Resolution, means one or more official depository banks of the Board maintained for the benefit of the District Special Project.

DD. *Designated Financial Officer* means the chief executive officer of the Board, the chief financial officer of the Board, or such other financial or accounting official of the Board so designated by the Board and the City.

EE. *Development Corporation* means the Bexar Metropolitan Development Corporation, a nonprofit industrial development corporation organized and existing under the laws of the State of Texas.

FF. *Development Corporation Bonds* means the \$30,296,423.75 “Bexar Metropolitan Development Corporation Water Facility Contract Revenue Bonds, Series 1998”, dated July 1, 1998 and currently outstanding in the principal amount of \$17,631,423.75, authorized to be issued by a Trust Agreement, dated as of July 1, 1998, between the Development Corporation and the trustee named therein, and which are payable primarily from the Development Corporation revenues derived from a Lease with an Option to Purchase, dated as of July 1, 1998, between the Development Corporation and the District pursuant to which the Development Corporation has leased to the District the surface water treatment plant (the construction of which was originally financed with the proceeds of the Development Corporation Bonds).

GG. *District* has the meaning ascribed thereto in the preamble of this Ordinance.

HH. *District Board* means the Board of Trustees of the District, being its governing body.

II. *District Commercial Paper Notes*, which term has substantially the same meaning as *Notes* as defined and described in the District Commercial Repair Resolution, means the “Bexar Metropolitan Water District Commercial Paper Notes, Series A” which are authorized by the District Commercial Paper Resolution to be issued from time to time and Outstanding in an aggregate principal amount not to exceed \$50,000,000 and are secured by and payable from a lien on and pledge of DSP Pledged Revenues that is subordinate and inferior to the lien thereon and pledge thereof securing the DSP Senior Lien Obligations and on parity with the lien thereon and pledge thereof securing the DSP Subordinate Lien Obligations, such District Commercial Paper Notes Outstanding as of the date of this Ordinance in the aggregate principal amount of \$10,000,000.

JJ. *District Commercial Paper Resolution* means the resolution of the District Board originally adopted on July 22, 2002, as amended from time to time, authorizing the

creation of the program pursuant to which District Commercial Paper Notes are from time to time issued and remain Outstanding.

KK. *District Debt Authorization* means, collectively, the District Senior Lien Orders, the District Subordinate Lien Orders, and the District Commercial Paper Resolution.

LL. *District Debt Obligations* means, collectively, the District Senior Lien Bonds, the District Subordinate Lien Bonds, the District Commercial Paper Notes, and any DSP Commercial Paper Notes issued from time to time by the City under the District Commercial Paper Resolution, as amended, for so long as any of the same remain Outstanding, along with any payment obligation secured by DSP Pledged Revenues arising under a Credit Agreement.

MM. *District Senior Lien Bonds*, which term has substantially the same meaning as *Parity Bonds* as defined and described in the District Senior Lien Orders, means those obligations heretofore issued by the District and that remain Outstanding as of the date of this Ordinance, which obligations are equally and ratably secured by and payable from a first lien on and pledge of the DSP Pledged Revenues and include:

- (i) the District Series 1998 Senior Lien Bonds;
- (ii) the District Series 2002 Senior Lien Bonds;
- (iii) the District Series 2006 Senior Lien Bonds;
- (iv) \$31,235,000 “Bexar Metropolitan Water District Waterworks System Revenue Refunding Bonds, Series 2007”, dated July 1, 2007 and currently outstanding in the principal amount of \$28,045,000, authorized to be issued by an order of the District Board adopted on June 25, 2007;
- (v) \$67,215,000 “Bexar Metropolitan Water District Waterworks System Revenue Refunding Bonds, Series 2009”, dated October 15, 2009 and currently outstanding in the principal amount of \$65,180,000, authorized to be issued by an order of the District Board adopted on September 28, 2009; and
- (vi) \$23,390,000 “Bexar Metropolitan Water District Waterworks System Senior Lien Revenue Refunding Bonds, Series 2010”, dated December 1, 2010 and currently outstanding in the principal amount of \$23,390,000, authorized to be issued by an order of the District Board adopted on January 3, 2011.

NN. *District Senior Lien Orders* means, collectively, those orders of the District Board authorizing the issuance of the District Senior Lien Bonds.

OO. *District Series 1998 Senior Lien Bonds* means the \$66,655,403.00 “Bexar Metropolitan Water District Waterworks System Revenue Bonds, Series 1998”, dated July 1, 1998 and currently outstanding in the principal amount of \$33,662,975.17, authorized to be issued by an order of the District Board adopted on June 22, 1998.

PP. *District Series 2002 Senior Lien Bonds* means the \$57,700,000 “Bexar Metropolitan Water District Waterworks System Revenue Refunding Bonds, Series 2002”, dated

July 15, 2002 and currently outstanding in the principal amount of \$23,440,000, authorized to be issued by an order of the District Board adopted on July 22, 2002.

QQ. *District Series 2006 Senior Lien Bonds* means the \$53,741,387 “Bexar Metropolitan Water District Waterworks System Revenue Refunding Bonds, Series 2006”, dated June 1, 2006 and currently outstanding in the principal amount of \$50,471,386.95, authorized to be issued by an order of the District Board adopted on May 31, 2006.

RR. *District Series 2010-A Subordinate Lien Bonds* means the \$11,820,000 “Bexar Metropolitan Water District Waterworks System Subordinate Lien Revenue Refunding Bonds, Series 2010-A”, dated December 1, 2010, and currently outstanding in the principal amount of \$11,820,000, authorized to be issued by an order of the District Board adopted on January 3, 2011.

SS. *District Special Project* or *DSP* means the Special Project identified and created in Section 2 of this Ordinance pursuant to and in accordance with the terms and provisions of the City System Ordinances and SB 341 and which includes, upon completion of the SAWS Transfer, all rights, duties and obligations that are directly and/or incidentally related to the ownership and operation of the then-former District System.

TT. *District Subordinate Lien Orders* means, collectively, those orders of the District Board authorizing the issuance of the District Subordinate Lien Bonds.

UU. *District Subordinate Lien Bonds*, which term has substantially the same meaning as *Subordinate Lien Obligations* as defined and described in the District Subordinate Lien Orders, means those obligations heretofore issued by the District and that remain Outstanding as of the date of this Ordinance, which obligations are equally and ratably secured by and payable from a subordinate lien on and pledge of the DSP Pledged Revenues and include:

(i) \$2,500,000 “Bexar Metropolitan Water District Waterworks System Subordinate Lien Revenue Bonds, Series 1995-A”, dated November 15, 1995 and currently outstanding in the principal amount of \$625,000, issued pursuant to an authorizing document adopted by the District Board adopted on November 20, 1995; and

(ii) the District Series 2010-A Subordinate Lien Bonds.

VV. *District System*, which term has substantially the same meaning as *System* as defined and described in the District Debt Authorization as of the date of the SAWS Transfer, means the District’s entire existing waterworks system, together with all future DSP Capital Acquisitions, DSP Capital Additions, and DSP Capital Improvements, all replacements thereof, and the District’s interest in any shared facility and water supply source.

WW. *DSP Capital Acquisition*, which term has substantially the same meaning as *Capital Acquisition* as defined and described in the District Senior Lien Orders and the District Commercial Paper Resolution, means the acquisition of any existing waterworks system, which shall become a part of the DSP System.

XX. *DSP Capital Additions*, which term has substantially the same meaning as *Capital Additions* as defined and described in the District Senior Lien Orders and the District Commercial Paper Resolution, means a water reservoir or an interest therein, a water storage facility, water treatment plant or an interest therein, regional oversized pipelines or an interest therein, and associated transmission facilities with respect to each, and any combination thereof, which shall become a part of the DSP System.

YY. *DSP Capital Improvements*, which term has substantially the same meaning as *Capital Improvements* as defined and described in the District Senior Lien Orders and the District Commercial Paper Resolution, means any extensions, improvements, and additions to the DSP System other than DSP Capital Additions and/or DSP Capital Acquisitions.

ZZ. *DSP Commercial Paper Notes* means commercial paper notes issued from time to time by the City in the name of the City under the District Commercial Paper Resolution, as amended by Section 14 hereof.

AAA. *DSP Debt Obligations* means any District Debt Obligations and any Additional DSP Debt at any time Outstanding.

BBB. *DSP Gross Revenues*, which term has substantially the same meaning as *Gross Revenues* as defined and described in the District Debt Authorization, means, for any period, all revenues and income of every nature derived or received by the District Special Project from the operation and ownership of the DSP System, including the interest income from the investment or deposit of money in any fund or account created by any District Debt Authorization or other document authorizing the issuance of DSP Debt Obligations to the extent described therein (excluding refundable meter deposits and federal or state grants), and including, but not limited to, revenues derived from the ownership or operation of other enterprises which the Board and the City, as appropriate, acting by and through the District Special Project, may lawfully own or operate in the future, impact fees, water development or acquisition fees, and developer extension fees and contributions in aid of construction.

CCC. *DSP Improvement and Contingency Fund*, which term has substantially the same meaning as *Improvement and Contingency Fund* as defined and described in the District Debt Authorization, means the fund established, created, and confirmed in each of the District Senior Lien Orders, and further confirmed and renamed in Section 4.B(vii) hereof, to hold funds in the amount and to be used for the purposes described in the District Senior Lien Orders and in Section 4.B(vii) hereof.

DDD. *DSP Inferior Lien Obligations*, which term has substantially the same meaning as *Inferior Lien Obligations* as defined and described in the District Commercial Paper Resolution, means any bonds, notes, warrants, or other Debt, which the District has reserved the right (and which right by reservation now inures to the benefit of the City), to hereafter issue as provided in the District Commercial Paper Resolution and in Section 4.C(iii) of this Ordinance, that are payable from and equally and ratably secured by a lien on and pledge of DSP Net Revenues that is subordinate and inferior to the lien thereon and pledge thereof securing the payment of any DSP Senior Lien Obligations or DSP Subordinate Lien Obligations.

EEE. *DSP Net Earnings*, which term has substantially the same meaning as *Net Earnings* as defined and described in the District Senior Lien Orders, means the DSP Gross Revenues after deducting the DSP Operating Expenses, but not expenditures which, under standard accounting practice, should be charged to capital expenditures.

FFF. *DSP Net Revenues*, which term has substantially the same meaning as *Net Revenues* as defined and described in the District Debt Authorization, means DSP Gross Revenues after deducting DSP Operating Expenses.

GGG. *DSP Note Payment Fund*, which term has substantially the same meaning as *Note Payment Fund* as defined and described in the District Commercial Paper Resolution, means the fund established, created, and confirmed in the District Commercial Paper Resolution, and further confirmed and renamed in Section 4.B(v) hereof, to provide for the payment of the principal of and interest on maturing District Commercial Paper Notes and DSP Commercial Paper Notes as the same becomes due and owing.

HHH. *DSP Operating Expenses*, which term has substantially the same meaning as *Operating Expenses* as defined and described in the District Senior Lien Orders and the District Subordinate Lien Orders and *Maintenance and Operating Expenses* as defined and described in District Commercial Paper Resolution, means the necessary and reasonable expenses of operation and maintenance of the DSP System, including all salaries, labor, materials, and payments under contracts for facilities shared with other entities; provided, however, repairs and extensions, as in the judgment of the Board, reasonably and fairly exercised, that are necessary to keep the DSP System in operation and render adequate service to the ratepayers of the DSP System, or such as might be necessary to meet some physical accident or condition which would otherwise impair the District Debt Obligations shall be considered DSP Operating Expenses. Depreciation and payments into and out of any debt service or debt service reserve fund as established and required in any District Debt Authorization or ordinance of the City authorizing the issuance of Additional DSP Debt shall never be considered as expenses of operation and maintenance. DSP Operating Expenses include lease payments made by the City to the Development Corporation that are used to pay debt service on the Development Corporation Bonds while the same are Outstanding.

III. *DSP Payment Obligation* means any cost of transferring, improving, expanding, repairing, operating, and maintaining the DSP System, which cost is incurred by the City, acting by and through the Board, prior to System Integration and shall include (but not be limited to) payment of (i) any costs incurred by the City or the Board in connection with effectuating the SAWS Transfer that the Board determines are properly allocable to the District Special Project, (ii) DSP Operating Expenses, and (iii) debt service on any DSP Debt Obligation, identified, calculated, and (as necessary or required) allocated by the Board in accordance with generally accepted accounting standards.

JJJ. *DSP Pledged Revenues*, which term has substantially the same meaning as *Pledged Revenues* as defined and described in the District Debt Authorization, means the DSP Net Revenues and any other revenues or assets specifically pledged by the Board, in its sole discretion, to the payment of the Outstanding District Debt Obligations or any Additional DSP Debt hereafter issued.

KKK. *DSP Senior Lien Debt Service Fund*, which term has substantially the same meaning as *Interest and Sinking Fund* as defined and described in the District Senior Lien Orders, means the fund established, created, and confirmed in each of the District Senior Lien Orders, and further confirmed and renamed in Section 4.B(ii) hereof, to provide for the payment of the principal of, redemption premium (if any), and interest on the DSP Senior Lien Obligations as the same becomes due and owing.

LLL. *DSP Senior Lien Debt Service Reserve Fund*, which term has substantially the same meaning as *Reserve Fund* as defined and described in the District Senior Lien Orders, means the fund established, created and confirmed in each of the District Senior Lien Orders, and further confirmed and renamed in Section 4.B(iii) hereof, to provide for the payment of the principal of and interest on the DSP Senior Lien Obligations when and to the extent that the amounts held in the DSP Senior Lien Debt Service Fund are insufficient for such purpose and, at the Board's discretion, to finally retire, by maturity, early redemption, or otherwise, any DSP Senior Lien Obligations.

MMM. *DSP Senior Lien Debt Service Reserve Requirement*, which term has substantially the same meaning as *Reserve Requirement* as defined and described in the District Senior Lien Orders, means the lesser of (i) 10% of the face amount of the DSP Senior Lien Obligations, (ii) 100% of the maximum annual debt service for the DSP Senior Lien Obligations, and (iii) 125% of the average annual debt service for the DSP Senior Lien Obligations.

NNN. *DSP Senior Lien Obligations*, which term has substantially the same meaning as *Parity Bonds* as defined and described in the District Senior Lien Orders, means the District Senior Lien Bonds at any time Outstanding and any Additional DSP Senior Lien Obligations hereafter issued by the City.

OOO. *DSP Special Facility Debt*, which term has substantially the same meaning as *Special Facilities Bonds* as defined and described in the District Debt Authorization, means special revenue obligations of the City, issued for the benefit of the District Special Project, which are not payable from or secured by any DSP Net Revenues, but which are secured by and payable from liens on and pledges of any other revenues, sources, or payments, including (but not limited to) special contract revenues, sources, or payments which shall not be considered or constitute DSP Gross Revenues, unless and to the extent otherwise provided in the ordinance or ordinances authorizing the issuance of the subject DSP Special Facility Debt.

PPP. *DSP Subordinate Lien Debt Service Fund*, which term has substantially the same meaning as *Interest and Sinking Fund* as defined and described in the District Subordinate Lien Orders, means the fund established, created, and confirmed in each of the District Subordinate Lien Orders, and further confirmed and renamed in Section 4.B(iv) hereof, to provide for the payment of the principal of, redemption premium (if any), and interest on the DSP Subordinate Lien Obligations as the same becomes due and owing.

