



February 18, 2011

VIA E-MAIL

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

File Number - S7-45-10

SEC Release No. 34-63576

Re: United States Securities and Exchange Commission Proposed Rule¹ Concerning the
Registration of Municipal Advisors

Dear Ms. Murphy:

We write to respectfully request that the Commission (hereinafter defined) modify its interpretation of the term "municipal advisor," or grant exemptive relief, so as to exclude appointed boardmembers from that term. We ask that you take that action in furtherance of established principles of federalism and to protect municipal entities (a purpose of the applicable provision), from adverse consequences.

We serve as the President/Chief Executive Officer, Senior Vice President/Chief Financial Officer, and the Interim General Counsel to an agency of the City of San Antonio, Texas (the "City") that was created in 1992 by the City Council of the City in accordance with the City's water, wastewater, and chilled water systems (the "Systems") revenue bond ordinances (the "SAWS Bond Ordinances") and is referred to as the San Antonio Water System ("SAWS"). The assets of the Systems are owned by the City, but the management, control, operation, and maintenance of the Systems has been delegated in the SAWS' Bond Ordinances to a seven member appointed Board of Trustees (the "SAWS Board"), including the Mayor of the City who serves as an ex-officio (but voting) member of the SAWS Board. The SAWS Board, excluding the Mayor, is subject to the appointment, review, and removal process set forth in the SAWS Bond Ordinances. We have enclosed the "Management" section of a recent SAWS Bond Ordinance as Exhibit A to this letter for your review and files.

This management structure envisions that the SAWS Board will establish policies, provide general oversight, approve maintenance and operations and capital budgets, establish strategic goals and plans, approve certain contracts, and receive, review, and make appropriate recommendations based upon management input received from the President/Chief Executive Officer of SAWS and his senior staff and other employees and outside consultants. These

¹ 76 Fed. Reg. 824 (January 6, 2011)

outside consultants, which with respect to the issuance of municipal securities would be bond counsel and entities generally referred to as financial advisors, would provide their professional advice with a duty to SAWS relating to the issuance of municipal securities.

SAWS is the largest municipally-owned provider of water utility services in Central and South Texas. Each of the national rating agencies, in providing SAWS with their extremely favorable ratings for municipally-owned revenue bond issuers, have commented favorably concerning the importance of this governance structure. All of the employees of SAWS are also employees of the City and SAWS is significantly regulated by the City's Home Rule Charter, the Texas Utilities Code, Chapter 1502, as amended, Texas Government Code, and a variety of other Texas statutes. Each appointed member of the SAWS Board is subject to scrutiny by the San Antonio City Council, and each member must make an initial detailed filing and make annual updated filings under the City's Ethics Code. We have attached these provisions as Exhibit B hereto, and these provisions are incorporated by reference for all purposes. Lastly, the SAWS Board is subject to the Texas open meetings and open records laws.

The San Antonio City Council alone has the legal authority to approve any debt issuances, to approve any changes in utility rates or structures, to commence any condemnation proceedings, and, as discussed above, to appoint, review, and remove members of the SAWS Board. The entire San Antonio City Council is subject to election every two years as set forth in the City's Home Rule Charter and other applicable law.

As you are well aware, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amended Section 15B of the Securities and Exchange Act of 1934 (the "Exchange Act") to make it unlawful for a municipal advisor to provide advice to a municipal entity with respect to municipal financial products or the issuance of municipal securities unless the municipal advisor is registered with the United States Securities and Exchange Commission (the "SEC" or the "Commission"). The Dodd-Frank Act also gives the Municipal Securities Rulemaking Board (the "MSRB") regulatory authority over municipal advisors and imposes a fiduciary duty on municipal advisors when providing advice to municipal entities. As amended by the Dodd-Frank Act, Section 15B of the Exchange Act is intended for the protection of municipal entities as well as investors. Under Section 23 of the Exchange Act, the Commission is authorized to adopt rules to implement the provisions of the Exchange Act, including Section 15B, and any act or omission made in reliance on Commission rules in good faith is exempted from liability. In addition, the Commission is specifically authorized by Section 15B(a)(4) of the Exchange Act, as amended by the Dodd-Frank Act, to exempt municipal advisors from any provision of Section 15B, including the registration requirements, fiduciary duties, and MSRB rules applicable to municipal advisors, if it finds that the exemption is consistent with the public interest, the protection of investors, and the purposes of Section 15B.

Section 15B(e)(4), of the Exchange Act, as amended by Section 975 of the Dodd-Frank Act, defines "municipal advisor" as:

“(A)... a person (who is not a municipal entity or an employee of a municipal entity) (i) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues, or (ii) that undertakes a solicitation of a municipal entity.”²

Thus, under the statute, an employee of a municipal entity cannot be a “municipal advisor” and is exempt from the proposed rule. As such, all employees of the City, including those of SAWS, would be exempt from the proposed rule. We would also note that the Commission could exercise its regulatory authority to define that all issuers and their elected or appointed governing bodies would be classified as the “municipal entity” and, as such, would be exempt from the proposed rule.

