

# Texas Water Development Board

## PROJECT FUNDING REQUEST

BOARD DATE: March 1, 2018

TEAM MANAGER: Caaren Skrobarczyk

<b>APPLICANT</b>	City of Lawn
<b>TYPE OF ASSISTANCE</b>	\$885,000 Financing \$2,678,239 Principal Forgiveness Agreement
<b>LEGAL PLEDGE</b>	Ad Valorem Taxes and Net Revenues Certificates of Obligation

### STAFF RECOMMENDATION

Approve       No Action

### ACTION REQUESTED

Approve by resolution, a request from the City of Lawn (Taylor County) for \$3,563,239 in financial assistance, consisting of \$885,000 in financing and \$2,678,239 in principal forgiveness from the Drinking Water State Revolving Fund for a regional water supply project and water system improvements.

### PROJECT

Regional Water Supply Project  
Project Number 62568

### BACKGROUND

The City of Lawn (City) is located at the intersection of U.S. Highway 84 and Farm Road 604, approximately twenty-four miles south of Abilene in southeastern Taylor County. With a population of 497, the City provides water service to 284 connections.

The City has experienced multiple deficiencies at their 40-year old surface water treatment plant (SWTP) on Lake Coleman, which has caused the City to be cited by the Texas Commission of Environmental Quality (TCEQ). The City is under enforcement for insufficient treatment capacity, high total organic carbon, high turbidity levels and other deficiencies within the distribution system. The City's water supply contract with the City of Coleman is currently on a month to month basis and the City needs to secure a long-term water supply. The City is also experiencing high water loss and is exceeding the water loss threshold.

In January of 2013, the City received \$200,000 in principal forgiveness from the Drinking Water State Revolving Fund (DWSRF) through the Texas Water Development Board

**COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE SEPTEMBER 30, 2018**

(TWDB) for planning and design for a new surface water treatment plant. After studying several alternatives to address the TCEQ violations and water supply challenges, the City negotiated a new water supply source with the City of Abilene. The City's proposed regional project includes construction of a shared pump station and a water transmission pipeline to the City of Abilene for a long-term water supply for the cities of Lawn, Buffalo Gap and Tuscola-Taylor County Water Control and Improvement District #1. The project also includes replacement of deteriorated water lines and meters to address real and apparent water loss.

Buffalo Gap and the Tuscola-Taylor County Water Control and Improvement District #1 have applications pending with the United States Department of Agriculture-Rural Development for their portion of the shared project.

### Key Issues

The City has not completed its 2016 or 2017 financial audit. The TWDB received and reviewed the 2015 financial audit and unaudited 2016 and 2017 financials. The commitment is conditioned on TWDB receiving adopted and final 2016 and 2017 financial audits, acceptable in form and substance to the Executive Administrator, prior to the loan closing. The financial analysis below is based on the 2015 financial audit. The draft 2016 and 2017 financials show a slight improvement in financial position, but it does not result in a change to the assigned internal risk score.

The City received a favorable financial, managerial, and technical capacity assessment from the TCEQ on January 13, 2017.

### Pledge and Repayment

The City is pledging ad valorem taxes and net revenues for the repayment of the proposed loan. The City's current average monthly water rate is \$90.00. Based on staff's analysis of financial documentation received, the current average monthly water rate would need to be increased by \$7.53 by fiscal year 2020 to generate sufficient revenues to meet the current and proposed debt service requirements. Alternately, the City could levy an interest and sinking tax rate of \$0.39 per \$100 of assessed valuation. The City currently does not levy an interest and sinking fund tax, because it does not have any debt supported by taxes.

### Principal Forgiveness

The City and the proposed project qualifies for \$2,678,239 in principal forgiveness from the DWSRF, consisting of \$200,000 as a very small system and \$2,478,239 as a disadvantaged community. The proposed project would not be feasible without the principal forgiveness funding, due to the size of the system and limited resources of the City and residents.

### Cost Savings

Based on a 30-year maturity and current interest rates, the City could save approximately \$181,869 over the life of the loan. The City is also saving \$2,678,239 in principal forgiveness.

### Internal Risk Score

Staff assigns a 2C to the City, and the proposed project to be funded by the TWDB. This means that the City's payment capacity is sufficient.

The City received moderate scores on the short-term indicators of financial sustainability and moderate on reinvestment in the system. Reinvestment in infrastructure has been typical with an estimated 17 years of useful life remaining. Assets with a useful life between 12 and 24 years are considered a typical level reinvestment. Revenues available for debt service are currently produced only by system revenues.