QQQ. *DSP Subordinate Lien Debt Service Reserve Fund*, which term has substantially the same meaning as *Reserve Fund* as defined and described in the District Subordinate Lien Order authorizing the issuance of the District Series 2010-A Subordinate Lien Bonds, means the fund established and created in the District Subordinate Lien Order authorizing the issuance of the District Series 2010-A Subordinate Lien Bonds, and further confirmed and

renamed in Section 4.B(vi) hereof, to provide for the payment of the principal of and interest on the District Series 2010-A Subordinate Lien Bonds when and to the extent that the amounts held in the DSP Subordinate Lien Debt Service Fund are insufficient for such purpose and, at the City's discretion, to finally retire, by maturity, early redemption, or otherwise, the District Series 2010-A Subordinate Lien Bonds.

RRR. *DSP Subordinate Lien Debt Service Reserve Requirement* means, as of the date of this Ordinance, the amount of \$1,182,000 (as specified in the District Subordinate Lien Order authorizing the issuance of the District Series 2010-A Subordinate Lien Bonds) or such larger amount that may be required to be on deposit in the DSP Subordinate Lien Debt Service Reserve Fund upon the issuance of Additional DSP Subordinate Lien Debt Obligations, as may be provided in any ordinance or resolution of the City authorizing such Additional DSP Subordinate Lien Debt Obligations.

SSS. *DSP Subordinate Lien Obligations* means the District Subordinate Lien Bonds and the District Commercial Paper at any time Outstanding and any Additional DSP Subordinate Lien Obligations hereafter issued by the City.

TTT. *DSP System*, which term has substantially the same meaning as *System* as defined and described in the District Debt Authorization, means (i) the former District System assumed by the City as of the effective date of the SAWS Transfer and owned and operated thereby as the District Special Project, together with all future DSP Capital Acquisitions, DSP Capital Additions, and DSP Capital Improvements and all replacements thereof, made in accordance with the provisions of this Ordinance and any District Debt Authorization prior subsequent to the effective date of the SAWS Transfer and prior to System Integration and (ii) any other related facilities, all or any part of the revenues or income from which may, in the future, at the option of the Board and the City, as appropriate, and in accordance with law, become DSP Pledged Revenues; provided, however, that, notwithstanding the foregoing and to the extent now or hereafter authorized or permitted by law, the term "DSP System" shall not mean any water or other facilities of any kind which are declared by the Board not to be a part of the DSP System and which are acquired or constructed by the City with the proceeds from the issuance of DSP Special Facility Debt.

UUU. *DSP System Fund*, which term has substantially the same meaning as *System Fund* as defined and described in the District Debt Authorization, means the fund established, created, and confirmed in each of District Authorization, and further confirmed and renamed in Section 4.B(i) hereof, into and from which all DSP Gross Revenues are deposited and disbursed, respectively.

VVV. *Election* has the meaning ascribed thereto in the preamble of this Ordinance.

WWW. *Engineer of Record*, which term has substantially the same meaning as defined and described in the Senior Lien Orders, means the independent engineer or firm at the time employed by the City, acting by and through the Board, to perform and carry out the duties imposed on such engineer or firm by any District Senior Lien Order and/or this Ordinance and having a favorable reputation nationally for skill and experience in the engineering of waterworks systems of comparable size and character as those forming all or part of the DSP System.

XXX. *Financing Transaction* means, for the purpose of establishing the District Special Project, the District Debt Obligations assumed by the City as obligations of the City payable from and secured by a lien on and pledge of the DSP Pledged Revenues, as well as any other District Debt Obligation issued or incurred subsequent to the effective date of the SAWS Transfer but prior to System Integration.

YYY. *Fiscal Year*, which term has substantially the same meaning as *Year* or *fiscal year* as each are defined and described in the District Senior Lien Orders and the District Subordinate Lien Orders, means the twelve-month accounting period used by the Board in connection with the operation of the DSP System and the District Special Project, currently ending on April 30th of each year until such ending date is changed pursuant to Section 15 hereof, which may be any twelve consecutive month period established by the Board.

ZZZ. *Government Securities* which term has substantially the same meaning as *Government Obligations* as defined and described in the District Senior Lien Orders and the District Subordinate Lien Orders, means the (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America; (ii) noncallable obligations of the following agencies or instrumentalities of the United States, which obligations are unconditionally guaranteed or insured by the full faith and credit of the United States and, on the date the City adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than “AAA” or its equivalent: U.S. Export-Import Bank, Farmers Home Administration, Federal Financing Bank, General Services Administration, U.S. Maritime Administration, and U.S. Department of Housing and Urban Development; or (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the City adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by S&P and Moody’s not less than “AAA” and “Aaa”, respectively (if there is no Moody’s rating, then the pre-funded obligations must be been pre-funded with cash, direct United States or United States-guaranteed obligations, or “AAA” rated pre-funded municipal obligations).

AAAA. *Interest Payment Date* means the date semiannual interest is payable on any DSP Debt Obligation while any of the same remains Outstanding.

BBBB. *Moody’s* means Moody’s Investors Service, Inc.

CCCC. *Ordinance* means this ordinance adopted by the City Council on October 27, 2011.

DDDD. *Outstanding* when used in this Ordinance with respect to DSP Debt Obligations means, as of the date of determination, all DSP Debt Obligations identified in this Ordinance, except:

(i) those DSP Debt Obligations canceled by the paying agent/registrars therefor or delivered to the paying agent/registrars therefor for cancellation;

(ii) those DSP Debt Obligations for which payment has been duly provided by the City in accordance with the applicable defeasance provisions of the document

authorizing the issuance of the particular series of DSP Debt Obligations and Chapter 1207, as amended, Texas Government Code; and

(iii) those DSP Debt Obligations that have been mutilated, destroyed, lost, or stolen and replacement DSP Debt Obligations have been registered and delivered in lieu thereof in accordance with the applicable provisions of the document authorizing the issuance of the particular series of DSP Debt Obligations and Chapter 1206, as amended, Texas Government Code.

EEEE. *Permitted Investments*, which term has substantially the same meaning as specified in the District Debt Authorization, means, for so long as any District Debt Obligations remain Outstanding:

(i) direct obligations of the United States or its agencies and instrumentalities;

(ii) obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:

(a) the Export-Import Bank;

(b) the Farmers Home Administration;

(c) the U.S. Maritime Administration;

(d) the Small Business Administration;

(e) the Government National Mortgage Association;

(f) the U.S. Department of Housing and Urban Development (PHAs);

and

(g) the Federal Housing Administration;

(iii) bonds, notes, or other evidences of indebtedness rated “AAA” by S&P and “Aaa” by Moody’s issued by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years;

(iv) U.S. dollar denominated deposit accounts, federal funds, and banker’s acceptances with domestic commercial banks which:

(a) have a rating on their short term certificates of deposit on the date of purchase of “A-1” or “A-1+” by S&P and “P-1” by Moody’s (ratings on holding companies are not considered as the rating of the bank); and

(b) mature no more than 360 days after the date of purchase.

Although the following securities fall within categories (i) through (iii) listed above, they are not Permitted Investments: (A) obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and

pays no principal; (B) obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest; (C) collateralized mortgage obligations that have a stated final maturity date of greater than ten years; and (D) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

FFFF. *Prudent Utility Practice* means any of the practices, methods, and acts, in the exercise of reasonable judgment, in the light of the facts, including but not limited to the practices, methods, and acts engaged in or previously approved by a significant portion of the public utility industry, known at the time the decision was made, that would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. It is recognized that Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather is a spectrum of possible practices, methods, or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In the case of any facility included in the DSP System which is operated in common with one or more other entities, the term *Prudent Utility Practice*, as applied to such facility, shall have the meaning set forth in the agreement governing the operation of such facility.

GGGG. *SAWS Transfer* has substantially the meaning ascribed thereto in the preamble of this Ordinance.

HHHH. *SB 341* has substantially the meaning ascribed thereto in the preamble of this Ordinance.

III. *Special Project* means, as defined in the City System Ordinances and to the extent permitted by law, any water, wastewater, reuse water, or municipal drainage system property, improvement, or facility declared by the City, upon the recommendation of the Board, not to be part of the City System, for which the costs of acquisition, construction, and installation are paid from proceeds of a financing transaction other than the issuance of bonds payable from ad valorem taxes, Pledged Revenues (as defined and described in the City System Senior Lien Ordinances), or City System Net Revenues and for which all maintenance and operation expenses are payable from sources other than ad valorem taxes, Pledged Revenues, or City System Net Revenues, but only to the extent that and for so long as all or any part of the revenues or proceeds of which are or will be pledged to secure the payment or repayment of such costs of acquisition, construction, and installation under such financing transaction.

JJJJ. *Special Project Resolution* has the meaning ascribed thereto in the preamble of this Ordinance.

KKKK. *System Integration* means the an event, the occurrence of which is evidenced by resolution of the Board or City ordinance declaring that (i) the areas of service located in the former District are no longer operated as a part of the District Special Project, (ii) the ratepayers of the former District pay the same rates for services provided by the City System as other similarly situated City System ratepayers, and (iii) the former District System ratepayers receive water service that meets the requirements of the Commission.

SECTION 2: Creation of the District Special Project. As permitted by and in accordance with the provisions of the City System Ordinances and SB 341, the City hereby establishes and creates, the District Special Project as a “Special Project” identified in and as contemplated by each of the City System Ordinances and SB 341. In connection with such creation, the City Council hereby finds, determines, and concludes that, in reliance and based upon the facts and circumstances presented to the City and by recommendation of the Board included in the Special Project Resolution, the creation of the District Special Project (i) represents the implementation of a plan that is consistent with sound planning, (ii) will not materially and adversely interfere with the operation of the City System, (iii) can be economically and efficiently operated and maintained, and (iv) can be economically and efficiently utilized by the Board to meet water, wastewater, water reuse, or stormwater drainage requirements and the cost of such will be reasonable. These findings, determinations, and conclusions of the City shall evidence the City’s satisfaction of all prerequisites to the creation of a Special Project as specified in the City System Ordinance; for the purpose of satisfying the Special Project definition, as included in the City System Ordinances, the Financing Transactions are hereby found and determined to constitute the “financing transactions” identified in that definition.

As recommended by the Board in the Special Project Resolution, the City Council hereby declares that the District Special Project, until such time as System Integration occurs in accordance Section 13 hereof, shall not be considered and is in fact not part of the City System. Any costs or payment obligations incurred by the City or the Board in connection with the SAWS Transfer shall represent a DSP Payment Obligation and, to the extent the same are not properly classified as a DSP Operating Expense or a payment associated with a DSP Debt Obligation, such costs or payment obligations are properly payable from the DSP System Fund at the SEVENTH level of priority as specified in Section 4.B(i)(g) hereof.

Furthermore, for the purpose of Texas Government Code Section 851.001(7), the City Council hereby recognizes the District Special Project as a separate division of the City System performing a governmental or proprietary function of the City and hereby elects that the District Special Project shall not participate in the Texas Municipal Retirement System.

SECTION 3: City Acceptance of Assets and Assumption of Liabilities, Rights, Duties and Obligations. Upon certification to the Texas Secretary of State identifying the results of the Election in favor of the SAWS Transfer, the City shall, as specified in SB 341, accept ownership, along with the responsibility of controlling the operation and maintenance, of the District System. In addition, at such time as the Commissioner transfers the same to the City in accordance with the provisions of and subject to the qualifications set forth in SB 341, the City shall accept such transfer of:

- A. all rights and duties of the District, including existing contracts, duties, assets, and obligations of the District;
- B. all files, records, and accounts of the District, including those that pertain to the control, finances, management, and operation of the District; and
- C. all permits, approvals, and certificates necessary to provide water services.

In connection with its acceptance of the responsibilities of controlling the operation and maintenance of the District System, and because ownership of the assets constituting the District System is necessary to carry out this legally imposed City obligation arising under SB 341, the City also accepts the ownership of District assets incidental thereto and resultant therefrom. To the extent that the aforementioned transfers by the Commissioner do not occur simultaneously with the City's acceptance of controlling the operation and maintenance of the District System, the Board is hereby authorized, upon such acceptance, to transfer to the City, to the extent permitted by applicable law (including SB 341), the legal and/or equitable title to all District assets, leaving as ministerial in nature the final transfer of legal title to such assets to the City by the Commissioner as required by SB 341.

All assumptions by and transfers to the City as a result of the SAWS Transfer shall be initially and immediately placed in and made a part of and shall constitute the District Special Project for all purposes under the control, management, and operation of the Board, where the same shall remain and exist until System Integration occurs in accordance with Section 13 hereof. In connection with the foregoing, the City hereby covenants that, upon its assumption of the assets, rights, duties, and obligations described in this Section 3, it shall provide affordable and reliable water services to all former ratepayers of the District System. In connection with the foregoing, the City adopts the District's water service rate structure and rate tariffs in existence on the date of the SAWS Transfer as the rate structure and rate tariffs applicable to the District Special Project, and the City shall keep and maintain the same as the District Special Project rate structure until the earlier to occur of (i) a change in rates applicable to the District Special Project made in accordance with the terms of this Ordinance and (ii) System Integration as specified in SB 341.

SB 341 specifically provides that the SAWS Transfer, and the subsequent assumption by the City of the District's role as its legal successor in interest, is not intended to enhance or harm the position of any entity with whom the District has originally contracted. Further, SB 341 provides that no law or charter provision shall be construed to limit the City's performance of an obligation that it has assumed under a District contract if revenue from that contract was pledged wholly or partly to pay debt service on revenue bonds approved by the Texas Attorney General. For these reasons, the City hereby affirmatively asserts and affirms its acceptance as its own the duties and obligations imposed upon the District under each District Debt Authorization for so long as any series of related District Debt Obligation remains Outstanding. With respect to District Debt Obligations, each District Debt Authorization includes covenants and obligations that are the responsibility of the District and inure to and are for the benefit of the related series of District Debt Obligation. City affirmation of covenants relating to all District Debt Obligations is accomplished in Section 4 hereof; affirmation of covenants relating to individual series of District Debt Obligations is accomplished in Section 5 hereof. Through these affirmations, the City has complied with this requirement of SB 341.

SECTION 4: Affirmation of Existing District Covenants Applicable to All District Debt Obligations. In connection with its issuance from time to time of the District Debt Obligations, the District made certain covenants for the benefit and protection of the holders of the District Debt Obligations as the same relates to the ownership and operation of the District System. Those covenants that relate specifically to the ownership and operation of the former District System heretofore made by the District, as well as the collection and disbursement of revenues

derived from the same, are reproduced herein in substance and made applicable to the City's ownership and operation of the District Special Project and the DSP System for so long as any District Debt Obligation assumed by the City in connection with the SAWS Transfer remains Outstanding.