In its proposing release, the Commission provides interpretation on who is an “employee of a municipal entity.” The release interprets “municipal employees” to include members of a municipal entity’s elected governing body and appointed members of a governing body to the extent such appointed members are ex officio members of the governing body by virtue of holding an elective office, but to exclude members of an appointed governing body. Under this interpretation, members of the SAWS Board, excluding the Mayor, could be considered municipal advisors and therefore required to register with the SEC and be subject to MSRB regulation, if they fulfill their official duties by giving advice to SAWS concerning municipal securities issues or municipal financial products. The only reason given for the differing treatment of elected and appointed members in the interpretation in the SEC commentary is that appointed boardmembers “are not directly accountable for their performance to the citizens of the municipal entity.”³ We believe strongly that the SAWS Board is more accountable, or at least as accountable, to the “citizens of the municipal entity” as to the accountability that is deemed to be afforded an employee of the municipality in the Commission’s release.

Based upon our facts and the referenced Texas law, we believe that the Commission’s proposed policy decision to treat elected and appointed officials differently concerning their potential classification as a municipal advisor has no merit. For the reasons set forth above, each appointed member of the SAWS Board is subject to significant regulatory “control” by the San Antonio City Council, who are elected officials. As such, we respectfully request that the Commission modify its interpretation, or exercise its exemptive authority, to exempt governing body members who are appointed by elected officials.

We have serious concerns about the effect that the proposed interpretation has on potential legal liabilities that stem from the classification of a person as a municipal advisor and the resultant imposition of a federal law fiduciary duty on the municipal advisor. As you are well aware, violations of this fiduciary duty could subject municipal advisors to criminal and/or civil

² Section 15B(e)(4)(A) of the Securities Exchange Act.

³ 76 *Fed. Reg.* 837 (January 6, 2011).

liabilities. In addition, both the SEC and the MSRB have recently adopted or proposed additional rules to impose further regulatory restrictions and duties on municipal advisors, other than those contained in the proposed rule and interpretation that is the subject of this comment letter.

Texas law concerning an appointed boardmember's "duty" is not settled law. In fact, Texas law provides a mechanism by which "officials" may disclose a conflict of interest and then recuse themselves from a vote concerning the matter to be voted upon by the governing body. As you are well aware, the imposition of this fiduciary duty, under federal law and the supremacy clause, may have the effect of conflicting with and superseding Texas law on this important subject.

Commentators have noted that the proposed rule does not define "provides advice" and that arguably the SAWS Board's deliberations and voting on recommendations concerning the issuance of debt by the City (that would have to be approved by the San Antonio City Council) or concerning the investment of public funds or the approval of derivative transactions is not providing "advice" that is the focus of the proposed rule.

We, in good conscience, are not willing to accept this definitional determination. Although the SAWS Board has engaged independent financial advisors, bond counsel, and accountants, and selected various investment banks to be members of underwriting pools that will form syndicates to sell the City's municipal securities pursuant to SAWS' Bond Ordinances, the SAWS Board has active discussions concerning its proposed plan of finance, structuring assumptions, the use of swaps and other derivative products, the purchase of bond insurance policies or surety bonds, capital items, operation and maintenance budgets, redemption provisions, the review and approval of disclosure documents, and various other matters concerning the contemplated debt issuance. In fact, the SAWS Board is required under the SAWS Bond Ordinances to make recommendations to the San Antonio City Council concerning the issuance of municipal securities. Lastly, we also believe that the Commission's previous enforcement actions around the United States compel both elected and appointed boardmembers who authorize the issuance of publically-offered municipal securities to be active participants in this process.

We have concerns that **IF** the appointed members of the SAWS Board could be "deemed" by the Commission to be a "municipal advisor" pursuant to the Commission's interpretation, then such deliberations, discussions, and votes could be classified as "advice" that would impose the proposed rule's licensing requirements and fiduciary duty on the appointed members of the SAWS Board and trigger the reporting, record keeping, and certification requirements set forth in the proposed rule.

It is also our understanding that the Commission's existing MA-T Municipal Advisory Temporary Registration Form (that is attached hereto as Exhibit C and incorporated by reference for all purposes) may be the template for the creation of the proposed rule's MA-I format.

As we previously disclosed and discussed, each member of the SAWS Board is subject to initial and annual updating compliance in accordance with the City's Ethics Code. As such, we believe

that the proposed rule's MA-I Form is cumbersome, unnecessary in our situation, and may have a chilling effect on prospective boardmembers, because the information disclosed in the MA-I Form will be publically available, and discourage their contemplated public service as a member of the SAWS Board. We are confident that you will agree that having the most qualified members on the SAWS Board is in the public's best interest. It seems to us that the proposed rule's MA-I Form has merit and applicability for a person truly providing "financial" advice to a municipal entity but, in our case, not to an appointed member of the SAWS Board.

We also have concerns about the annual certification requirement in the proposed rule, if and when an appointed boardmember is deemed to be a municipal advisor that is providing "advice" to its board. Once again, the administrative time and manpower costs to comply with these registration, record keeping, and certification requirements, the inevitable registration and annual certification filing fees and expenses, and additional continuing education requirements for the appointed boardmember to take further time away from their regular full-time jobs and potentially their families is not justified under the SAWS factual scenario.

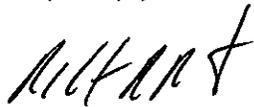
For each of the stated reasons, we respectfully request that the Commission significantly limit the scope of the "municipal advisor" to address, only from a policy standpoint, the specific factual situation that was the impetus for the Dodd-Frank provisions. We are confident that you will agree that none of the appointed members of the governing body of the SAWS Board should be classified as municipal advisors for the reasons set forth in this comment submission.

In closing, we request that the Commission treat all appointed boardmembers in the same manner as the interpretation treats elected officials and municipal employees.

Thank you for your careful consideration of this request to exempt all appointed boardmembers in the Commission's final rule definition of "municipal advisor" so that the final rule will accomplish its intended public purpose.