The City maintains unrestricted cash and short-term investments equivalent to 22 days of the operating expenses of the City's system. An amount between 15 and 29 days is considered a sufficient level of liquidity. Sufficient liquidity provides financial stability to the City by providing the resources needed to cover short-term, unplanned needs.

The median household income for the City is \$31,000, which is 57 percent of the median household income for the state. The City's average annual water rates represent a projected household cost factor of 3.78 percent. The benchmark for the projected household cost factor of water is 1 percent.

Taylor County's unemployment rate is 3.1 percent, compared to the state's unemployment rate of 3.7 percent. The population has decreased 0.16 percent annually over the past six years. However, the assessed valuation of taxable property in the City has increased annually for the past five years and the average tax collection rate is 96 percent. Annual sales tax revenues have also increased over the past five years.

The service area of the City maintains an unemployment level lower than the state overall and median household income below the state. Reinvestment in its infrastructure has been typical. Based on an assessment of the financial stability, socioeconomic conditions, liquidity, and debt level of the applicant, the City is assigned a risk score of 2C. However, the increasing trend in sales tax revenue and assessed valuation of taxable properties could help mitigate risk.

### **LEGAL**

#### Key Issues

Executed interlocal agreements and evidence of sufficient funding between the participants will be required prior to release of funding for construction of the shared portion of the project.

#### Conditions

Standard DWSRF, tax-exempt, tax and revenue, principal forgiveness conditions and additional conditions as follows:

- Prior to closing, submittal of 2016 and 2017 audited financial statements;
- Executed Interlocal Agreements;
- Principal forgiveness agreement;
- Water conservation plan;
- Return of surplus principal forgiveness funds; and
- Compliance with environmental conditions.

Attachments: 1. Project Data Summary  
2. Debt Service Schedule  
3. Engineering/Environmental Review  
4. Project Budget  
5. Resolution (18- )  
6. Water Conservation Review  
7. Location Map

**Project Data Summary**

<b>Responsible Authority</b>	City of Lawn
<b>Program</b>	Drinking Water State Revolving Fund
<b>Commitment Code</b>	L1000582 and LF1000643
<b>Project Number</b>	62568
<b>Intended Use Plan Year</b>	2017
<b>Fund Number</b>	951
<b>Type of Pledge</b>	3- Combo Tax and Rev
<b>Revenue Pledge Level</b>	First
<b>Legal Description</b>	\$885,000 Combination Tax and Net Revenue Certificates of Obligation, Series 2018 and \$2,678,239 Principal Forgiveness Agreement
<b>Tax-exempt or Taxable</b>	Tax-exempt
<b>Refinance</b>	No
<b>Outlay Requirement</b>	Yes
<b>Disbursement Method</b>	Escrow
<b>Outlay Type</b>	Outlay = Escrow
<b>Population</b>	497
<b>Rural</b>	Yes
<b>Water Connections</b>	284
<b>Wastewater Connections</b>	0
<b>Qualifies as Disadvantaged</b>	Yes
<b>Disadvantaged Level</b>	6
<b>Clean Water State Revolving Fund Type</b>	N/A
<b>SWIFT Financing Type</b>	N/A
<b>SWIFT Characteristic</b>	N/A
<b>Financial Managerial &amp; Technical Complete</b>	Yes
<b>Funding Phase Code</b>	Design and Construction
<b>Pre-Design</b>	Yes
<b>Project Consistent with Water Plan</b>	Yes
<b>Water Conservation Plan</b>	Approvable
<b>Water Rights Certification Required</b>	No
<b>Internal Risk Score</b>	2C
<b>External Ratings (for SRF rates)</b>	
<b>Standard and Poor's</b>	Non-Rated
<b>Moody's</b>	Non-Rated
<b>Fitch</b>	Non-Rated
<b>Special Issues</b>	No 2016 Audit

**Project Team**

Team Manager	Caaren Skrobarczyk
Financial Analyst	Hector Estrada
Engineering Reviewer	JoAnne Duncan
Environmental Reviewer	Chris Caran
Attorney	Joe Reynolds