A. Rates and Charges. The City will fix and maintain rates and collect charges for the facilities and services afforded by the District Special Project and the DSP System which will provide revenues sufficient at all times:

- (i) to pay all DSP Operating Expenses;
- (ii) to establish and maintain the DSP Senior Lien Debt Service Fund;
- (iii) to generate in each year DSP Net Revenues equal to 1.25 times the maximum annual requirement for the payment of the principal of and interest on the DSP Senior Lien Obligations at the time Outstanding (although amounts shall be paid into the applicable debt service and/or debt service reserve fund in accordance with the provisions and at the times specified in the applicable order, ordinance, or resolution authorizing the issuance of the subject series of DSP Debt Obligations) during the then-current Fiscal Year;
- (iv) for so long as any District Commercial Paper Notes or DSP Commercial Paper Notes remain Outstanding, to produce DSP Net Revenues equal to at least (i) 1.10 times the annual coverage requirements for the payment of the principal of and interest on the DSP Senior Lien Obligations at the time Outstanding and (ii) the amounts required to be deposited in any reserve or contingency fund created for the payment and security of the DSP Senior Lien Obligations;
- (v) to establish and maintain the DSP Subordinate Lien Debt Service Fund;
- (vi) to produce DSP Net Revenues equal to at least (i) 1.10 times the maximum annual requirement for the payment of the principal of and interest on the DSP Subordinate Lien Obligations at the time Outstanding and (ii) the amounts required to be deposited in any reserve or contingency fund created for the payment and security of the DSP Subordinate Lien Obligations;
- (vii) to produce DSP Net Revenues, together with any other lawfully available funds (including the proceeds of any other DSP Debt Obligations which the City expects will be utilized to pay all or part of the principal and/or interest on any obligations described in this clause (vii), but excluding any City System Gross Revenues, the City's general fund, or any funds derived by the City's exercise of its ability to levy and collect an ad valorem tax), sufficient to pay the principal of and interest on any DSP Inferior Lien Obligations hereafter issued as the same becomes due and payable and to deposit the amounts required to be deposited into any special fund created and established for the payment and security of any DSP Inferior Lien Obligations hereafter issued; and
- (viii) to pay any other Outstanding DSP Debt Obligations payable from and/or secured by a lien on and pledge of any DSP Net Revenues or the assets of the District

Special Project, other than any DSP Special Facility Debt, as and when the same become due and payable.

For the purpose of performing the calculation described in clause (vi) above, only the principal of the District Commercial Paper Notes or DSP Commercial Paper Notes which are not being paid from available proceeds of District Commercial Paper Notes, DSP Commercial Paper Notes, or other DSP Debt Obligations shall be considered Outstanding.

B. DSP Funds and Accounts.

(i) *DSP System Fund; Flow of Funds.* There has been created and established in the District Debt Authorization, and accounted for separate and apart from all other funds, a special fund entitled the “Bexar Metropolitan Water District Waterworks System Fund”, which establishment and creation is hereby confirmed and such fund is hereby renamed the SAN ANTONIO WATER SYSTEM DSP SYSTEM FUND (the *DSP System Fund*). All DSP Gross Revenues are and shall be credited to the DSP System Fund immediately upon receipt.

Payments from the DSP System Fund shall be made in the following irrevocable order of priorities when and as required by any (i) District Debt Authorization for so long as any District Debt Obligation assumed by the City in connection with the SAWS Transfer remains Outstanding, (ii) City ordinance or resolution authorizing the issuance of any Additional DSP Debt, or (iii) Credit Agreement hereafter entered into by the City (or any amendment to a Credit Agreement that exists as of the effective date of the SAWS Transfer and remains in effect thereafter).

(a) FIRST, to the payment of DSP Operating Expenses;

(b) SECOND, (1) until such time as no District Series 1998 Senior Lien Obligations remain Outstanding, to the DSP Senior Lien Debt Service Fund, when and in the amounts required by any District Senior Lien Order or ordinance or resolution of the City authorizing the issuance of any Additional DSP Senior Lien Obligations and (2) thereafter, to the DSP Senior Lien Debt Service Fund, when and in the amounts required by any District Senior Lien Order or ordinance or resolution of the City authorizing the issuance of any Additional DSP Senior Lien Obligations or any Credit Agreement;

(c) THIRD, to the DSP Senior Lien Debt Service Reserve Fund, when and in the amounts required by any District Senior Lien Order or ordinance or resolution of the City authorizing the issuance of any Additional DSP Senior Lien Obligations;

(d) FOURTH, to the payment of principal and interest requirements for any District Debt Obligations currently Outstanding or Additional DSP Debt hereafter issued that are payable from and secured by a lien on and pledge of the Pledged Revenues that is subordinate and inferior to the lien thereon and pledge thereof that secures the repayment of the DSP Senior Lien Obligations, when and

in the amounts required by any District Debt Authorization or ordinance or resolution of the City authorizing the issuance of such Additional DSP Debt, including any payment obligation arising under a Credit Agreement;

(e) FIFTH, to the DSP Subordinate Lien Debt Service Reserve Fund or any additional and similar fund, when and in the amounts required by any District Subordinate Lien Order or ordinance or resolution of the City authorizing the issuance of any Additional DSP Subordinate Lien Obligations that are additionally secured by a lien on and pledge of a debt service reserve fund (including, but not limited to, the DSP Subordinate Lien Debt Service Reserve Fund);

(f) SIXTH, to the DSP Improvement and Contingency Fund, when, in the amounts, and as required by the District Senior Lien Orders and as specified by Section 4.B(vii) of this Ordinance; and

(g) SEVENTH, all remaining amounts to be used by the City and the Board for any lawful purpose relating to the District Special Project.

(ii) *DSP Senior Lien Debt Service Fund.* For the sole purpose of paying the principal of, redemption premium, if any, and interest on the DSP Senior Lien Obligations, as the same come due and owing, there has been created and established in the District Senior Lien Orders, and accounted for separate and apart from all other funds, the “Bexar Metropolitan Water District Waterworks System Parity Bonds Interest and Sinking Fund”, which establishment and creation is hereby confirmed and such fund is hereby renamed the SAN ANTONIO WATER SYSTEM DSP SENIOR LIEN OBLIGATIONS DEBT SERVICE FUND (the *DSP Senior Lien Debt Service Fund*). Payments into the DSP Senior Lien Debt Service Fund shall be made in substantially equal monthly payments (commencing with respect to a particular series of DSP Senior Lien Obligations on the date of initial delivery of such obligations to the initial purchasers thereof) during each year in which any of the DSP Senior Lien Obligations are Outstanding in an aggregate amount equal to 100% of the amounts required to meet the interest and principal payments falling due on or before the next Interest Payment Date or date of prior redemption of the DSP Senior Lien Obligations.

The Board shall, for so long as the DSP Series 1998 Senior Lien Bonds and the DSP Series 2002 Senior Lien Bonds remain Outstanding, at least five days prior to the next occurring Interest Payment Date deposit into the DSP Senior Lien Debt Service Fund any additional DSP Pledged Revenues available in the DSP System Fund which may be necessary to pay in full the interest on and principal, if any, coming due, whether by scheduled maturity or prior redemption, on such Interest Payment Date. Thereafter, the Board shall, within a reasonable period of time necessary to permit the paying agent/registrars for each series of DSP Senior Lien Obligations to make scheduled payments on each Interest Payment Date, deposit into the DSP Senior Lien Debt Service Fund any additional DSP Pledged Revenues available in the DSP System Fund which may be necessary to pay in full the interest on and principal, if any, coming due, whether by scheduled maturity or prior redemption, on such Interest Payment Date. In no event shall any amount in excess of the amounts stated above be retained in the DSP Senior

Lien Debt Service Fund, and any such excess amount may be withdrawn by the Board and replaced in the DSP System Fund.

(iii) *DSP Senior Lien Debt Service Reserve Fund.* There has been created and established, in the District Senior Lien Orders, and accounted for separate and apart from all other funds, the “Bexar Metropolitan Water District Waterworks System Parity Bonds Reserve Fund”, which establishment and creation is hereby confirmed and such fund is hereby renamed the SAN ANTONIO WATER SYSTEM DSP SENIOR LIEN OBLIGATIONS DEBT SERVICE RESERVE FUND (the *DSP Senior Lien Debt Service Reserve Fund*). The DSP Senior Lien Debt Service Reserve Fund is used to pay the principal of and interest on the DSP Senior Lien Obligations when and to the extent the amounts in the DSP Senior Lien Debt Service Fund available for such payment are insufficient for such purpose, and may be used for the purpose of finally retiring the last of the DSP Senior Lien Obligations. Notwithstanding any provision hereof to the contrary, no deposits shall be made into the DSP Senior Lien Debt Service Reserve Fund at a time when there is a deficiency in the amount on deposit in the DSP Senior Lien Debt Service Fund nor shall any deposits be made into the DSP Senior Lien Debt Service Reserve Fund at any time it contains an amount equal to or greater than the DSP Senior Lien Debt Service Reserve Requirement. If and whenever the balance in the DSP Senior Lien Debt Service Reserve Fund is reduced below the DSP Senior Lien Debt Service Reserve Requirement, the District shall, from the first available and unallocated DSP Pledged Revenues of the following month or months, cause amounts equal in the aggregate to any such deficiency to be set apart and transferred into the DSP Senior Lien Debt Service Reserve Fund from the DSP System Fund; provided, however, that in any event the DSP Senior Lien Debt Service Reserve Fund balance shall be restored to the DSP Senior Lien Debt Service Reserve Requirement within 12 months of such reduction. If at the end of any Fiscal Year, surplus funds remain in the DSP Senior Lien Debt Service Reserve Fund resulting from any reduction of the DSP Senior Lien Debt Service Reserve Requirement or otherwise, they shall be promptly transferred from the DSP Senior Lien Debt Service Reserve Fund into the DSP Senior Lien Debt Service Fund and payments into the DSP Senior Lien Debt Service Fund from the DSP System Fund shall be reduced accordingly.

To satisfy the DSP Senior Lien Debt Service Reserve Requirement, the City may (i) use cash from DSP Net Revenues, proceeds resultant from the sale of a new series of Additional DSP Senior Lien Obligations, or money from any other lawfully available sources; (ii) use a surety bond in lieu thereof; (iii) use a combination of such cash and surety bond; or (iv) make equal semiannual installment payments to the DSP Senior Lien Debt Service Reserve Fund over the 24-month period following the issuance of a new series of Additional DSP Senior Lien Obligations, all as the City deems reasonable and appropriate, to fund the DSP Senior Lien Debt Service Reserve Fund; provided, however, that (A) the amount of any such cash, the coverage of any surety bond in lieu thereof, the amount of such cash and the coverage of such surety bond, and the sum of the semiannual payments when added together shall at least equal the DSP Senior Lien Debt Service Reserve Requirement and (B) any such surety bond provided in lieu of cash shall be issued by an insurance company or association of companies whose insured obligations are rated by a nationally recognized rating agency in its highest rating

category. The District has, in the District Senior Lien Orders, evidenced its intention, which intention is hereby adopted and assumed by the City, that to provide maximum flexibility with respect to the DSP Senior Lien Debt Service Reserve Fund to be provided for any of the DSP Senior Lien Obligations, the foregoing provisions shall be liberally construed in order to achieve that objective without materially prejudicing the rights and interests of the owners of the DSP Senior Lien Obligations at any time Outstanding.

(iv) *DSP Subordinate Lien Debt Service Fund.* There has been created and established, in the respective District Subordinate Lien Orders, and accounted for separate and apart from all other funds, the “Bexar Metropolitan Water District Waterworks System Subordinate Lien Interest and Sinking Fund,” and the “Bexar Metropolitan Water District Waterworks System Subordinate Lien Revenue Refunding Bonds, Taxable Series 2010-A Interest and Sinking Fund”, which establishment and creation is hereby confirmed and which funds are hereby renamed the SAN ANTONIO WATER SYSTEM DSP SUBORDINATE LIEN OBLIGATIONS INTEREST AND SINKING FUND and the SAN ANTONIO WATER SYSTEM DSP SUBORDINATE LIEN OBLIGATIONS REVENUE BONDS, TAXABLE SERIES 2010-A INTEREST AND SINKING FUND, respectively (together, the *DSP Subordinate Lien Debt Service Fund*).

The DSP Pledged Revenues remaining after payment of the principal of, premium, if any, interest on the DSP Senior Lien Obligations and the DSP Senior Lien Debt Service Reserve Requirement, shall be paid in substantially equal monthly payments into the DSP Subordinate Lien Debt Service Fund commencing on the date of delivery of the initial delivery of the DSP Subordinate Lien Obligations to the initial purchaser thereof and continuing until no DSP Subordinate Lien Obligations are Outstanding, such that the DSP Subordinate Lien Debt Service Fund will contain an amount equal to 100% of the amounts required to meet the payments falling due on or before the next Interest Payment Date of the DSP Subordinate Lien Obligations. The City shall, at least five days prior to each May 1 or November 1, deposit into the DSP Subordinate Lien Debt Service Fund any additional DSP Pledged Revenues available in the DSP System Fund which may be necessary to pay in full the interest or interest and principal coming due on such May 1 or November 1. In no event shall any amount in excess of the amounts stated above be retained in the DSP Subordinate Lien Debt Service Fund, and any such excess amount may be withdrawn by the Board and replaced in the DSP System Fund.

(v) *DSP Note Payment Fund.* There has been created and established, in the District Commercial Paper Resolution, and accounted for separate and apart from all other funds, the “Bexar Metropolitan Water District Commercial Paper Note Payment Fund”, which establishment and creation is hereby confirmed and which fund is hereby renamed the SAN ANTONIO WATER SYSTEM DSP COMMERCIAL PAPER NOTE PAYMENT FUND (the *DSP Note Payment Fund*). Money on deposit in the DSP Note Payment Fund shall be used to (a) pay principal of and interest on District Commercial Paper Notes or DSP Commercial Paper Notes at the respective interest payment dates or maturity dates of each issue of such District Commercial Paper Notes or DSP Commercial Paper Notes, as provided in the District Commercial Paper Resolution, and

(b) (except proceeds from draws on any letter of credit providing liquidity support for the DSP Commercial Paper Notes delivered and made available pursuant to a Credit Agreement) repay any amounts Outstanding under a bank note or similar instrument evidencing an obligation to repay any amount owed under such Credit Agreement. Proceeds of DSP Commercial Paper Notes remaining in the DSP Note Payment Fund not then necessary for the purposes thereof (except proceeds from draws on the aforementioned letter of credit) may be transferred to a construction fund created for the purpose of holding proceeds of DSP Commercial Paper Notes issued for purposes other than the repayment of maturing District Commercial Paper Notes or DSP Commercial Paper Notes (the creation of such construction fund or funds being hereby authorized, so long as the maintenance of the same is consistent with the treatment of any similar fund or account authorized to be created under the District Commercial Paper Resolution) upon request of a Designated Financial Officer.

Pursuant to the applicable provisions of the District Commercial Paper Resolution, the proceeds of all DSP Commercial Paper Notes issued upon the maturity of previously issued District Commercial Paper Notes or DSP Commercial Paper Notes shall be deposited into the DSP Note Payment Fund and used to reimburse any bank providing a letter of credit or similar means of liquidity for the District Commercial Paper Notes or DSP Commercial Paper Notes for any amounts drawn under such letter of credit or otherwise advanced by such bank which amounts have not been repaid to such bank by the City. In accordance with District Commercial Paper Resolution, all proceeds of loans or other advances from a bank as heretofore described shall be deposited into the DSP Note Payment Fund and used to pay the principal of and interest on the District Commercial Paper Notes or the DSP Commercial Paper Notes when due.

Additionally, all DSP Net Revenues, if any, which are to be transferred from the DSP System Fund to pay the principal of and interest on District Commercial Paper Notes or DSP Commercial Paper Notes pursuant to the District Commercial Paper Resolution when due shall be deposited from the applicable DSP Subordinate Lien Debt Service Fund into the DSP Note Payment Fund and used to reimburse any bank described in this clause.