Please do not hesitate to contact us if we can provide any future clarification or support on this important manner.

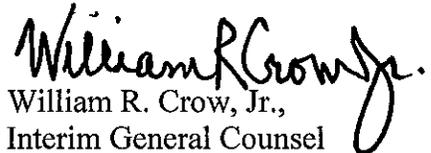
Very truly yours,



Robert Puente,
President/Chief Executive
Officer



Doug Evanson,
Senior Vice President/Chief
Financial Officer



William R. Crow, Jr.,
Interim General Counsel

Enclosure

cc: Mr. Alexander E. Briseño (Chairman, Board of Trustees, San Antonio Water System)
Honorable Julián Castro (Mayor, City of San Antonio, Texas)
Ms. Sheryl Sculley (City Manager, City of San Antonio, Texas)

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Mr. Michael Bernard (City Attorney, City of San Antonio, Texas)
Mr. Ben Gorzell (Chief Financial Officer, City of San Antonio, Texas)
Honorable John Cornyn (United States Senator)
Honorable Kay Bailey Hutchison (United States Senator)
Honorable Lamar Smith (United States House of Representatives)
Honorable Charles Gonzalez (United States House of Representatives)
Honorable Francisco Canseco (United States House of Representatives)

EXHIBIT A

Management Section of Bond Ordinance

Management of System.

A. Pursuant to the authority contained in Chapter 1502, as amended, Texas Government Code (formerly Texas Revised Civil Statutes Annotated Article 1115b, as amended), except as otherwise specifically provided in this Ordinance, the complete management and control of the System during such time as any Debt is outstanding shall be vested in a seven-member board of trustees to be known as the "San Antonio Water System Board of Trustees". Such board is referred to in this Ordinance as the "Board." The Mayor of the City from time to time shall ex-officio be one of the members of the Board, and the other current members of the Board as of the date of passage of this Ordinance are Willie A. Mitchell currently serving a term ended May 31, 2010 (Mr. Mitchell remains in such position until his reappointment, or his replacement is appointed, by the City Council), Robert Anguiano currently serving a term ending on May 31, 2012, Samuel E. Luna, Elizabeth M. Provencio, and Louis E. Rowe all currently serving a term ending May 31, 2013, and Alexander E. Briseño currently serving a term ending May 31, 2014. Notwithstanding the foregoing, the Members of the Board may be increased to a number greater than seven (7), to include the Mayor of the City as an ex-officio member, as otherwise appointed by the City.

B. Members of the Board must be citizens of the United States and must either reside inside the corporate limits of the City or inside the area served by the System. No person who is related within the second degree of consanguinity or affinity (or as further restricted by the City's Home Rule Charter) to any Member of the Board or any member of the City Council shall be eligible for appointment as a Member of the Board. The term of office of each Member of the Board shall be four (4) years. All terms shall commence on June 1 and shall terminate on May 31 four years later; provided, however, in the event a replacement for a Member has not been named by the City Council prior to the expiration of such Member's term, such Member shall serve until such Member's successor shall be appointed, and such successor's term shall terminate on May 31st of the year in which such term normally would have terminated if the City Council had appointed such successor prior to the termination of such Member's term. No person who has served as a Member of the Board for a total of two (2) terms shall be eligible for appointment as a Member of the Board. Any Member who is appointed to the Board to serve out an unexpired portion of another Member's term shall not be considered to have served a term unless the unexpired portion of the term so served is two (2) years or more.

C. Removal of residence from the area served by the System by any Member of the Board shall vacate such person's office as a Member of the Board, and any Member of the Board (other than the Mayor of the City) who shall be continuously absent from all meetings of the Board for a period of four (4) consecutive months shall, unless such person has requested and been granted leave of absence by the unanimous vote of the remaining Members of the Board, be considered to have vacated such person's office as a Member of the Board.

D. All vacancies in membership on the Board, whether occasioned by failure or refusal of any person to accept appointment or by resignation, failure to continue to qualify to serve, expiration of term of office, or otherwise, shall be filled by majority vote of all members of the City Council then holding office. Any Member of the Board other than the Mayor of the City may, by a two-thirds (2/3) vote of all members of the City Council then holding office, be removed from office, with or without cause. For purposes of this Section 32, the term *members of the City Council then holding office* shall be the number of persons authorized from time to time by the City's Home Rule Charter to be members of the City Council, whether or not all such positions are filled at any particular time.

E. Except as otherwise specifically provided in this Ordinance, the Board shall have absolute and complete authority and power to control, manage, and operate the System and shall control the expenditure and application of the Gross Revenues of the System pursuant to this Ordinance. In connection with the control, management, and operation of the System and the expenditure and application of the Gross Revenues therefrom, the Board shall be vested with all of the powers of the City with respect thereto, including all powers necessary or appropriate for the performance of all the covenants, undertakings, and agreements of the City contained in this Ordinance, and, with the exception of fixing rates and charges for service rendered by the System, shall have full power and authority to make rules and regulations governing the furnishing of services of the 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 this Ordinance, shall have authority to make extensions, improvements, and additions to the System and to acquire by purchase or otherwise properties of every kind in connection therewith. The operational policies of the Board shall parallel those of the City Council insofar as practicable.