ISSUE BEING EVALUATED  
FOR ILLUSTRATION PURPOSES ONLY  
City of Lawn

**\$885,000 Combination Tax and Net Revenue Certificates of Obligation, Proposed Series 2018**

Dated Date: 6/1/2018	Source: DWSRF
Delivery Date: 6/1/2018	Rate: 2.14%
First Interest: 12/1/2018	Insurance: No
First Principal: 6/1/2020	Case: Tax & Revenue
Last Principal: 6/1/2049	Admin.Fee: \$19,474
Fiscal Year End: 09/30	Admin. Fee Payment Date: 6/1/2018
Required Coverage: 1.0	

FISCAL YEAR	PROJECTED* NET SYSTEM REVENUES	CURRENT DEBT SERVICE	\$885,000 ISSUE				TOTAL DEBT SERVICE	COVERAGE
			PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT		
2019	\$52,197	\$15,470	-	-	\$18,939	\$18,939	\$34,409	1.52
2020	52,197	13,262	20,000	2.14%	18,939	38,939	52,201	1.00
2021	52,197	4,674	20,000	2.14%	18,511	38,511	43,185	1.21
2022	52,197	4,674	20,000	2.14%	18,083	38,083	42,757	1.22
2023	52,197	4,674	20,000	2.14%	17,655	37,655	42,329	1.23
2024	52,197	4,674	20,000	2.14%	17,227	37,227	41,901	1.25
2025	52,197	4,674	20,000	2.14%	16,799	36,799	41,473	1.26
2026	52,197	4,674	20,000	2.14%	16,371	36,371	41,045	1.27
2027	52,197	4,674	25,000	2.14%	15,943	40,943	45,617	1.14
2028	52,197	-	25,000	2.14%	15,408	40,408	40,408	1.29
2029	52,197	-	25,000	2.14%	14,873	39,873	39,873	1.31
2030	52,197	-	25,000	2.14%	14,338	39,338	39,338	1.33
2031	52,197	-	25,000	2.14%	13,803	38,803	38,803	1.35
2032	52,197	-	25,000	2.14%	13,268	38,268	38,268	1.36
2033	52,197	-	25,000	2.14%	12,733	37,733	37,733	1.38
2034	52,197	-	30,000	2.14%	12,198	42,198	42,198	1.24
2035	52,197	-	30,000	2.14%	11,556	41,556	41,556	1.26
2036	52,197	-	30,000	2.14%	10,914	40,914	40,914	1.28
2037	52,197	-	30,000	2.14%	10,272	40,272	40,272	1.30
2038	52,197	-	30,000	2.14%	9,630	39,630	39,630	1.32
2039	52,197	-	30,000	2.14%	8,988	38,988	38,988	1.34
2040	52,197	-	35,000	2.14%	8,346	43,346	43,346	1.20
2041	52,197	-	35,000	2.14%	7,597	42,597	42,597	1.23
2042	52,197	-	35,000	2.14%	6,848	41,848	41,848	1.25
2043	52,197	-	35,000	2.14%	6,099	41,099	41,099	1.27
2044	52,197	-	40,000	2.14%	5,350	45,350	45,350	1.15
2045	52,197	-	40,000	2.14%	4,494	44,494	44,494	1.17
2046	52,197	-	40,000	2.14%	3,638	43,638	43,638	1.20
2047	52,197	-	40,000	2.14%	2,782	42,782	42,782	1.22
2048	52,197	-	45,000	2.14%	1,926	46,926	46,926	1.11
2049	52,197	-	45,000	2.14%	963	45,963	45,963	1.14
		\$61,450	\$885,000		\$354,491	\$1,239,491	\$1,300,941	

AVERAGE (MATURITY) LIFE	18.72 YEARS
NET INTEREST RATE	2.140%
COST SAVINGS	\$4,581,564
AVERAGE ANNUAL REQUIREMENT	\$41,966

*Disclaimer: This is a working document and is provided as a courtesy. All information contained herein, including the proposed interest rate, is subject to change upon further review of the TWDB in accordance with 31 Texas Administrative Code Chapters 363, 371, 375, or 384, as applicable.*

*\* Includes a monthly water rate increase of \$7.53 to meet 1.00 times coverage.*



**Lawn  
62568 Regional Water Supply Project  
Engineering and Environmental Review**

**Engineering:**

Key Issues:

The City of Lawn (City) is developing plans to jointly construct a water transmission pipeline to the City of Abilene to provide a potable water supply for the City, City of Buffalo Gap, and Tuscola-Taylor County Water Control and Improvement District #1 (District). The City of Buffalo Gap and the District have submitted requests for funding to United States Department of Agriculture - Rural Development (USDA-RD) for their portions of the shared portions of the project. The actual operations and maintenance agreements for the transmission line are in negotiations and will be finalized prior to the release of the construction funding for the shared portions of the project. The City will move ahead with the needed replacements of distribution lines, aged water meters, construction of the elevated storage tank, and inter-connection with the Eula Water Supply Corporation, while the USDA-RD funding for the City of Buffalo Gap and the District is being finalized.