(vi) *DSP Subordinate Lien Debt Service Reserve Fund.* There has been created and established, in the District Subordinate Lien Order authorizing the issuance of the District Series 2010-A Subordinate Lien Bonds, the “Bexar Metropolitan Water District Waterworks System Subordinate Lien Revenue Refunding Bonds, Taxable Series 2010-A, Reserve Fund”, which establishment and creation is hereby confirmed and which fund is hereby renamed the SAN ANTONIO WATER SYSTEM DSP SUBORDINATE LIEN REVENUE BONDS, TAXABLE SERIES 2010-A DEBT SERVICE RESERVE FUND (the *DSP Subordinate Lien Debt Service Reserve Fund*). The DSP Subordinate Lien Debt Service Reserve Fund shall be used to pay the principal of the District Series 2010-A Subordinate Lien Bonds when and to the extent the amounts in the applicable DSP Subordinate Lien Debt Service Fund available for such payment are insufficient for such purpose, and may be used for the purpose of finally retiring the last of any Series 2010-A Subordinate Lien Bonds. If and whenever the balance held in the DSP Subordinate Lien Debt Service Reserve Fund is reduced below the DSP

Subordinate Lien Debt Service Reserve Requirement, the City shall, from the first available and unallocated DSP Pledged Revenues of the following month or months, cause amounts equal in the aggregate to any such deficiency to be set apart and transferred into the DSP Subordinate Lien Debt Service Reserve Fund from the DSP System Fund; provided, however, that in any event the DSP Subordinate Lien Debt Service Reserve Requirement shall be restored within 24 months of such reduction. Surplus funds in the DSP Subordinate Lien Debt Service Reserve Fund resulting from investment proceeds, any reduction of the DSP Subordinate Lien Debt Service Reserve Requirement, or otherwise shall be promptly transferred from the DSP Subordinate Lien Debt Service Reserve Fund into the DSP Subordinate Lien Debt Service Reserve Fund relating to the District Series 2010-A Subordinate Lien Bonds, and payments into the DSP Subordinate Lien Debt Service Reserve Fund relating to the District Series 2010-A Subordinate Lien Bonds from the DSP System Fund shall be reduced accordingly.

(vii) *DSP Improvement and Contingency Fund.* There has been created and established, in the District Senior Lien Orders (and acknowledged in the other District Debt Authorization), and accounted for separate and apart from all other funds, the “Bexar Metropolitan Water District Improvement and Contingency Fund”, which establishment and creation is hereby confirmed and such fund is hereby renamed the SAN ANTONIO WATER SYSTEM DSP IMPROVEMENT AND CONTINGENCY FUND (the *DSP Improvement and Contingency Fund*). The DSP Improvement and Contingency Fund shall be used for the purpose of paying the costs of improvements, enlargements, extensions, additions, replacements, or other capital expenditures related to the DSP System, or for paying the costs of unexpected or extraordinary repairs or replacements of the DSP System, or for paying unexpected or extraordinary expenses of operation and maintenance of the DSP System, or for any other lawful purpose.

The Board shall cause to be deposited to the credit of the DSP Improvement and Contingency Fund on the 15th day of each month for 36 consecutive months equal amounts until the DSP Improvement and Contingency Fund contains \$1,500,000. Subject to the priorities and deposits provided for and required under the District Debt Authorization and as specified in Section 4.B(i) of this Ordinance, at the end of each Fiscal Year thereafter, the Board shall transfer all remaining surplus DSP Pledged Revenues from the DSP System Fund and deposit same to the credit of the DSP Improvement and Contingency Fund to maintain such fund at \$1,500,000. Any amounts withdrawn from the DSP Improvement and Contingency Fund shall be replenished in full within 36 months of the withdrawal.

The Board, by formal resolution, may adjust the amount to be held in the DSP Improvement and Contingency Fund; provided, however, that such amount shall not be reduced to be less than three months of DSP Operating Expenses as shown on the District Special Project budget for the then-current Fiscal Year.

C. Additional DSP Debt.

(i) *Additional DSP Senior Lien Obligations.* In addition to Additional DSP Subordinate Lien Obligations and DSP Inferior Lien Obligations, the District has in the District Debt Authorization reserved the right, which right by reservation now inures to

the benefit of the City, hereafter to issue, subject to the remaining provisions hereof, Additional DSP Senior Lien Obligations, and the Additional DSP Senior Lien Obligations, when issued, may be secured by and payable from a lien on and pledge of the DSP Pledged Revenues in the same manner and to the same extent as then-Outstanding DSP Senior Lien Obligations, and, upon the issuance thereof, the Additional DSP Senior Lien Obligations will be in all respects of equal dignity with the then-Outstanding DSP Senior Lien Obligations. The Additional DSP Senior Lien Obligations may be issued to provide funds for DSP Capital Acquisitions, DSP Capital Additions, and DSP Capital Improvements, and for any other lawful purpose. No Additional DSP Senior Lien Obligations shall be issued, however, unless such Additional DSP Senior Lien Obligations are made to mature on May 1 in each of the years of scheduled maturity, and the following requirements are met:

(a) Conditions Precedent for Issuance of Additional DSP Senior Lien Obligations – General. As a condition precedent to the issuance of any Additional DSP Senior Lien Obligations, a Designated Financial Officer shall have executed a certificate stating (i) that the City is not then in default as to any covenant, obligation, or agreement contained in any proceeding relating to any obligations of the City payable from and secured by a lien on and pledge of the DSP Pledged Revenues and (ii) all payments into all funds or accounts created and established for the payment and security of all Outstanding obligations payable from and secured by a lien on and pledge of the DSP Pledged Revenues have been made in full and that the amounts on deposit in such funds or accounts are the amounts then required to be deposited therein. Such certificate shall be dated as of the date of such Additional DSP Senior Lien Obligations.

(b) Conditions Precedent for Issuance of Additional DSP Senior Lien Obligations – DSP Capital Acquisitions, DSP Capital Improvements, and any Other Lawful Purpose Except for DSP Capital Additions or for Refunding. The District has covenanted and agreed in the District Debt Authorization (which covenant and agreement the City hereby accepts and assumes) that Additional DSP Senior Lien Obligations will not be issued for the purpose of financing DSP Capital Acquisitions, DSP Capital Improvements, or any other lawful purpose (except for DSP Capital Additions or for refunding, which are to be issued in accordance with the provisions of clauses (c), (d), or (e) of this subparagraph) unless and until the conditions precedent in clause (a) above have been satisfied and, in addition thereto, the City has secured a certificate or opinion of an Accountant to the effect that, according to the books and records of the City maintained for the District Special Project, the DSP Net Earnings for the preceding Fiscal Year (or, at such time as the District Series 1998 Senior Lien Bonds, the District Series 2002 Senior Lien Bonds, and the District Series 2006 Senior Lien Bonds are no longer Outstanding, the most recent Fiscal Year for which the Board has received from an Accountant the District Special Project annual audit) or for 12 consecutive months out of the 15 months immediately preceding the month the ordinance or resolution of the City authorizing the issuance of the Additional DSP Senior Lien Obligations is adopted are at least equal to the sum of 1.25 times the Average Annual Principal and Interest

Requirements for the Outstanding DSP Senior Lien Obligations and for then-proposed Additional DSP Senior Lien Obligations. If the Board is relying on the audited financial statements of the District Special Project for a particular Fiscal Year to satisfy this debt service coverage requirement for issuing Additional DSP Senior Lien Obligations, the necessary certification can be made by a Designated Financial Officer in lieu of an Accountant. The revenues and expenses of any DSP Capital Acquisition may be added to the DSP Net Earnings of the Board for determinations made under this subparagraph. In making a determination of the DSP Net Earnings, the Accountant may:

(i) While the District Series 1998 Senior Lien Bonds remain Outstanding:

a. take into consideration a change in the rates and charges for services and facilities afforded by the DSP System that became effective at least 60 days prior to the last day of the period for which DSP Net Earnings are determined; and

b. for purposes of satisfying the above DSP Net Earnings test, make a pro forma determination of the DSP Net Earnings for the period of time covered by his certification or opinion based on such change in rates and charges being in effect for the entire period covered by the Accountant's certificate or opinion.

(ii) If the District Series 1998 Senior Lien Bonds are at such time no longer Outstanding:

a. take into consideration a change in the rates and charges for services and facilities afforded by the DSP System that became effective on the last day of the period for which DSP Net Earnings are determined; and

b. for purposes of satisfying the above DSP Net Earnings test, make a pro forma determination of the DSP Net Earnings for the period of time covered by his certification or opinion, adjusted to give effect to any change in rates and charges for services and facilities afforded by the DSP System, placed into effect or consummated prior to the adoption of the ordinance or resolution of the City authorizing the issuance of any Additional DSP Senior Lien Obligations, to the same extent as if such change in rates and charges had been placed in effect for the entire period covered by the Accountant's certificate or opinion.

(c) Conditions Precedent for Issuance of Additional DSP Senior Lien Obligations – DSP Capital Additions: Initial Issue. The District has covenanted and agreed in the District Debt Authorization (which covenant and agreement the City hereby accepts and assumes) that Additional DSP Senior Lien Obligations

will not be issued for the purpose of financing DSP Capital Additions, unless the same conditions precedent specified in clause (a) above have been satisfied and, in addition thereto, the conditions precedent specified in clause (b) above are satisfied or, in the alternative, the City shall have obtained:

(i) from the Engineer of Record a comprehensive report for each DSP Capital Addition to be financed, which report shall (A) contain (1) detailed estimates of the cost of acquiring and constructing the DSP Capital Addition, (2) the estimated date the acquisition and construction of the DSP Capital Addition will be completed and commercially operative, and (3) a detailed analysis of the impact of the DSP Capital Addition on the financial operations of the DSP System during the construction thereof and for at least five Fiscal Years after the date the DSP Capital Addition becomes commercially operative, and (B) conclude that (1) the DSP Capital Addition will substantially increase the capacity, or is needed to replace existing facilities, to meet current and projected demands for the service or product to be provided thereby, and (2) the estimated cost of providing the service or product from the DSP Capital Addition will be reasonable in comparison with projected costs for furnishing such service or product from other reasonably available sources; and

(ii) a certificate of the Engineer of Record to the effect that, based on the report prepared for each DSP Capital Addition, the projected DSP Net Earnings for each of the five Fiscal Years subsequent to the date the DSP Capital Addition becomes commercially operative (as estimated in such report) will be equal to at least 1.25 times the Average Annual Principal and Interest Requirements for DSP Senior Lien Obligations then Outstanding or incurred and all Additional DSP Senior Lien Obligations estimated to be issued, if any, for all DSP Capital Acquisitions, DSP Capital Improvements, and DSP Capital Additions then in progress or then being initiated during the period from the date the first series of obligations for the DSP Capital Addition is to be delivered through the fifth Fiscal Year subsequent to the date the DSP Capital Addition is estimated to become commercially operative.

The District has covenanted and agreed in the District Debt Authorization (which covenant and agreement the City hereby accepts and assumes) that it will adopt on or before the closing date for the proposed Additional DSP Senior Lien Obligations and enforce any periodic rate increases described in the report of the Engineer of Record; provided, however, if such rate increases are not actually needed for any Fiscal Year, the City may, by subsequent ordinance or resolution, delay such increase until it becomes actually necessary to comply with its rate covenants included in the District Senior Lien Orders and as specified in Section 4.A of this Ordinance (but excluding subparagraphs (iv) and (vi) of such section, which are only applicable to DSP Subordinate Lien Obligations).

(d) Conditions Precedent for Issuance of Additional DSP Senior Lien Obligations – DSP Capital Additions: Subsequent Issues. Once the initial

Additional DSP Senior Lien Obligations have been delivered for a DSP Capital Addition, the District has in the District Debt Authorization reserved the right, which right by reservation now inures to the benefit of the City, to issue subsequent issues of Additional DSP Senior Lien Obligations to finance the remaining costs of such DSP Capital Addition in such amounts as may be necessary to complete the acquisition and construction thereof and make the same commercially operative, without satisfaction of any condition precedent under clause (b) or clause (c) of this Subsection 4.C(i), but subject to satisfaction of the following conditions precedent:

(i) the Board makes a forecast (the *Forecast*) of the operations of the DSP System demonstrating the DSP System's ability to pay all obligations payable from the DSP Pledged Revenues of the DSP System to be Outstanding after the issuance of the Additional DSP Senior Lien Obligations then being issued for the period (the *Forecast Period*) of each ensuing Fiscal Year through the fifth Fiscal Year subsequent to the latest estimated date such DSP Capital Addition is expected to be commercially operative, and

(ii) the Engineer of Record reviews the Forecast and executes a certificate to the effect that the Forecast is reasonable, and that based thereon (and such other factors deemed to be relevant), the DSP Pledged Revenues of the DSP System will be adequate to pay all the obligations payable from the DSP Pledged Revenues to be Outstanding after the issuance of the Additional DSP Senior Lien Obligations then being issued for the Forecast Period.

(e) *Additional DSP Senior Lien Obligations – Refundings.* The District has in the District Debt Authorization reserved the right, which right by reservation now inures to the benefit of the City, to issue refunding bonds to refund all or any part of the then-Outstanding DSP Senior Lien Obligations (pursuant to any law then available), upon such terms and conditions as the City may deem to be in the best interest of the ratepayers of the DSP System, and if less than all such Outstanding DSP Senior Lien Obligations are refunded, the conditions precedent for the issuance of Additional DSP Senior Lien Obligations set forth in clauses (a) and (b) of this Subsection 4.C(i) shall be satisfied and the Accountant's certificate or opinion required by clause (b) of this Section 4.C(i) shall give effect to the issuance of the proposed refunding bonds (and shall not give effect to the obligations being refunded following their cancellation or provision being made for their payment). No Accountant's certificate otherwise required by clause (b) of this Section 4.C(i) will be required for refunding bonds, after giving effect to such proposed refunding, if there is no increase in debt service for any Fiscal Year before or including any Fiscal Year in which there will be debt service on DSP Senior Lien Obligations Outstanding both before and after such refunding and any such refunding bond does not have a lien on DSP Pledged Revenues superior to the obligation which it refunds.

(f) Determination of Average Annual Principal and Interest Requirements. With reference to Additional DSP Senior Lien Obligations anticipated and estimated to be issued or incurred, the Average Annual Principal and Interest Requirements therefor shall be those reasonably estimated and computed by a Designated Financial Officer. In the preparation of the report required in clause (c)(i) of this Section 4.C(i), the Engineer of Record may rely on other experts or professionals, including those in the employment of the District; provided, however, that such reports disclose the extent of such reliance and concludes it is reasonable so to rely. In connection with the issuance of Additional DSP Senior Lien Obligations for DSP Capital Additions, the certificate of the Designated Financial Officer and the Engineer of Record, together with the appropriate report for the initial issue and the Forecast for a subsequent issue, shall be conclusive evidence and the only evidence required to show compliance with the provisions and requirements of this Subsection 4.C(i).

(g) Combined Issues. Additional DSP Senior Lien Obligations for DSP Capital Additions may be combined in a single issue with Additional DSP Senior Lien Obligations, as the case may be, for DSP Capital Acquisitions or DSP Capital Improvements, or for any lawful purpose, provided the conditions precedent set forth in clauses (b) through (e) of this Subsection 4.C(i) are complied with as the same relate to the appropriate purpose.