F. The Board shall determine the rates, fees, and charges for services rendered and to be rendered by the System, with due consideration being accorded to the terms, covenants, and conditions contained in this Ordinance and the ordinances authorizing the issuance of any Additional Senior Lien Obligations. 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 System shall never be reduced in such amounts as will impair the performance of any of the covenants contained in this Ordinance or in any ordinance authorizing the issuance of any Additional Senior Lien Obligations.

G. The Mayor, with the concurrence of the City Council, annually shall appoint one of the other Members of the Board as the Chairman of the Board. The Board annually shall elect one of its Members as Vice-Chairman of the Board and shall appoint a Secretary and an Assistant Secretary, either or both of whom may, but need not be, a Member or Members of the Board. If a Member of the Board is not appointed as Secretary or Assistant Secretary, then an employee or employees of the Board may be so appointed. The Board may adopt rules for the orderly conduct of its meetings. The Board shall manage and conduct the affairs of the System

in a manner consistent with practices ordinarily employed by the boards of directors of private utility corporations operating properties of a similar nature and with the same degree of prudence. The Board shall have at least one meeting monthly. All meetings of the Board shall be open to the public in accordance with the requirements of Chapter 551, as amended, Texas Government Code. The Board is authorized to adopt rules of procedure and standards of conduct for persons attending and participating in its meetings and any public hearings conducted by or on behalf of the Board.

H. The Board shall appoint and employ all officers, employees, and professional consultants which it may deem desirable, including, without limitation, a chief executive officer of the System, attorneys, auditors, engineers, architects, and other advisers; provided, however, that the City Attorney shall be the chief legal adviser of the Board. The selection of additional attorneys shall be made in consultation with the City Attorney, but the decision of the Board shall be final. The Board may delegate administrative duties and authority to its employees and consultants. No officer or employee of the Board may be employed who shall be related within the second degree of consanguinity or affinity (or as further restricted by the City's Home Rule Charter) to any Member of the Board or any member of the City Council.

I. The Board shall obtain and keep continually in force an employees' fidelity and indemnity bond ("blanket" form), or its equivalent, written by a solvent and recognized insurer and covering losses to the amount of not less than One Hundred Thousand Dollars (\$100,000.00).

J. The Board shall make such provision for an employee retirement plan or pensions for employees of the Board as it may in its discretion determine. The Board may continue in existence the retirement plans in effect on the date of adoption of the ordinance authorizing the issuance of the Series 1992 Bonds for the Waterworks System, the Wastewater Department of the City, and the Water Reuse Department of the City and may change the same from time to time as it may determine. The title to and ownership of funds set aside in accordance with an employee retirement plan shall be held in trust for the benefit of the members of such pension plan.

K. The Members of the Board, other than the Mayor of the City shall each receive annual compensation in the amount of \$2,500.00 or such additional amount as may be determined from time to time by the City Council. The Members of the Board shall be entitled to payment by the Board of their reasonable and necessary expenses for the discharge of their duties.

L. The Members of the Board shall not be personally liable, either individually or collectively, for any act or omission in the performance of their duties as Members of the Board not willfully fraudulent or in bad faith. The Board may authorize the use of Board funds to provide defense for its Members or its employees for civil actions brought against them for any such acts and may hold such Members and employees harmless from any damages awarded against them in any civil action.

M. The City Manager, or the City Manager's designee, shall be authorized to attend meetings of the Board, and the Board shall provide the City Manager with notice of such meetings in the same manner that such notice is given by the Board to its Members.

N. The Board when expending funds for improvements and materials and supplies shall be governed by the then current provisions of applicable City policy and the laws of the State of Texas relating to notices to bidders, advertisement thereof, requirements as to the taking of sealed bids based upon specifications for such improvements or purchase, the furnishing of surety bonds by contractors, and the manner of letting contracts.

O. The City Council reserves the right to require the Board, at the System's expense and payable from the Renewal and Replacement Fund, to conform its installations in the streets, alleys, and public ways of the City to any changes created by City construction projects; provided, however, such City ordered relocation of System facilities at System expense shall be limited, in any Fiscal Year, to an amount not to exceed 5% of the Board's annual budget for Maintenance and Operating Expenses in such Fiscal Year. Relocation costs exceeding such 5% limitation shall be funded through direct payment of such excess costs by the City, through payment to the Board of such excess cost by the City, or through the issuance of Debt.

P. No Member of the Board, or any officer, agent, or employee of the Board shall have a financial interest, direct or indirect, in any contract with the Board or shall be financially interested, directly or indirectly, in the sale to the Board of any land, materials, supplies, or services except on behalf of the Board as an officer or employee or as permitted by the provisions of Chapter 171, as amended, Local Government Code, or any other similar general Texas law in effect from time to time, or the City's Home Rule Charter, whichever is most restrictive.

Q. The Board shall prepare an annual budget to serve as a tool in controlling and administering the management and operation of the System. The annual budget shall reflect an estimate of Gross Revenues and an estimate of the disposition of these revenues in accordance with the funds flow requirements of this Ordinance. The annual budget shall be presented and approved by the Board at least sixty (60) days prior to the beginning of the Board's Fiscal Year. Immediately following approval of the annual budget by the Board, it shall be submitted to the City Council for review and consultation. The Board may subsequently modify its approved budget by giving notice thereof to the City.

R. The Board shall prepare and administer, and may amend from time to time, a master plan for the System (the *Master Plan*), addressing the water resource and capital improvement projects required to accommodate the projected growth and development of the service area of the System. The 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.