Project Need/Description

**Project Need:** The City has experienced multiple deficiencies at its 40-year old surface water treatment plant (SWTP) on Lake Coleman, which has resulted in the City being cited by the Texas Commission of Environmental Quality (TCEQ) with numerous compliance issues. The City's water supply contract with Coleman is currently on a month to month basis and the City needs to secure a long-term water supply. The City is also experiencing significant water loss within its transmission and distribution lines.

**Project Description:** The proposed regional project constructs a shared pump station and 39 miles of transmission line serving the cities of Lawn, Buffalo Gap, and Tuscola/Taylor County WCID #1 from the Abilene Hargesheimer Water Treatment Plant (WTP) in order to secure a long- term reliable treated water source. The Cities of Lawn, Buffalo Gap, and the District will share the cost and maintenance of the Abilene Pump Station, standpipe and transmission line. The City's aged Lake Coleman SWTP will be decommissioned and abandoned, once the new water supply is available. The improvements to the City's water distribution system include replacing Lawn's standpipe, and rehabilitating another standpipe to improve system water pressure. The replacement of deteriorated water lines and aged water meters with new lines and a new radio read meter system will address real and apparent water losses. The City also plans to replace the line to the Hudson pump station and to construct an emergency interconnect with Eula Water Supply Corporation in order to provide for an alternate water supply during an emergency.

**Project Schedule:**

<b>Project Task</b>	<b>Schedule Date</b>
Closing	6/1/2018
Engineering Feasibility Report Completion (End of Planning Phase)	7/31/2018
Design Phase Complete	9/18/2018
Start of Construction	1/15/2019

**Environmental Section:**

Key Issues:

None known at this time.

Environmental Summary:

As required by 31 Texas Administrative Code 371, Section E, the environmental review of the proposed project has been completed. A Finding of No Significant Impact was issued on October 13, 2016. The proposed project is

in compliance with the National Environmental Policy Act. Although the project scope has changed, the existing CE remains applicable. In addition to the standard emergency discovery conditions for threatened and endangered species and cultural resources, the project also must comply with the following special conditions:

- As per an agreement with the United States Army Corps of Engineers (SWF-2015- 00348), the City will use directional boring to avoid impacts to jurisdictional waters of the U.S., including wetlands, to ensure compliance with Section 404 of the Clean Water Act;
- As per an agreement with Texas Parks and Wildlife (TPWD Project No. 35086) to ensure compliance with the Migratory Bird Treaty Act, if vegetation clearing activities occur during the nesting season of March through August, a survey of the area for any nests, eggs, or young will be performed. Should eggs or nesting young be discovered in this process, measures will be taken to not work in those areas, or construction will be delayed if necessary until the nests have been vacated;
- As per an agreement with Texas Parks and Wildlife (TPWD Project No. 35086) to ensure compliance with the Texas Parks and Wildlife Code, a pre-construction survey will be performed prior to construction to determine the presence of Texas homed lizards on the project site, or directly adjacent to the construction area. The following notes will be added to construction contract documents: (1) All construction personnel will be instructed to avoid killing, injuring, or making any type of harmful disturbance to the Texas homed lizard during construction; (2) Pipeline trenches that remain open overnight, and/or for more than two daylight hours will be inspected for the presence of the Texas horned lizard prior to backfilling; and (3) Texas homed lizards discovered in any open trenches will be reported to Jacob & Martin, LLC and Texas Parks and Wildlife Department. Texas Parks and Wildlife Department will be consulted for developing plans to safely relocate the Texas homed lizards;
- As per agreement with the United States Fish and Wildlife Service (Consultation 02ETAU00-2016-TA-0351) to ensure compliance with the Endangered Species Act, for projects that are anticipated to remove or degrade black-capped vireo habitat or are located within 300 feet of habitat and would be constructed during the breeding season, surveys for the presence of black-capped vireos shall be conducted prior to any disturbance activities. If the results of the survey indicate an absence of the black-capped vireo, no further coordination with the United States Fish and Wildlife Service is necessary, provided construction was implemented and completed prior to the beginning of the breeding season immediately following the survey year (i.e. an "absence" determination may only be applied to the year of the survey). If presence/absence survey results are positive, the United States Fish and Wildlife Service will be contacted for further evaluation.