(h) DSP Senior Lien Debt Service Reserve Fund. The City shall increase the balance of the DSP Senior Debt Service Reserve Fund upon the issuance of Additional DSP Senior Lien Obligations to an amount equal to the DSP Senior Lien Debt Service Reserve Requirement after taking into consideration the issuance of such Additional DSP Senior Lien Obligations by providing (i) cash from the proceeds of sale of the Additional DSP Senior Lien Obligations or any other lawfully available source; (ii) a surety bond in lieu thereof; (iii) a combination of such cash and surety bond; or (iv) making equal monthly installment payments to the DSP Senior Lien Debt Service Reserve Fund over the 24-month period following the issuance of such Additional DSP Senior Lien Obligations, all as the City deems reasonable and appropriate; provided, however, that (A) the amount of any such cash, the coverage of any surety bond in lieu thereof, the amount of such cash and the coverage of such surety bond, and the sum of the monthly payments when added together shall at least equal the increased DSP Senior Lien Debt Service Reserve Requirement; (B) any such surety bond provided in lieu of cash shall be issued by an insurance company or association of companies whose insured obligations are rated by a nationally recognized rating agency in its highest rating category; and (C) any such surety bond may be written (or amended) to provide coverage not only for such Additional DSP Senior Lien Obligations but also pro rata for the DSP Senior Lien Obligations then Outstanding; provided, however, that any existing cash or surety bond in lieu thereof which secures any such Outstanding DSP Senior Lien Obligations is extended ratably to secure the Additional DSP Senior Lien Obligations then being issued. The District has in the Senior Lien Orders evidenced its intention, which intention is hereby adopted and assumed by the

City, to provide maximum flexibility with respect to the DSP Senior Lien Debt Service Reserve Fund to be provided for any Additional DSP Senior Lien Obligations which may be issued hereafter and the foregoing provisions shall be liberally construed in order to achieve that objective without materially prejudicing the rights and interests of the owners of any DSP Senior Lien Obligations at the time Outstanding.

(ii) *Additional DSP Subordinate Lien Obligations.* In addition to DSP Inferior Lien Obligations and Additional DSP Senior Lien Obligations, the District has in the District Debt Authorization reserved the right, which right by reservation now inures to the benefit of the City, to issue Additional DSP Subordinate Lien Obligations, and the Additional DSP Subordinate Lien Obligations, when issued, may be secured by and payable from a lien on and pledge of the DSP Pledged Revenues in the same manner and to the same extent as the Outstanding DSP Subordinate Obligations, and the Outstanding DSP Subordinate Lien Obligations and the Additional DSP Subordinate Lien Obligations may be in all respects of equal dignity. The Additional DSP Subordinate Lien Obligations may be issued to provide funds for any lawful purpose. It is provided, however, that no Additional DSP Subordinate Lien Obligations shall be issued unless;

(a) such Additional DSP Subordinate Lien Obligations are made to mature on May 1 in each of the years in which they are scheduled to mature;

(b) a Designated Financial Officer shall have executed a certificate, dated as of the date of such Additional DSP Subordinate Lien Obligations, stating (i) that the City is not then in default as to any covenant, obligation, or agreement contained in any proceeding relating to any obligations of the City payable from and secured by a lien on and pledge of all or any part of the DSP Net Revenues and (ii) all payments into all funds or accounts created and established for the payment and security of all Outstanding obligations payable from and secured by a lien on and pledge of the DSP Net Revenues have been made in full and that the amounts on deposit in such funds or accounts are the amounts then required to be deposited therein; and

(c) the City has secured a certificate or opinion of the Accountant to the effect that, according to the books and records of the City relating to the District Special Project, the DSP Net Earnings for the preceding Fiscal Year or for 12 consecutive months out of the 15 months immediately preceding the month the ordinance or resolution of the City authorizing the Additional DSP Subordinate Lien Obligations is adopted are at least equal to the sum of (i) the Average Annual Principal and Interest Requirements for the then Outstanding Senior Lien Obligations and (ii) 1.10 times the Average Annual Principal and Interest Requirements for the then-Outstanding DSP Subordinate Lien Obligations and the proposed Additional DSP Subordinate Lien Obligations. In making a determination of the DSP Net Earnings, the Accountant may take into consideration a change in the rates and charges for services and facilities afforded by the DSP System that became effective at least 60 days prior to the last day of the period for which DSP Net Earnings are determined and (ii) for purposes of satisfying the above DSP Net Earnings test, make a pro forma determination of

the DSP Net Earnings for the period of time covered by his certification or opinion based on such change in rates and charges being in effect for the entire period covered by the Accountant's certificate or opinion, In addition, the revenues and expenses of any DSP Capital Addition may be added to the DSP Net Earnings for making these determinations.

(iii) *DSP Inferior Lien Obligations.* The District has, in the District Debt Authorization, reserved the right, which right by reservation now inures to the benefit of the City, to issue at any time obligations including, but not limited to, DSP Inferior Lien Obligations payable from and equally and ratably secured, in whole or in part, by a lien on and pledge of the DSP Net Revenues that is subordinate and inferior in rank and dignity to the lien thereon and the pledge thereof securing the payment of the DSP Senior Lien Obligations and the DSP Subordinate Lien Obligations currently Outstanding or hereafter issued from time to time by the City, as may be authorized by the laws of the State of Texas.

(iv) *Limitation Applicable to all Additional DSP Debt.* No Additional DSP Debt shall remain Outstanding subsequent to System Integration. To accommodate this requirement, each series of Additional DSP Debt shall be structured to include a feature that mandates retirement of any Additional DSP Debt at or before System Integration by operation of the terms thereof (and not at the City's discretion). Such a feature may include stated maturity, mandatory redemption, mandatory tender, or other provision that produces the same result.

D. Funds Secured. Money in all funds created under the District Debt Authorization and confirmed by this Ordinance or created under this Ordinance, to the extent not invested, shall be secured in the manner prescribed by law for securing funds of the City.

E. Investment of Funds; Valuation. Money in any fund established by any District Debt Authorization and confirmed by this Ordinance may, at the option of the Board, be placed or invested in Permitted Investments, to the extent permitted by Texas law.

The "value" of the above investments shall be determined as of the end of each month and shall be calculated as follows:

(i) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*), the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(ii) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or *The New York Times*, the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Board in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and

(iii) as to certificates of deposit and bankers acceptances, the face amount thereof, plus accrued interest.

Any obligation in which money from a debt service or debt service reserve fund relating to any DSP Debt Obligation is so invested shall be kept and held in a Depository in escrow and in trust for the benefit of the owners of the related series of DSP Debt Obligations, and shall be promptly sold and the proceeds of sale applied to the making of any payments required to be made from the debt service or debt service reserve fund, as the case may be. Except as described in the applicable District Debt Authorization concerning a debt service fund and Section 4.B hereof, all such investments shall at all times be a part of the fund from which the money used to acquire said investments shall have come and all earnings on such investments shall be credited to, and losses thereon charged against, such fund. Notwithstanding any provision hereof to the contrary, any investment of money in a debt service fund shall be made so as to mature or be subject to redemption at the option of the owner or holder thereof on or prior to the date or dates on which money therefrom will be required.

F. General Covenants. The District has in the District Debt Authorization further covenanted, warranted, and agreed, which covenants, warranties, and agreements the City hereby assumes, affirms, and confirms as its own, that in accordance with and to the extent required or permitted by law while any District Debt Obligations are Outstanding as follow:

(i) *Performance.* The City, as the legal successor in interest to the District by operation of the provisions of SB 341 and the results of the Election in favor of the SAWS Transfer, will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in each District Debt Authorization and in each and every District Debt Obligation; it will promptly pay or cause to be paid the principal of, premium (if any), and interest on every District Debt Obligation, on the dates and in the places and manner prescribed in the applicable District Debt Authorization; it will, at the times and in the manner prescribed, deposit or cause to be deposited the amounts required to be deposited into the applicable debt service fund, applicable debt service reserve fund, and the DSP Improvement and Contingency Fund; and any holder of District Debt Obligations may require the City, its officials and employees to carry out, respect, or enforce the covenants and obligations of the District Debt Authorization by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings in any court of competent jurisdiction against the City, its officials, and employees.

(ii) *City's Legal Authority.* The City is a duly created and existing political subdivision and home rule city of the State of Texas, and is duly authorized under the laws of the State of Texas (including, particularly, SB 341), to assume as its own the obligations imposed upon the District as a result of its issuance of the District Debt Obligations. In addition, the City hereby affirms and covenants with those parties with interest in the District Debt Obligations that, pursuant to the Constitution and laws of the State of Texas and its Home Rule Charter, it is authorized to make the covenants and representations included in this Ordinance.

(iii) *Title.* The City, as the legal successor in interest to the District by operation of the provisions of SB 341 and the results of the Election in favor of the

SAWS Transfer, has or will obtain lawful title to the lands, buildings, structures, and facilities constituting the DSP System; it will defend the title to all the aforesaid lands, buildings, structures, and facilities, and every part thereof, for the benefit of the holders and owners of the District Debt Obligations, against the claims and demands of all persons whomsoever.

(iv) *Liens.* The City, as the legal successor in interest to the District by operation of the provisions of SB 341 and the results of the Election in favor of the SAWS Transfer, will from time to time and before the same become delinquent pay and discharge all taxes, assessments, and governmental charges, if any, which shall be lawfully imposed upon it or the DSP System; it will pay all lawful claims for rents, royalties, labor, materials, and supplies which if unpaid might by law become a lien or charge thereon, the lien of which would be prior to or interfere with the liens hereof, so that the priority of the liens granted hereunder shall be fully preserved in the manner provided herein; and it will not create or suffer to be created any mechanic's, laborer's, materialman's or other lien or charge which might or could be prior to the liens hereof, or do or suffer any matter or thing whereby the liens hereof might or could be impaired; provided, however, that no such tax, assessment, or charge, and that no such claims which might be used as the basis of a mechanic's, laborer's, materialman's, or other lien or charge, shall be required to be paid so long as the validity of the same shall be contested in good faith by the City.

(v) *Operation of System; No Free Service.* The City, as the legal successor in interest to the District by operation of the provisions of SB 341 and the results of the Election in favor of the SAWS Transfer, shall continuously and efficiently operate the DSP System and maintain the DSP System in good condition, repair, and working order, all at reasonable cost. No free service of the DSP System shall be allowed, and should the City, or any of its agencies or instrumentalities, lessees, or concessionaires, make use of the services and facilities of the DSP System, payment monthly of the standard retail price of the services provided shall be made by the City, or any of its agencies or instrumentalities, lessees, or concessionaires, out of funds from sources other than the revenues of the DSP System, unless made from surplus DSP Net Revenues.

(vi) *Further Encumbrance.* The rents, revenues, and income of the DSP System have not in any manner been pledged to the payment of any other debt or obligations of the City or of the City System; and the City, as the legal successor in interest to the District by operation of the provisions of SB 341 and the results of the Election in favor of the SAWS Transfer, shall not additionally sell or encumber the DSP Net Revenues in any manner, except as permitted in the District Debt Authorization and this Ordinance.

(vii) *Sale or Disposal of Property.* The City, as the legal successor in interest to the District by operation of the provisions of SB 341 and the results of the Election in favor of the SAWS Transfer, shall not sell, convey, mortgage, encumber, lease, or in any manner transfer title to, or dedicate to other use, or otherwise dispose of the DSP System, or any significant or substantial part thereof; provided, however, that whenever the Board deems it necessary to dispose of any other property, machinery, fixtures, or equipment, or dedicate such property to other use, it may do so either when it has made arrangements to

replace the same or provide substitutes therefor, or it is determined by resolution of the Board that no such replacement or substitute is necessary.

(viii) *Insurance.* The City, as the legal successor in interest to the District by operation of the provisions of SB 341 and the results of the Election in favor of the SAWS Transfer, shall cause to be insured such parts of the DSP System as would usually be insured by corporations operating like properties, with a responsible insurance company or companies, against risks, accidents, or casualties against which and to the extent insurance is usually carried by corporations operating like properties, including, to the extent reasonably obtainable, fire and extended coverage insurance, insurance against damage by floods, and use and occupancy insurance. Public liability and property damage insurance shall also be carried unless legal counsel for the Board gives a written opinion to the effect that the City and the Board are not liable for claims which would be protected by such insurance. All insurance premiums shall be paid as a DSP Operating Expense. At any time while any contractor engaged in construction work shall be fully responsible therefor, the City shall not be required to carry insurance on the work being constructed if the contractor is required to carry appropriate insurance. All such policies shall be open to the inspection of the holders of the DSP Debt Obligations and their representatives at all reasonable times. Upon the happening of any loss or damage covered by insurance from one or more of said causes, the Board shall make due proof of loss and shall do all things necessary or desirable to cause the insuring companies to make payment in full directly to the Board. The proceeds of insurance covering such property, together with any other funds necessary and available for such purpose, shall be used forthwith by the Board for repairing the property damaged or replacing the property destroyed; provided, however, that if said insurance proceeds and other funds are insufficient for such purpose, then said insurance proceeds pertaining to the DSP System shall be deposited in a special and separate trust fund, at a Depository, to be designated the *DSP Insurance Account*. The DSP Insurance Account shall be held until such time as other funds become available which, together with the DSP Insurance Account, will be sufficient to make the repairs or replacements originally required.

The annual audit of the District Special Project as required in the District Debt Authorization and this Ordinance may contain a section commenting on whether or not the Board has complied with the requirements of this Section 4.F(viii) with respect to the maintenance of insurance, and shall state whether or not all insurance premiums upon the insurance policies to which reference is made have been paid.

(ix) *Records.* The City, as the legal successor in interest to the District pursuant by operation of the provisions of SB 341 and the results of the Election in favor of the SAWS Transfer and acting by and through the Board, shall keep proper books of records and accounts in which full, true, proper, and correct entries will be made of all dealings, activities, and transactions relating to the DSP System, the DSP Pledged Revenues, and the funds created pursuant to the District Debt Authorization (as the same are confirmed in this Ordinance) or this Ordinance, and all books, documents, and vouchers relating thereto shall at all reasonable times be made available for inspection upon request of any holder of a DSP Debt Obligation or ratepayer of the DSP System. To the extent consistent with the provisions of the District Debt Authorization and this

Ordinance, the Board shall keep its books and records relating to the District Special Project in a manner conforming to standard accounting practices as usually would be followed by private corporations owning and operating a system similar to the DSP System, with appropriate recognition being given to essential differences between municipal and corporate accounting practices.

(x) *Audits.* After the close of each Fiscal Year, an audit will be made of the books and accounts relating to the District Special Project and the DSP Pledged Revenues by an Accountant. The audit shall include a schedule of the deposits made to the various funds created by the District Debt Authorization (as the same are confirmed in this Ordinance) and this Ordinance. The annual audit reports shall be open to the inspection of the holders of the District Debt Obligation and their agents and representatives at all reasonable times.

(xi) *Governmental Agencies.* The City, as the legal successor in interest to the District by operation of the provisions of SB 341 and the results of the Election in favor of the SAWS Transfer, will comply with all of the terms and conditions of any and all franchises, permits, and authorizations applicable to or necessary with respect to the DSP System, and which have been obtained from any governmental agency; and the City and/or the Board has or will obtain and keep in full force and effect all franchises, permits, authorization, and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation, and maintenance of the DSP System.

(xii) *No Competition.* The City, as the legal successor in interest to the District by operation of the provisions of SB 341 and the results of the Election in favor of the SAWS Transfer, will not operate, or grant any franchise or permit for the acquisition, construction, or operation of, any facilities which would be in competition with the District Special Project, and to the extent that it legally may, the City and/or the Board will prohibit any such competing facilities. For the same reasons the City found and determined in the preamble of this Ordinance that its operation of the City System and the DSP System does not violate this similar covenant in the City System Ordinances, the City hereby finds and determines that such a dual maintenance and operation of systems is not in violation of this covenant.