S. The Board shall provide the City Council with a complete briefing on any matter of litigation which is being contemplated involving the Board as a plaintiff against the City or any of its agencies, and City Council approval shall be obtained by the Board prior to the formal initiation of any such matter of litigation. Unless the City Attorney recommends City Council

approval with respect to a particular matter of litigation proposed to be initiated by the Board, all other matters of litigation initiated by the Board may be approved by the Board without approval of the City Council.

T. The Board shall establish an appeals process for disciplinary actions involving its employees. An appeals committee composed of at least three (3) persons who are neither employees nor Members of the Board shall be appointed by the Board, and such committee shall operate under rules established by the Board from time to time. Such committee shall make recommendations to the chief executive officer of the System, with the final determination concerning disposition of a disciplinary action being made by the chief executive officer of the System. The Board shall further establish Equal Employment Opportunity and Affirmative Action programs in compliance with applicable federal and State of Texas guidelines. All personnel policies established by the Board shall parallel those of the City in effect from time to time insofar as practicable.

U. During each Fiscal Year, the Board shall prepare and formally present to the City Council a minimum of two (2) reports regarding the status of water resource planning and development, other water related issues being undertaken or contemplated by the Board, and other matters previously requested by the City Council.

V. The City Council reserves the right, by ordinance, to abolish the Board and thereafter transfer control, maintenance, and operation of the System to a department of the City in accordance with the provisions of the laws of the State of Texas and the City's Home Rule Charter. The City Council may so abolish the Board at any regular or special meeting of the City Council upon the affirmative vote of 3/4 of the members of the City Council then holding office. Such vote must be preceded by at least two (2) public hearings conducted by the City Council at least 30 days apart. Notice of such public hearings and the subject matter to be discussed shall be published at least one (1) time prior to each such hearing in a newspaper of general circulation within the City at least 15 days prior to the hearing. Such hearings may be conducted at a regular or special meeting of the City Council or in some other location designated by the City Council, and the calling of such hearings and the authorization of the publication of such notices may be by majority vote of all members of the City Council then holding office at any regular or special meeting of the City Council. The ordinance abolishing the Board shall name the effective date of the abolition of the Board and the transfer of maintenance, control, and operation of the System to the City. By the same procedure, the City Council may subsequently reconstitute the Board and thereafter transfer control, maintenance, and operation of the System to such Board as otherwise set forth in this Ordinance..

EXHIBIT B

City of San Antonio Ethics Code Disclosure

Officials and Employees), 3 (Former City Officials and Employees), 4 (Persons Doing Business with the City), and 5 (Lobbyists) of this ethics code.

DIVISION 7: FINANCIAL DISCLOSURE

SECTION 2-73 FINANCIAL DISCLOSURE REPORT

(a) Persons Required to File Disclosure Form.

(1) **City Officials and Designated City Employees.** No later than thirty (30) days after accepting appointment or assuming the duties of office, and annually thereafter, the city officials defined in Section 2-42 of Division 1 (Definitions), Police Department Captains, Assistant Chiefs, and Deputy Chiefs, all appointed Deputy Fire Chiefs and appointed Assistant Fire Chiefs, and any Assistant Fire Chief who either works in the Fire Administration Building or any other division and is involved in having input to any contract, vehicle specification, or who is otherwise involved with the purchasing of any product, service, or land for the Fire Department, any fire Inspector, Plan Reviewer or Uniformed Administrator of the Fire Prevention Division, any uniformed employee involved in maintaining Departmental Personnel Records located at the Fire Administration Building, any uniformed Personnel utilized in evaluating or purchasing equipment, vehicles or any other purchases who also have contact with contractor(s) who provide such equipment or vehicles, and any Uniformed Personnel utilized in providing input to any contract or composing specifications of equipment and vehicles, who also have contact with contractor(s) who provide such services, equipment or vehicles are required to file with the City Clerk a complete sworn financial disclosure report.

(2) **Exception.** Candidates for City Council and City officials required to file financial disclosure statements pursuant to Local Government Code Chapter 145 shall file financial disclosure statements in compliance with the Local Government Code in place of filing statements required by this code of ethics. Such officials shall also complete an addendum to the statement disclosing information required by this code of ethics, but not required under the Local Government Code. The addendum shall be prepared by the Office of the City Clerk. Deadlines for filing the financial disclosure documents shall be governed by Chapter 145 of the Local Government Code.

(b) **Open Records.** Financial disclosure reports are open records subject to the Texas Open Records Act, and shall be maintained in accordance with the Local Government Records Act.

(c) **Annual Filing Date.** Annual financial disclosure reports filed by City officials who are City employees and by City employees who are required to report must be received by the City Clerk by 4:30 p.m. on the 31st day of January. Annual financial disclosure reports filed by City officials who are not City employees and who are required to report must be received by the City Clerk by 4:30 p.m. on the 31st day of March. When the deadline falls on a Saturday or Sunday, or on an official city holiday as established by the City Council, the deadline for receipt by the City Clerk is extended to 4:30 p.m. of the next day which is not a Saturday or Sunday or official city holiday. The City Clerk shall grant an extension of time in which to file a report upon written request submitted in advance of the deadline. The extension shall not exceed fifteen (15) days.

Unforeseen Circumstances. In the event of an unforeseen circumstance, including, but not limited to, military

service or acute illness or leave without pay under the Family Medical Leave Act, the deadline for receipt by the City Clerk is extended until such time as the city official or employee resumes his city duties.

(d) **Reporting Periods.** Each initial or annual financial disclosure report filed by an individual designated in Section 2-73(a)(1) of Division 7 (Financial Disclosure Report), and each report filed by a candidate for City Council, shall disclose information relating to the prior calendar year, as well as any material changes in that information which occurred between the end of the prior calendar year and the date of filing.

(e) **City Clerk.** The City Clerk shall:

- (1) prior to January 15 of each year, notify city officials who are city employees and employees specified in Subsection (a)(1) of their obligation to file financial disclosure reports and provide forms to be completed; and prior to February 15 of each year, notify city officials who are not city employees of their obligation to file financial disclosure reports and provide the forms to be completed.
- (2) provide forms to all new City Council appointees and those filing for elective office, and advise them of reporting requirements and deadlines;
- (3) provide guidance and assistance on the reporting requirements for persons required to file financial disclosure reports and develop common standards, rules, and procedures for compliance with Division 7 (Financial Disclosure);
- (4) review reports for completeness and timeliness;
- (5) maintain filing, coding, and cross-indexing systems to carry out the purpose of Division 7 (Financial Disclosure), including:
 - (A) a publicly available list of all persons required to file; and
 - (B) computerized systems designed to minimize the burden of filing and maximize public access to materials filed under Division 7 (Financial Disclosure);
- (6) make available for public inspection and copying at reasonable times the reports filed under Division 7 (Financial Disclosure);
- (7) upon determining that such appointee who is required to file a financial disclosure report has failed to do so or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing within fifteen (15) days after the original deadline constitutes an automatic resignation. At the same time, the City Clerk shall publicly announce to the City Council the names of those who have not filed and to whom this notification is being sent. If such an appointee fails to file a completed report within fifteen (15) days from the original deadline, the position shall be considered vacant, and a new appointment shall be made by the City Council; and
- (8) upon determining that the Mayor, a member of City Council, a candidate for City Council, the City Manager, or a Municipal Court Judge or Magistrate has failed to timely file a financial disclosure report, or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing within fifteen (15) days after the original deadline will result in the

matter being forwarded to the Ethics Review Board. If the person in question fails to file a completed report within fifteen days of the original deadline, a report of non-compliance shall be forwarded to the Ethics Review Board for appropriate action.

- (9) upon determining that a person other than as provided in subsections (7) or (8) above, has failed to timely file a financial disclosure report, or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing within fifteen (15) days after the original deadline will result in the matter being forwarded to the City Manager. If the person in question fails to file a completed report within fifteen days of the original deadline, a report of non-compliance shall be forwarded to the City Manager for appropriate action.

The failure of the City Clerk to provide any notification required by this Section does not bar appropriate remedial action, but may be considered on the issue of culpability.

- (f) **Exception.** A city official who is a member of a board or commission created pursuant to federal or state law may only be removed for failing to file a financial disclosure form if allowed under federal or state law.

SECTION 2-74 CONTENTS OF FINANCIAL DISCLOSURE REPORTS

Each initial or annual financial disclosure report shall disclose, on a form provided by the city, the following information:

- (a) the reporting party's name;
- (b) the name of any person related as parent, child, (except a child who is a minor), or spouse to the reporting party;
- (c) the name of any member of the reporting party's household not disclosed under Subsection (b) of this rule;
- (d) the name of any employer of any person disclosed under Subsections (a) or (b) of this rule;
- (e) the name of any business entity (including self employment in the form of a sole proprietorship under a personal or assumed name) in which the reporting party or his or her spouse holds an economic interest;
- (f) the name of any business which the reporting party knows is a partner, or a parent or subsidiary business entity, of a business entity owned, operated, or managed by the reporting party or his or her spouse;
- (g) the name of any person or business entity from whom the reporting party or his or her spouse, directly or indirectly:
 - (1) has received and not rejected an unsolicited offer of subsequent employment; or
 - (2) has accepted an offer of subsequent employment which is binding or expected by the parties to be carried out;
- (h) the name of each nonprofit entity or business entity in which the reporting party serves as an officer or director, or in any other policy making position;

- (i) the name of each business entity which has sought city business, has a current city contract or anticipates seeking city business in which any individual listed in Subsection (a) or (b) is known to directly or indirectly own:
 - (1) ten (10) percent or more of the voting stock or shares of the business entity, or
 - (2) ten (10) percent or more of the fair market value of the business entity;
- (j) the name of any business entity of which any individual or entity disclosed under Subsection 2(a) or (2)(i) is known to be:
 - (1) a subcontractor on a city contract;
 - (2) a partner; or
 - (3) a parent or subsidiary business entity.
- (k) the name of each source of income, other than dividends or interest, amounting to more than five thousand dollars (\$5000) received during the reporting period by the reporting party or his or her spouse, unless that source has been disclosed under Subsections (a) through (j) of this rule;
- (l) the identification by street address, or legal or lot-and-block description, of all real property located in the State of Texas in which the reporting party or his or her spouse has a leasehold interest, a contractual right to purchase, or an interest as: fee simple owner; beneficial owner; partnership owner; joint owner with an individual or corporation; or owner of more than twenty-five (25) percent of a corporation that has title to real property. There is no requirement to list any property:
 - (1) used as a personal residence of a peace officer;
 - (2) over which the reporting party has no decision power concerning acquisitions or sale; or
 - (3) held through a real estate investment trust; mutual fund, or similar entity, unless the reporting party or his or her spouse participates in the management thereof;
- (m) the name of persons or entities to whom the reporting party or spouse owes an unsecured debt of more than five thousand dollars (\$5,000.00), other than debts for:
 - (1) money borrowed from a family member from his or her own resources; and
 - (2) revolving charge accounts.
- (n) the name of each person, business entity, or other organization from whom the reporting party, or his or her spouse, received a gift with an estimated fair market value in excess of one hundred dollars (\$100) during the reporting period and the estimated fair market value of each gift. Excluded from this requirement are:
 - (1) lawful campaign contributions which are reported as required by state statute or local ordinance;