SECTION 5: Affirmation of City Acceptance of Covenants Relating to Individual Series of District Debt Obligations. (a) To the extent permitted by applicable law, the City hereby affirms and accepts as its own the District covenants made in each District Debt Authorization as the same relate to each individual series of District Debt Obligations and, to the extent necessary, are in addition to those covenants as set forth in Section 4 of this Ordinance. Such covenants appearing in the District Debt Authorization, which are incorporated by reference and made a part of this Ordinance as though reproduced herein, include, but are not limited to, the pledge of DSP System revenues and/or funds or accounts created under any District Debt Authorization as security for the repayment of a particular series of District Debt Obligations, the obligation to timely make payments due and owing on each series of District Debt Obligation, to assure that the funds and accounts created under any District Debt Authorization are funded in the required amounts as specified in the applicable District Debt Authorization, the obligation to maintain the tax-exempt status, as applicable, of any series of qualifying District Debt Obligation, and the requirement to provide on a continuing basis

specified information concerning any District Debt Obligation and the operational performance of the DSP System and/or the District Special Project.

SECTION 6: City Reservation of Rights Under Assumed District Debt Obligations and other Contracts; Reservation of Right to Issue Debt of the City System. The City hereby expressly reserves all rights under any contract or applicable law, including (but not limited to) any District Debt Authorization, assumed thereby in connection with the SAWS Transfer. This reservation of rights includes, but is not limited to, any right of enforcement, any right of the District to amend (or to consent to the amendment of) the terms thereof, or any right of the District to exercise remedies thereunder, as well as any right granting express and direct termination rights to the City, acting by and through the Board.

In addition to the foregoing, the City, acting through the Board, expressly reserves the right (in addition to all rights, duties, and obligations contained herein) to issue any Debt (as defined in the City System Ordinances) to refund, retire, prepay, or defease any District Debt Obligation, and/or any DSP Payment Obligation, to the extent permitted in the City System Ordinances and applicable law.

SECTION 7: District Special Project Governance.

A. The complete management and control of the District Special Project, for so long as the same is maintained, shall be vested in the Board. Except as otherwise specifically provided in the District Debt Authorization or this Ordinance, the Board shall, subject to the terms of this Ordinance and, to the extent applicable, the City System Ordinance, have absolute and complete authority and power to control, manage, and operate the DSP System and shall control the expenditure and application of the DSP Gross Revenues pursuant to District Debt Authorization and this Ordinance. In connection with the control, management, and operation of the DSP System and the expenditure and application of the DSP Gross Revenues, the Board shall be vested with all of the powers of the City, who itself shall have all of the powers formerly vested with the District Board (to the extent that such powers do not conflict with applicable law) as the legal successor in interest to the District by operation of the provisions of SB 341 and the results of the Election in favor of the SAWS Transfer, including all powers necessary or appropriate for the performance of all the covenants, undertakings, and agreements of the City contained in this Ordinance or included in the District Debt Authorization that are assumed by the City as the legal successor in interest to the District, and, with the exception of fixing rates and charges for service rendered by the DSP System, shall have full power and authority to make rules and regulations governing the furnishing of services of the DSP System to customers and for the payment of the same, and for the discontinuance of such services upon failure of customers to pay therefor and, to the extent authorized by law and by the District Debt Authorization and this Ordinance, shall have authority to make extensions, improvements, and additions to the DSP System (including DSP Capital Additions, DSP Capital Improvements, and DSP Capital Acquisitions) and to acquire by purchase or otherwise properties of every kind in connection therewith. The operational policies of the Board with respect to the District Special Project shall parallel those of Board relating to the City System insofar as practicable.

B. The Board shall determine the rates, fees, and charges for services rendered and to be rendered by the DSP System, with due consideration being accorded to the terms, covenants, and conditions contained in this Ordinance, the District Debt Authorization, and any ordinance

or resolution of the City authorizing the issuance of Additional DSP Debt. In the event any such determination reflects a necessity for the adjustment either by an increase or a reduction of such rates, fees, and charges, then the Board shall submit to the City Council a full report of the basis upon which such proposed adjustment is predicated, accompanied by a formal request from the Board for approval and adoption of the rates, fees, and charges recommended by the Board. If the City Council approves the adjustment thus recommended by the Board, it shall pass an appropriate ordinance placing such adjusted rates, fees, and charges in effect; provided, however, that the rates, fees, and charges for services rendered by the DSP System shall never be reduced in such amounts as will impair the performance of any of the covenants contained in this Ordinance, the District Debt Authorization, or any ordinance or resolution of the City authorizing the issuance of Additional DSP Debt.

C. The Board shall prepare an annual budget to serve as a tool in controlling and administering the management and operation of the District Special Project. The annual budget shall reflect an estimate of DSP Gross Revenues and an estimate of the disposition of these revenues in accordance with the flow of funds requirements of the District Debt Authorization (as reproduced and confirmed in Section 4.B(i) hereof), and any ordinance or resolution of the City authorizing the issuance of Additional DSP Debt. Except for the initial budget (which shall be delivered to the Board for approval not later than the 90th day after the effective date of the SAWS Transfer and shall cover the remaining Fiscal Year as of such date the initial budget is approved), the annual budget shall be presented and approved by the Board at least sixty (60) days prior to the beginning of the Fiscal Year. Immediately following approval of the District Special Project annual budget by the Board, it shall be submitted to the City Council for review and consultation. The Board may subsequently modify the District Special Project's approved budget by giving notice thereof to the City.

D. The Board shall prepare and administer, and may amend from time to time, a master or similar plan for the DSP System (the *DSP Master Plan*), addressing the District Special Project's operations and the water resource and capital improvement projects required to accommodate the projected growth and development of the service area of the DSP System. The DSP Master Plan (and any amendment thereof) shall be approved by the Board and submitted for consideration and approval by the City Council in accordance with applicable provisions of the City's Home Rule Charter then in effect. Any DSP Master Plan shall include provisions for accomplishing System Integration as required by SB 341 and Section 13 hereof. The initial DSP Master Plan shall be delivered not later than one year after the effective date of the SAWS Transfer.

E. At least annually, commencing on the first anniversary of the effective date of the SAWS Transfer, the Board shall provide the City Council, with a copy to be delivered to the Commission, a complete report detailing the progress of System Integration and the status of any relevant contract provisions.

F. To the extent not addressed herein or there is not a conflict with any provision of any District Debt Authorization, the operation and management of the District Special Project shall be consistent with the manner by which the Board operates and manages the City System, as specified by the City System Ordinances and the Board's Bylaws (as the same may be amended from time to time). To the extent that the City System Ordinances or the Board's Bylaws specify a manner of operation of the City System which is not addressed by the District

Debt Authorization or this Ordinance, references to the City System shall be read to include the District Special Project. Subsequent to the effective date of the SAWS Transfer, all studies, reports, plans, and updates required by the Board to be prepared in connection with its ownership and operation of the City System, to include (but not be limited to) any required presentations or plans to be presented to the City or the City Council, shall include a section, segment, chapter, or description dedicated to the District Special Project's performance and its anticipated impact to the City System upon System Integration.

SECTION 8: District Special Project Advisory Committee. As provided in SB 341, the Board shall timely create the Advisory Committee. The Advisory Committee shall be provided with a charge of advising the Board with respect to the integration of the services and infrastructure of the former District System into the City System, including service integration issues and the delivery of water services by the City System, in specific areas or water systems located in the area outside of the corporate boundaries of the City. Until the completion of System Integration pursuant to Section 13 hereof, the Board shall consult with the Advisory Committee at least quarterly during a scheduled or specially called Board meeting. In addition, and on request of the chair of the Advisory Committee, the Board will provide members of the Advisory Committee with an opportunity to address the Board on matters relating to the duties of the Advisory Committee.

Membership of the Advisory Committee, as well as the qualifications to serve thereon, shall be determined by the Board; provided, however, that the Board shall work cooperatively with the commissioners court in each county in which the former District was wholly or partly located to establish the Advisory Committee. The Advisory Committee shall include at least one representative of each of such aforementioned counties who resides in the boundaries of the former District or owned or operated a business within such boundaries.

SECTION 9: Employees; Employee Benefits. To the extent that the Board deems it necessary or desirable, the Board shall appoint and employ all District Special Project officers, employees, and professional consultants including, without limitation, a District Special Project manager, attorneys, auditors, engineers, architects, and other advisers, subject only to the limitations of applicable Texas law, the City System Ordinances, and as hereafter specified. The Board shall determine the compensation and benefit packages made available to all employees assigned to duties, whether exclusively or jointly with other duties relating to the City System, relating to the operation and maintenance of the District Special Project. The Board shall also have discretion in determining the respective start dates for former District employees for the purpose of ascertaining the level of benefits earned by such employees (and which start dates may differ as applied to a single employee dependent upon the purpose for assigning a starting date). Notwithstanding its discretion with respect to matters relating to District Special Project employment, for those former District employees hired by the Board and assigned to the District Special Project, the Board shall attempt to preserve the aggregate level of compensation and benefits enjoyed by such employees as District employees as of the effective date of the SAWS Transfer, and may in its discretion continue benefit plans sponsored by the District immediately before the effective date of the SAWS Transfer.

The Board may offer employment as employees assigned to the District Special Project to all employees of the District as of the effective date of the SAWS Transfer, but shall (except as hereinafter specified) offer employment in such capacity to all Covered Employees. During

the two-year period of time subsequent to the effective date of the SAWS Transfer, no Covered Employee shall be terminated by the Board except for Cause; during the five-year period of time subsequent to the effective date of the SAWS Transfer, no Covered Employee whose combined years of service to the District and the City, plus the Covered Employee's age, equals or exceeds 80 shall be terminated by the Board except for Cause (and any such qualifying Covered Employee meeting this combined service and age requirement that is terminated for Cause shall be afforded the same appeal rights as any City System employees who is not a former District employee).

Notwithstanding the foregoing, the Board shall not be required to employ any former District employee if that employee was formerly terminated, or resigned in lieu of termination, as a City System employee.

SECTION 10: Segregation of Activities; Allocation of Assets and Expenses. The Board may allocate assets and expenses to the District Special Project to ensure that all activities and transactions are properly stated in the books and records of the District Special Project. Allocation methodologies will be applied in accordance with generally accepted accounting principles.

SECTION 11: Exception to Required Transfer to City General Fund. No DSP Gross Revenues shall be subject to the provision of the City System Senior Lien Ordinances requiring a portion of the gross revenues of the City System to be transferred to the City (the *City Transfer*) for use thereby in accordance with and as permitted by Chapter 1502, as amended, Texas Government Code and the City System Ordinances. At such time as all or a part of the DSP System is integrated into the City System pursuant to System Integration in accordance with Section 13 hereof, the DSP Gross Revenues allocable to that portion of the former DSP System then comprising a portion of the City System shall be subject to the City Transfer.

SECTION 12: Emergency Action Upon Certification of Election Results. Immediate assumption of responsibility for the operation and control of the District System by the City, acting by and through the Board, on the effective date of the SAWS Transfer is necessary to assure continued service to the ratepayers of the District System and the protection of the health, safety, and welfare of the same. As a result, as soon as is reasonably practicable after the results of the Election favoring the SAWS Transfer become known, the Board shall convene for the purpose of adopting an interim operating plan to assure continued operation of the DSP System until a permanent DSP Master Plan can be formulated and adopted. In the event that the SAWS Transfer is effective prior to the ability of the Board to convene and adopt the interim operating plan described above, all necessary power to provide for the continued operation of the DSP System and delivery of service thereby, including the power and authority to sign all documentation as the act and deed of the City (acting by and through the Board), shall be vested in each Designated Financial Officer.

SECTION 13: System Integration. To the extent permitted by applicable law, the Board shall timely accomplish System Integration. Notwithstanding its obligation to achieve System Integration in accordance with the provisions of SB 341 and this Ordinance, the City may integrate the DSP System into the City System over time, in whole or in part, based upon a reasonable methodology determined by the Board after considering relevant information, to include:

- A. The location and condition of DSP System infrastructure;
- B. The cost of retiring District Debt Obligations;
- C. Prudent Utility Practice and fiscal policies;
- D. DSP Gross Revenues and DSP Operating Expenses; and
- E. The anticipated impact upon customers of the DSP System and the City System.

The Board's plan for accomplishing System Integration shall be included in and made a part of the DSP Master Plan.

Not later than the time of System Integration, the City shall have taken necessary action to assure that no DSP Debt Obligations then remain Outstanding. This requirement, however, does not affect the City's ability to issue Additional DSP Debt prior to System Integration so long as any such series of Additional DSP Debt is compliant with Section 4.C(iv) hereof.

SECTION 14: Amendment of District Debt Authorization. Though the City has herein affirmed its acceptance of all operational covenants relating to the ownership and operation of the DSP System and the servicing of all District Debt Obligations, its assumption of the DSP System necessitates by operation of Texas law the amendment of the District Debt Authorization. Accordingly, each District Debt Authorization, as of the effective date of the SAWS Transfer, is hereby amended in the following manner: each provision of any District Debt Authorization describing the District shall be replaced with the City; each provision of any District Debt Authorization describing the District Board shall be replaced with the Board or the City Council, as applicable based on the applicable provisions of this Ordinance; and any reference to the District System in any District Debt Authorization shall be replaced with the DSP System. In addition to the foregoing, and for the avoidance of doubt, each District Debt Authorization term specifying that:

A. the District shall retain ownership of the District System, upon the effective date of the SAWS Transfer, is hereby amended to state that the City shall retain ownership of the DSP System; and

B. the District Board shall operate, control, and maintain the District System, upon the effective date of the SAWS Transfer, is hereby amended to state that the Board shall, except with respect to those rights specifically reserved to the City Council by applicable law or this Ordinance, operate, control, and maintain DSP System.

In addition, the District Commercial Paper Resolution is further amended, which amendment shall become effective upon the effective date of the SAWS Transfer, to provide for DSP Commercial Paper Notes to be issued under the name of the City. As a result of this amendment, DSP Commercial Paper Notes shall be styled "CITY OF SAN ANTONIO, TEXAS DSP COMMERCIAL PAPER NOTES".

The District Senior Lien Orders permit amendment of their terms without any prerequisite to first receive consent or approval from any third party if such amendment makes

provision for the curing of any ambiguity or curing, correcting, or supplementing any defective provision contained therein, or in regard to clarifying matters or questions arising thereunder, as are necessary or desirable and not contrary to or inconsistent with the applicable District Senior Lien Order and which shall not adversely affect the interests of the holders of DSP Senior Lien Obligations. The City relies on this provision, and requisite curing of ambiguities, uncertainties, and defects thereunder as a result of the implementation of SB 341 and the results of the Election favoring the SAWS Transfer, as requisite authority and factual predicate to effectuate the amendments described herein.

Amendments to the District Commercial Paper Resolution described herein shall become effective upon the City's satisfaction of the necessary prerequisites described in Section 6.1 of such document (being receipt of consent from a bank that is a party to any Credit Agreement that exists and continues to remain in effect after the effective date of the SAWS Transfer).

The District Subordinate Lien Orders do not make specific provision for amendment of their terms. The implementation of SB 341 and the results of the Election favoring the SAWS Transfer, however, by operation of law result in the modification of certain terms thereof in the manner (but only to the extent) specified above. The City, for the purpose of providing certainty to those parties interested in the District Subordinate Lien Obligations (and in connection with its assumption of the rights, duties and obligations under the District Debt Authorization), accepts its assumptions under each District Subordinate Lien Order, as each such District Subordinate Lien Order is amended and modified, as described in this Section, by operation of law.

The City hereby delegates to each Designated Financial Officer, at the direction of the Board, the authority necessary to effectuate the amendment of any District Debt Authorization, including the pursuit of necessary legal proceedings, the execution any certifications, agreements, transfers, or consents, and other actions necessary or incidental to the effectuation of the amendments described herein or their declaration as being legally enforceable under Texas law.