- (2) gifts received from family members within the second degree of affinity or consanguinity;
- (3) gifts from an individual based on personal friendship who during the preceding three calendar years:
 - a) has not done or sought to do business with the city;
 - b) has not sought city action on any issue before the City Council or any city board or commission;
 - c) is not associated with any business or entity that has done or sought to do business with the city; and
 - d) is not associated with any business or entity that has sought city action on any issue before the City Council or a city board or commission.
- (4) gifts received among and between fellow city employees and city officials;
- (5) admission to events in which the reporting party participated in connection with official duties;
- (6) payment of or reimbursement of travel and accommodations expenses accepted in connection with official duties which have been reported under Section 2-76 (Travel Reporting Requirements); payment for or reimbursement of expenses for travel in excess of authorized rates under city policy are gifts subject to the reporting requirements under this section.

SECTION 2-75 SHORT FORM ANNUAL REPORT

A person who is required to file an annual financial disclosure report may fulfill his or her filing obligations by submitting a short sworn statement on a form provided by the city, if there have been few or no changes in the information disclosed by that person in a complete financial disclosure report filed within the past five (5) years. The short statement shall indicate the date of the person's most recently filed complete financial disclosure report and shall state that there have been no material changes in that information or shall list any material changes that have occurred.

SECTION 2-76 TRAVEL REPORTING REQUIREMENTS

- (a) Any city official or employee who, in connection with his or her official duties, accepts a trip or excursion involving the gratuitous provision of transportation, accommodations, entertainment, meals, or refreshments paid for by a person or entity other than a public agency must file with the City Clerk, before embarking on the travel, a disclosure statement identifying:
 - (1) the name of the sponsor;
 - (2) the places to be visited; and
 - (3) the purpose and dates of the travel;
 - (4) the estimated amount of the expenses paid.
- (b) Acceptance of a trip or excursion by Municipal Court Judges and Magistrates, City Manager, Deputy City Manager, City Clerk, Assistant City Clerk, Assistant City Managers, Assistants to the City Manager, and all department heads, assistant department heads, and employees in positions listed on the executive pay plan (Job Class 1000 through 1999) must receive prior written approval of the City Manager. Other personnel must receive written approval by their department director. Boards and commissions members must receive approval by a vote of their board or commission.

EXHIBIT C

SEC Form MA-T

OMB APPROVAL
OMB Number: 3235-0659
Expires: March 31, 2011
Estimated average
Burden hours per form: 2.5
Per amendment: 0.5

Note: Form MA-T is an electronic form accessible through a link located on the website of the U.S. Securities and Exchange Commission at www.sec.gov. It may not be filed in paper form.

FORM MA-T

MUNICIPAL ADVISOR TEMPORARY REGISTRATION FORM

ITEM 1 - IDENTIFYING INFORMATION

A. This is:

- An initial temporary registration as a municipal advisor
- An amendment of temporary registration as a municipal advisor
Municipal Advisor Registration Number: ____ - ____ - ____
- A withdrawal of temporary registration as a municipal advisor
Municipal Advisor Registration Number: ____ - ____ - ____

B. Full Legal Name of municipal advisor:

(firm name or name of sole proprietor)

C. Name under which the municipal advisor conducts business, if different:

D. IRS Employer Identification Number of the municipal advisor: _____

(Note: If you are a sole proprietor, leave this space blank. Do NOT fill in your social security number.)

E. If the municipal advisor is also registered with the SEC as an investment adviser, its SEC file number: 801- _____

F. If the municipal advisor is also registered with the SEC as a broker, dealer, or municipal securities dealer, its SEC file number: _____

G. If the municipal advisor has a number ("CRD Number") assigned by the FINRA's CRD system or by the IARD system, its CRD number *(Do not provide the CRD number of the municipal advisor's officers, employees, or affiliates)*: _____

H. Municipal advisor's principal office and place of business:

(1) Address (*do not use a P.O. Box*):

(number and street)

(city) (state/country) (zip+4/postal code)

(2) Telephone number at this location:

(area code) (telephone number)

(3) Facsimile number at this location, if any:

(area code) (telephone number)

(4) General e-mail address for the municipal advisor, if any:

@

(5) Website, if any, of the municipal advisor

www. _____

I. Mailing address, if different from the municipal advisor's principal office and place of business address:

(number and street)

(city) (state/country) (zip+4/postal code)

J. Contact person: *[The contact person should be a person whom the municipal advisor has authorized to receive information and respond to questions about this registration.]*

(name)

(title)

(telephone number, including area code)

(facsimile number, if any, including area code)

(number and street)

(city) (state/country) (zip+4/postal code)

@
(e-mail address, if any, of contact person)

ITEM 2 - MUNICIPAL ADVISORY ACTIVITIES

What type(s) of municipal advisory services does the municipal advisor provide? *Check all that apply.*

- (1) Advice concerning the issuance of municipal securities
- (2) Advice concerning the investment of the proceeds of municipal securities
- (3) Advice concerning guaranteed investment contracts
- (4) Recommendation and/or brokerage of municipal escrow investments
- (5) Advice concerning the use of municipal derivatives (e.g., swaps)
- (6) Solicitation of business from a municipal entity or obligated person for an unaffiliated person or firm (e.g., third party marketers, placement agents, solicitors and finders)
- (7) Preparation of feasibility studies, tax or revenue projections, or similar products in connection with offerings or potential offerings of municipal securities
- (8) Other (specify): _____