SECTION 15: Development Corporation. Upon dissolution of the District Board by operation of SB 341 and the results of the Election in favor of the SAWS Transfer, the City hereby appoints each member of the Board as members of the Development Corporation's Board of Directors and instructs such Board of Directors to convene as soon as practicable subsequent to the effective date of the SAWS Transfer to elect new officers, effectuate a change in name of the Development Corporation, and to take other necessary action to assume control and operation of the Development Corporation. In addition, the Board of Directors shall take such action as may be necessary to assure continued payment of regular debt service, when due, on the Development Corporation Bonds, the source of payment of which is revenue derived by the Development Corporation, as lessor, from the City (being the legal successor in interest to the District), as lessee, under any lease agreement originally entered into by the District and the Development Corporation and pursuant to which the Development Corporation leases facilities to the City.

SECTION 16: District Special Project Fiscal Year. The Fiscal Year for the District Special Project shall initially be the same as the fiscal year of the former District. The Board may, at its discretion and at any time prior to System Integration, change the District Special Project's Fiscal Year to coincide with the fiscal year of the City System. Upon the change of the

Fiscal Year of the District Special Project, the Board shall provide notice of such change as specified in any District Debt Authorization and any ordinance or resolution of the City authorizing the issuance any Additional DSP Debt at such time Outstanding.

SECTION 17: Ordinance a Contract; Amendments; Benefits of Ordinance. This Ordinance represents a contract by the City and the Board as it relates to the ownership and operation of the District Special Project, and is intended to benefit the holders of any District Debt Obligation. This Ordinance may be amended by the City Council at its discretion to the extent that such amendment does not conflict with applicable law, including SB 341, the City System Ordinances, the District Debt Authorization, or any ordinance or resolution of the City hereafter authorizing the issuance of any series of Additional DSP Debt.

Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Board, the agents, consultants, or attorneys for either of the foregoing, or any party having a legal interest in any District Debt Obligation any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City or the Board, or the agents, consultants, or attorneys for either of the foregoing, or any party having a legal interest in any District Debt Obligation.

SECTION 18: Delegation to Board. To the extent not specified otherwise herein by reservation of any specific right or power exclusively to the City Council or accomplished already by the terms of this Ordinance, the City Council hereby delegates to and authorizes the Board to act on the City's behalf to perform all duties and to satisfy all acts that are the responsibility of the City pursuant to the terms of this Ordinance and, as applicable, the City System Ordinances.

SECTION 19: No Recourse Against City or Board Officials. No recourse shall be had for the payment of principal of, premium, if any, or interest on any District Debt Obligations or for any claim based thereon or on this Ordinance against any official of the City, or the Board.

SECTION 20: Inconsistent Provisions; Severability. All City ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters ordained herein; provided, however, that, to the extent of any conflict between this Ordinance and any District Debt Authorization that is not addressed in this Ordinance, SB 341, or other applicable law, the provisions of the District Debt Authorization shall control.

If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid or irreconcilably in conflict with any District Debt Authorization provision, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid or inconsistent provision.

SECTION 21: Construction of Terms; Effect of Titles and Headings; Liberal Interpretation. If appropriate in the context of this Ordinance, words of the singular number shall

be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders. The titles and headings of the articles and sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein. In the event the Board is abolished pursuant to the applicable provisions of the City System Senior Lien Ordinances and the City Council assumes the management and control of the DSP System, all references in this Ordinance to the Board shall be deemed to mean the City Council or the City, as appropriate, and all references to a Designated Financial Officer shall be deemed to mean the City Manager or the Chief Financial Officer of the City, as appropriate.

SECTION 22: Incorporation of Preamble Recitals. The recitals contained in the preamble to this Ordinance are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council.

SECTION 23: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 24: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 25: Further Procedures; Authority to File Declaratory Judgment Action Under Chapter 1205, as amended, Texas Government Code. The officers and employees of the City, including those of the Board, are 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. In case any officer of the City whose signature shall appear on any certificate or document executed pursuant to the authority granted hereunder shall cease to be such officer before the delivery of such certificate or document, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

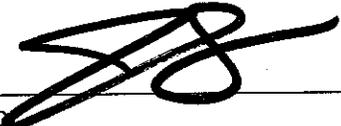
The City Council hereby authorizes the Board, acting through a Designated Financial Officer and in coordination with the City Attorney, to file a declaratory judgment action pursuant to Chapter 1205, as amended, Texas Government Code (*Chapter 1205*) as and to the extent determined by a Designated Financial Official to be necessary or desired to confirm the validity and enforceability of the acts and deeds ordained hereunder, the amendments to existing documentation made hereunder, or any other matter identified by a Designated Financial Official relating to the continued operation and management of the City System and the DSP System, and/or the City's ownership of the DSP System, subsequent to the SAWS Transfer. This delegation shall include the selection of proper venue for filing any such declaratory judgment action, addressing other matters left to the discretion of the party pursuing a declaratory

judgment action under Chapter 1205, and all other actions incident or related to the pursuit of the Chapter 1205 declaratory judgment action.

SECTION 26: Effective Date. The effective date of this Ordinance shall be governed by the provisions of Section 1-15 of the City Code of San Antonio, Texas. This Ordinance shall take effect immediately if passed by the affirmative vote of at least eight members of the City Council, otherwise the same shall take effect on the tenth day after the date of its passage by the City Council.

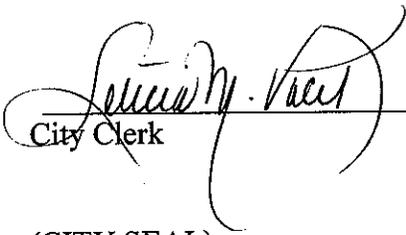
PASSED AND ADOPTED by an affirmative vote of 10 members of the City Council of the City of San Antonio, Texas, this the 20th day of October, 2011.

CITY OF SAN ANTONIO



Mayor

ATTEST:

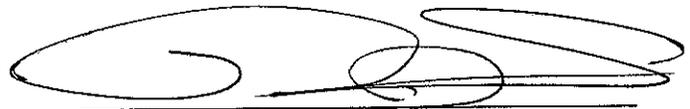


City Clerk



(CITY SEAL)

I, the undersigned, City Attorney of the City of San Antonio, Texas, hereby certify that I read, passed upon, and approved as to form the foregoing Ordinance prior to its adoption and passage as aforesaid.

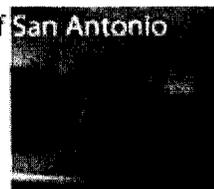


Michael D. Bernard, City Attorney, City of San Antonio, Texas



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 4

Name:	4						
Date:	10/20/2011						
Time:	09:47:32 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the San Antonio Water System to assume and continue operation of the Bexar Metropolitan Water District in the event the voters approve the dissolution of the District. [Ben Gorzell, Chief Financial Officer]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	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			x	
Carlton Soules	District 10		x				

CERTIFICATE OF CITY CLERK

THE STATE OF TEXAS §
 §
COUNTIES OF BEXAR, §
COMAL AND MEDINA §
 §
CITY OF SAN ANTONIO §

THE UNDERSIGNED HEREBY CERTIFIES that:

1. On the 20th day of October, 2011, the City Council (the *Governing Body*) of the City of San Antonio, Texas (the *Issuer*) convened in regular session at its regular meeting place in the Municipal Plaza Building of the Issuer (the *Meeting*), the duly constituted members of the Governing Body being as follows:

Julián Castro	Mayor
Ray Lopez	Mayor Pro Tem
Diego M. Bernal	Councilmember
Ivy R. Taylor	Councilmember
Jennifer V. Ramos	Councilmember
Rey Saldaña	Councilmember
David Medina, Jr.	Councilmember
Cris Medina	Councilmember
W. Reed Williams	Councilmember
Elisa Chan	Councilmember
Carlton Soules	Councilmember

and all of such persons were present at the Meeting, except the following: DAVID MEDINA, JR. thus constituting a quorum. Among other business considered at the Meeting, the attached ordinance (the *Ordinance*) entitled:

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS AUTHORIZING THE CREATION OF A SPECIAL PROJECT PURSUANT TO AND IN ACCORDANCE WITH THE PROVISIONS OF THE VARIOUS ORDINANCES OF THE CITY COUNCIL BY WHICH REVENUE OBLIGATIONS OF THE CITY PAYABLE FROM AND SECURED BY A LIEN ON AND PLEDGE OF THE REVENUES OF THE CITY'S COMBINED WATER, WASTEWATER AND CHILLED WATER SYSTEM WERE ISSUED AND NOW REMAIN OUTSTANDING; AMENDING CERTAIN TERMS AND PROVISIONS OF THE AUTHORIZING DOCUMENTS BY WHICH CERTAIN DEBT OBLIGATIONS ASSUMED BY THE CITY HAVE BEEN ISSUED AND REMAIN OUTSTANDING; PROVIDING FOR THE MANAGEMENT AND OPERATION OF THE NEWLY CREATED SPECIAL PROJECT;



Potential BexarMet to SAWS Transition: Special Project Ordinance

October 20, 2011

San Antonio City Council

Steve Clouse

Senior Vice President / Chief Operating Officer

Key Facts

- BexarMet has 92,800 connections that serve over 250,000 people
- 60% of BexarMet's customers reside within the City's corporate limits
- 70% are already SAWS' sewer customers
- SAWS' service areas and infrastructure are adjacent to, or relatively near, BexarMet's service areas and infrastructure

October 20, 2011

Potential BexarMet to SAWS Transition: Special Project Ordinance



SB 341 and Timeline

- DOJ has precleared the method of conducting the election on November 8th (early voting to begin Oct. 24th)
- SAWS actively planning for a transfer of the District's system to SAWS, if the election is in favor of dissolution
 - Utility integration team leading planning efforts
 - Conducted engineering and water resource planning
 - Developed Special Project Ordinance
- Dissolution of the BexarMet Board and transfer to SAWS will not take place until the vote is both certified and precleared by DOJ

October 20, 2011

Potential BexarMet to SAWS Transition: Special Project Ordinance



Engineering Studies

- Board awarded contract with three firms in April to study infrastructure integration opportunities
 - Analysis centered on CIP projects for both SAWS and BexarMet and looked for logical interconnections between the utilities
 - 5 year CIP planning horizon
 - Evaluated water supply consistent with SAWS drought of record evaluation methodology
- Studies are essentially complete
- Conservatively, >\$90 million in avoided capital cost identified
- Significant operational savings identified but not yet quantified

October 20, 2011

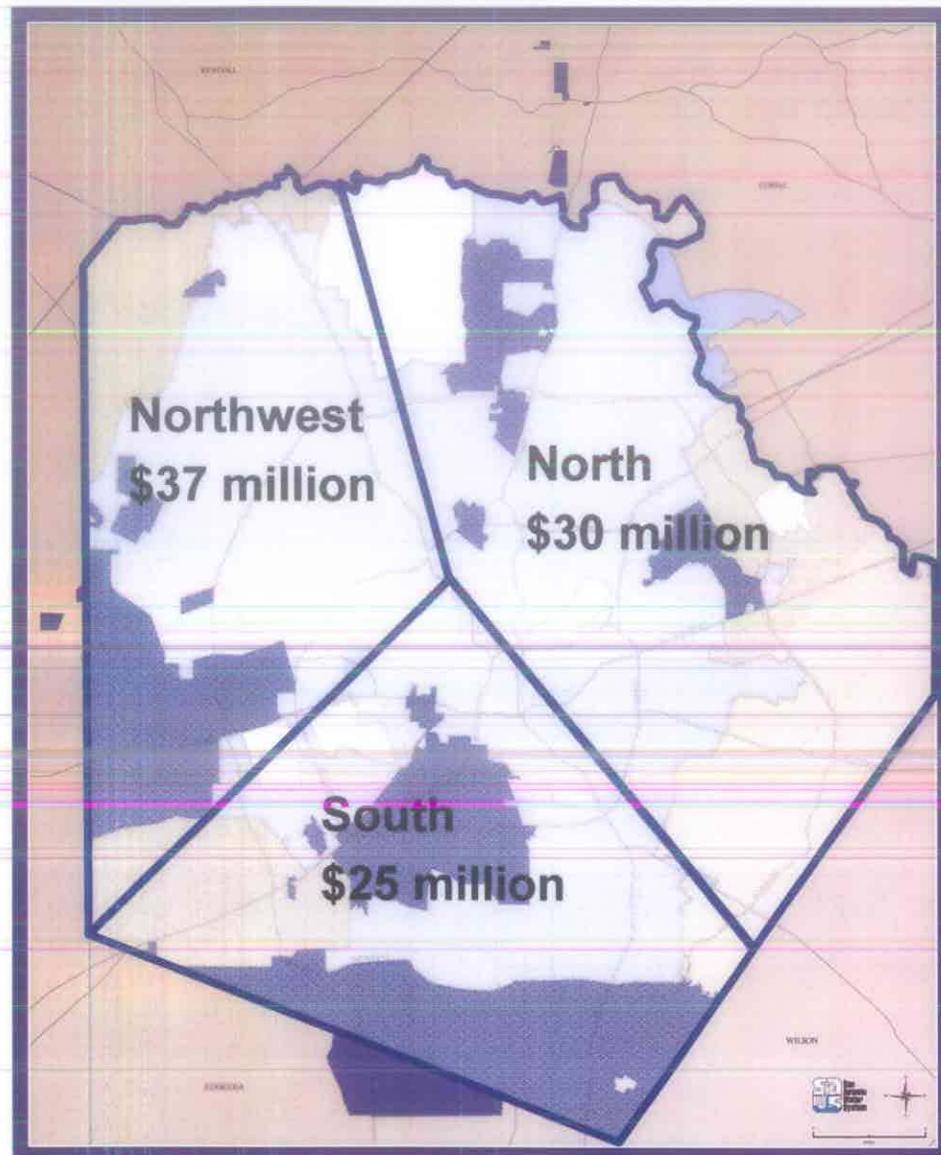
Potential BexarMet to SAWS Transition: Special Project Ordinance