ITEM 3 - DISCIPLINARY INFORMATION

In this Item, we ask for information about the municipal advisor's disciplinary history and the disciplinary history of all associated municipal advisor professionals (as defined in the Glossary accompanying this form). For any question to which you answer "yes," a drop-down box will appear for you to supply relevant information. *Note: If you have submitted a Criminal Disclosure Report Page or Pages, a Regulatory Action Disclosure Page or Pages, or a Civil Judicial Action Disclosure Reporting Page or Pages to FINRA or the SEC in connection with other filings, you may provide such information by referencing the public disclosure system (BrokerCheck or Investment Adviser Public Disclosure) that currently contains the disclosure, the CRD number of the entity under which the disclosure is listed, and whether the entity under which the disclosure is listed is a firm or individual. (Example: Please reference BrokerCheck, CRD 123456, for the individual Mr. X for reportable disclosures; Example: Please reference IAPD, CRD 987654, for the firm X's reportable disclosures.)*

One event may result in "yes" answers to more than one of the questions below.

A. In the past ten years, has the municipal advisor or any associated municipal advisor professional:

- (1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any felony? YES/NO
- (2) been charged with any felony? YES/NO
You may limit your response to Item 3.A(2) to charges that are currently pending.

B. In the past ten years, has the municipal advisor or any associated municipal advisor professional:

- (1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? YES/NO
- (2) been charged with a misdemeanor listed in Item 3.B(1)? YES/NO
You may limit your response to Item 3.B(2) to charges that are currently pending.

C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever:

- (1) found the municipal advisor or any associated municipal advisor professional to have made a false statement or omission? YES/NO
- (2) found the municipal advisor or any associated municipal advisor professional to have been involved in a violation of its regulations or statutes? YES/NO
- (3) found the municipal advisor or any associated municipal advisor professional to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? YES/NO
- (4) entered an order against the municipal advisor or any associated municipal advisor professional in connection with investment-related activity? YES/NO
- (5) imposed a civil money penalty on the municipal advisor or any associated municipal advisor professional, or ordered the municipal advisor or any associated municipal advisor professional to cease and desist from any activity? YES/NO

D. Has any other federal regulatory agency, any state regulatory agency, or any foreign financial regulatory authority:

- (1) ever found the municipal advisor or any associated municipal advisor professional to have made a false statement or omission, or been dishonest, unfair, or unethical? YES/NO
- (2) ever found the municipal advisor or any associated municipal advisor professional to have been involved in a violation of investment-related regulations or statutes? YES/NO
- (3) ever found the municipal advisor or any associated municipal advisor professional to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? YES/NO

- (4) in the past ten years, entered an order against the municipal advisor or any associated municipal advisor professional in connection with an investment-related activity? YES/NO
- (5) ever denied, suspended, or revoked the municipal advisor's or any associated municipal advisor professional's registration or license, or otherwise prevented the municipal advisor or any associated municipal advisor professional, by order, from associating with an investment-related business or restricted the municipal advisor's or any associated municipal advisor professional's activity? YES/NO

E. Has any self-regulatory organization or commodities exchange:

- (1) ever found the municipal advisor or any associated municipal advisor professional to have made a false statement or omission? YES/NO
- (2) ever found the municipal advisor or any associated municipal advisor professional to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the SEC)? YES/NO
- (3) ever found the municipal advisor or any associated municipal advisor professional to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? YES/NO
- (4) ever disciplined the municipal advisor or any associated municipal advisor professional by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities? YES/NO

F. Has the municipal advisor's or any associated municipal advisor professional's authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended? YES/NO

G. Is the municipal advisor or any associated municipal advisor professional the subject of any regulatory proceeding that could result in a "yes" answer to any part of Item 3.C., 3.D., or 3.E.? YES/NO

H. (1) Has any domestic or foreign court:

- (a) in the past ten years, enjoined the municipal advisor or any associated municipal advisor professional in connection with any investment-related activity? YES/NO

- (b) ever found that the municipal advisor or any associated municipal advisor professional was involved in a violation of investment-related statutes or regulations? YES/NO
 - (c) ever dismissed, pursuant to a settlement agreement, an investment-related civil action brought against the municipal advisor or any associated municipal advisor professional by a state or foreign financial regulatory authority? YES/NO
- (2) Is the municipal advisor or any associated municipal advisor professional now the subject of any civil proceeding that could result in a "yes" answer to any part of Item 3.H(1)? YES/NO

ITEM 4 - EXECUTION

The municipal advisor consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the municipal advisor's municipal advisory activities may be given by registered or certified mail or confirmed telegram to the municipal advisor's contact person at the main address, or mailing address, if different, given in Items 1.H, 1.I., and 1.J.

The undersigned deposes and says that he/she has executed this form on behalf of, and with the authority of, the municipal advisor. The undersigned and the municipal advisor represent that the information and statements contained herein and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and the municipal advisor further represent that, if this is an amendment, to the extent that any information previously submitted is not amended such information is currently accurate and complete.

Date: _____

Full Legal Name of Municipal Advisor: _____

By. _____
(signature)

Title: _____

Warning: Intentional misstatements or omissions of fact constitute Federal criminal violations. See, 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).