Infrastructure Integration Study Areas

Total integration avoided costs - \$93 million

30 facilities decommissioned

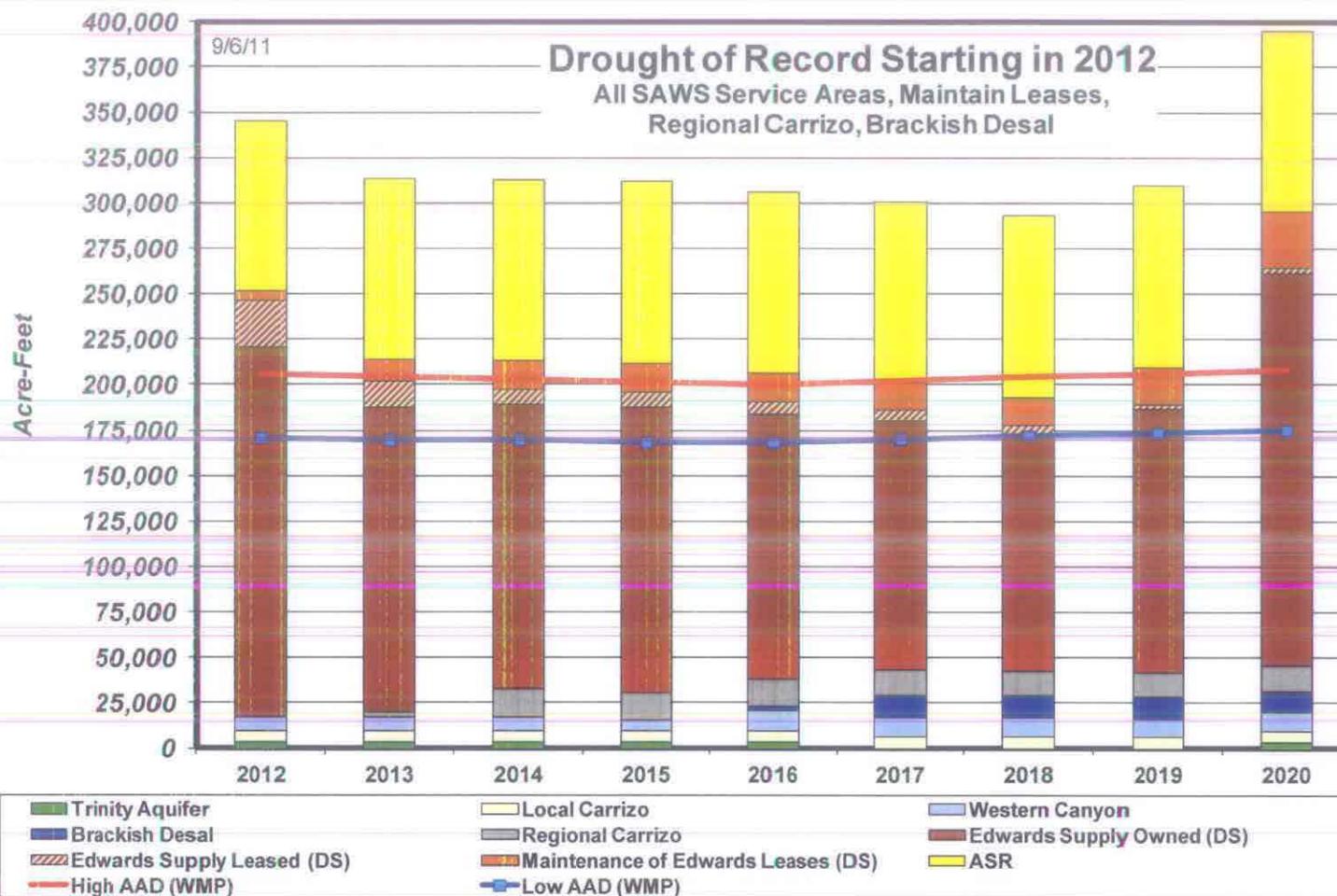


October 20, 2011

Potential BexarMet to SAWS Transition: Special Project Ordinance



SAWS and Drought of Record



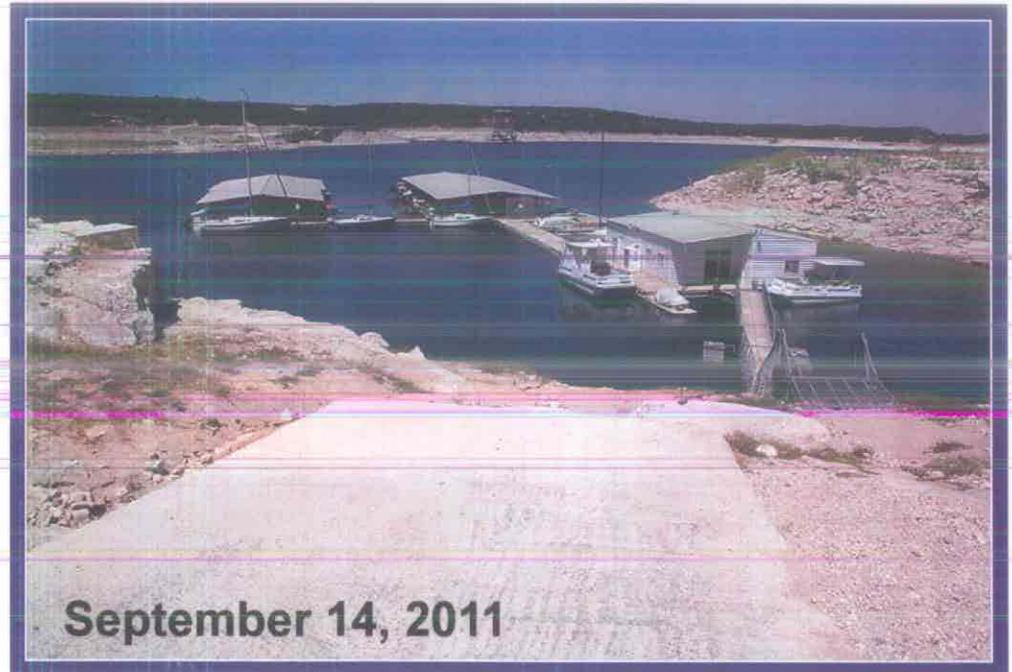
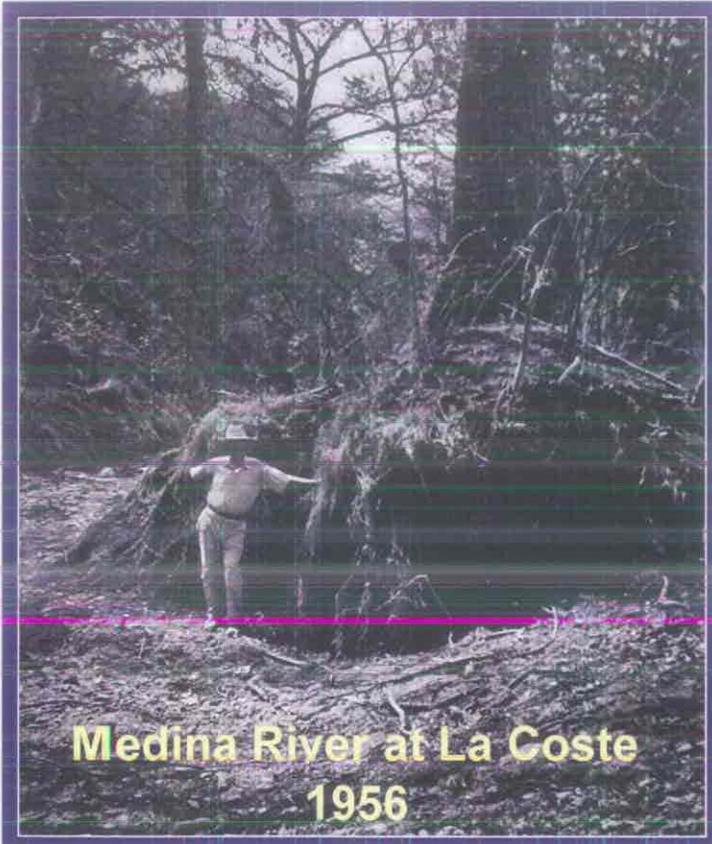
October 20, 2011

Potential BexarMet to SAWS Transition: Special Project Ordinance



Medina Lake and River

- 32% of total BexarMet Resources
- Currently 27% of capacity*
- Dry forecast for 2011-2012



*Source: Texas Water Development Board Real-Time Reservoir Summary, 10/18/11

October 20, 2011

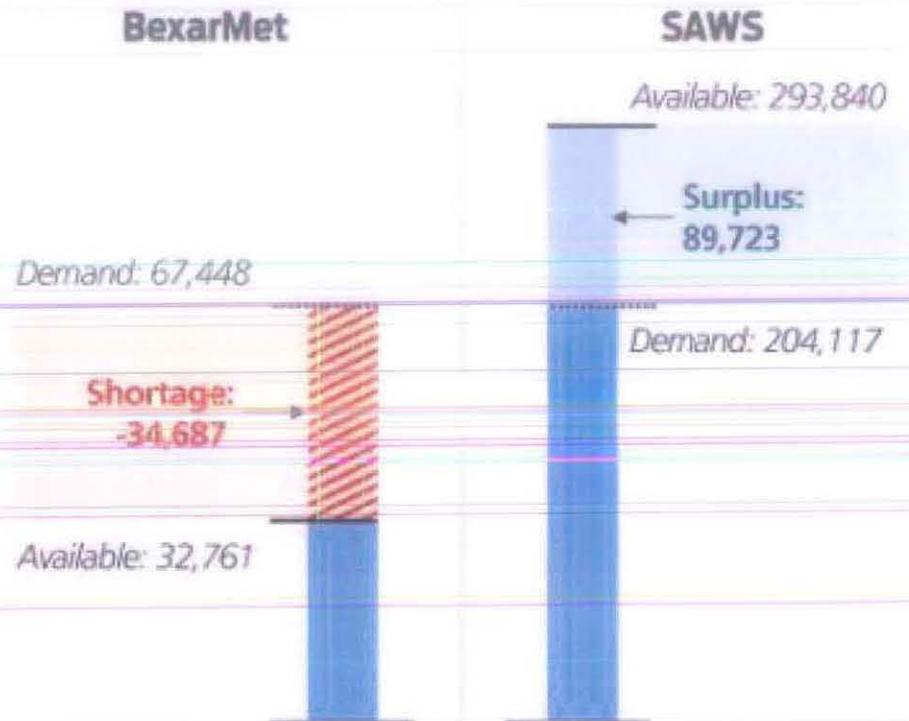
Potential BexarMet to SAWS Transition: Special Project Ordinance



What if there were a record drought?

If the worst drought on record were to repeat starting now, the water supplies of both utilities would reach their lowest point in 2018, with SAWS enjoying a surplus and BexarMet suffering a shortage.

2018 WATER SUPPLY DURING DROUGHT
in acre-feet of water



Sources: BexarMet, SAWS

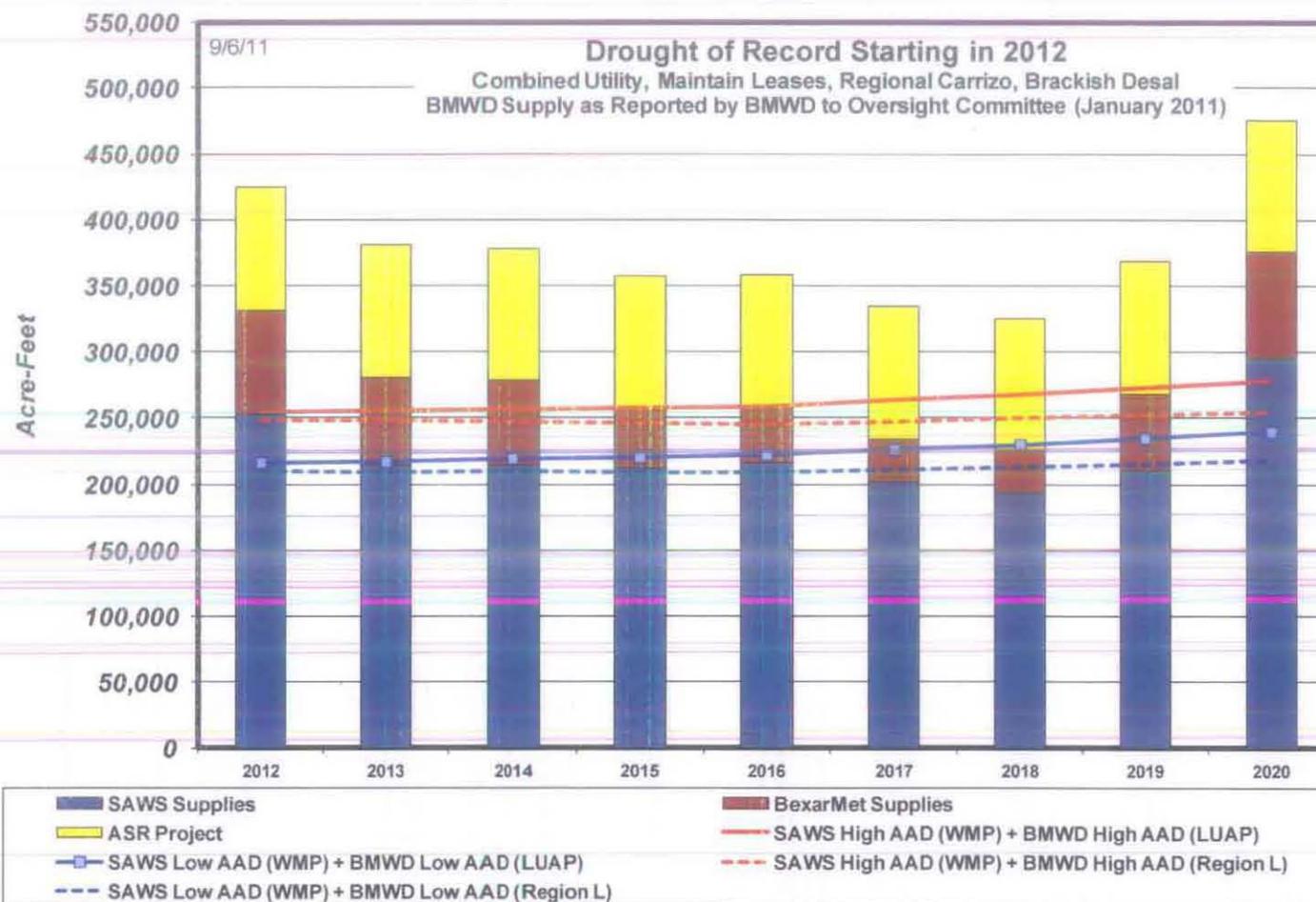
Source: Express-News

EXPRESS-NEWS GRAPHIC

October 20, 2011



Combined Utilities and Drought of Record



October 20, 2011

Potential BexarMet to SAWS Transition: Special Project Ordinance



Special Project Ordinance (SPO)

- Senate Bill 341 specifically allows for the creation of a Special Project
- Pursuant to all bond ordinances since SAWS was created, a Special Project is allowed to:
 - Manage and operate an independent system based on its own revenues and expenses (separate rates, bonds, impact fees, credit ratings, debt portfolio, etc.)
 - Protect the City's General Fund and SAWS' System Revenue Fund (without harming District's status)
- To be dissolved and integrated within 5 years

October 20, 2011

Potential BexarMet to SAWS Transition: Special Project Ordinance



Description of SPO

- The SPO establishes the operation of the District as a separate financial entity within SAWS
- Structure is comparable to SAWS' bond issuances, including SAWS' initial Creation Ordinance
- Articulates the history and purpose the Special Project consistent with SAWS Creation Ordinance and SB 341
- Assumes the rights, duties, obligations, assets and liabilities of the BexarMet District
- Delegates the management, control and governance to the SAWS Board of Trustees

October 20, 2011

Potential BexarMet to SAWS Transition: Special Project Ordinance



SPO and Bond Ratings

- The SPO is designed to protect SAWS bondholders from any debt associated with the BexarMet integration
- Initially maintains BexarMet's current rate structure and allows bonds to be sold for necessary capital improvements during the integration period
- Staff has discussed the SPO and bonding issues with the rating agencies and outside auditors
- Once the SPO is established, SAWS will need to meet with the rating agencies to establish debt portfolio and ratings for the SPO entity

October 20, 2011

Potential BexarMet to SAWS Transition: Special Project Ordinance



SPO Development

- SPO was developed in collaboration by
 - SAWS Legal Department and Fulbright and Jaworski who is the City's and SAWS' outside bond counsel and authored the ordinance creating SAWS in 1992
 - SAWS Finance Department and various other key departments
 - City Attorney's Office, and City's Department of Finance and Public Utilities Office

October 20, 2011

Potential BexarMet to SAWS Transition: Special Project Ordinance



SAWS Recommendation

- October 4, 2011 - San Antonio Water System Board of Trustees adopted a resolution to recommend that City Council approve the SPO
- SAWS staff recommends City Council approve the SPO

October 20, 2011

Potential BexarMet to SAWS Transition: Special Project Ordinance





Potential BexarMet to SAWS Transition: Special Project Ordinance

October 20, 2011

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