**Project Budget Summary**  
**Lawn**  
**62568 - Regional Water Supply Project**

Budget Items	Previous Commitments	This Commitment	Total TWDB Funds
<b>Construction</b>			
Construction	\$0.00	\$2,931,380.00	\$2,931,380.00
<b>Subtotal for Construction</b>	<b>\$0.00</b>	<b>\$2,931,380.00</b>	<b>\$2,931,380.00</b>
<b>Basic Engineering Services</b>			
Construction Engineering	\$0.00	\$52,000.00	\$52,000.00
Design	\$94,500.00	\$125,500.00	\$220,000.00
Planning	\$10,000.00	\$0.00	\$10,000.00
<b>Subtotal for Basic Engineering Services</b>	<b>\$104,500.00</b>	<b>\$177,500.00</b>	<b>\$282,000.00</b>
<b>Special Services</b>			
Application	\$2,500.00	\$2,500.00	\$5,000.00
Environmental	\$25,000.00	\$0.00	\$25,000.00
Geotechnical	\$2,500.00	\$5,000.00	\$7,500.00
Inspection	\$0.00	\$64,000.00	\$64,000.00
Pilot Testing	\$35,000.00	\$0.00	\$35,000.00
Surveying	\$18,000.00	\$0.00	\$18,000.00
Testing	\$0.00	\$10,000.00	\$10,000.00
Water Conservation Plan	\$2,500.00	\$0.00	\$2,500.00
<b>Subtotal for Special Services</b>	<b>\$85,500.00</b>	<b>\$81,500.00</b>	<b>\$167,000.00</b>
<b>Fiscal Services</b>			
Bond Counsel	\$0.00	\$25,000.00	\$25,000.00
Financial Advisor	\$0.00	\$35,000.00	\$35,000.00
Fiscal/Legal	\$0.00	\$3,620.00	\$3,620.00
Issuance Costs	\$0.00	\$2,000.00	\$2,000.00
Loan Origination Fee	\$0.00	\$19,474.00	\$19,474.00
<b>Subtotal for Fiscal Services</b>	<b>\$0.00</b>	<b>\$85,094.00</b>	<b>\$85,094.00</b>
<b>Other</b>			
Land/Easements Acquisition	\$7,500.00	\$0.00	\$7,500.00
Project Legal Expenses	\$2,500.00	\$3,620.00	\$6,120.00
<b>Subtotal for Other</b>	<b>\$10,000.00</b>	<b>\$3,620.00</b>	<b>\$13,620.00</b>
<b>Contingency</b>			
Contingency	\$0.00	\$284,145.00	\$284,145.00
<b>Subtotal for Contingency</b>	<b>\$0.00</b>	<b>\$284,145.00</b>	<b>\$284,145.00</b>
<b>Total</b>	<b>\$200,000.00</b>	<b>\$3,563,239.00</b>	<b>\$3,763,239.00</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$3,563,239 TO CITY OF LAWN  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$885,000 CITY OF LAWN, TEXAS COMBINATION TAX AND NET REVENUE  
CERTIFICATES OF OBLIGATION, PROPOSED SERIES 2018  
AND  
\$2,678,239 IN PRINCIPAL FORGIVENESS

(18- )

WHEREAS, the City of Lawn (City), located in Taylor County, has filed an application for financial assistance in the amount of \$3,563,239 from the Drinking Water State Revolving Fund (DWSRF) to finance the design and construction of certain water system improvements identified as Project No. 62568; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$885,000 City of Lawn, Texas Combination Tax and Net Revenue Certificates of Obligation, Proposed Series 2018 (together with all authorizing documents (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of \$2,678,239, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the City has offered a pledge of ad valorem taxes and net revenues of the utility systems as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 371.13; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* as well as state law, in accordance with Texas Water Code § 15.607;
3. that the City has submitted a proposed program of water conservation for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB's rules;

4. that the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and the needs to be addressed by the project will be addressed in a manner that is consistent with the approved regional and state water plans, as required by Texas Water Code § 16.053(j);
5. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.053(j);
6. that the City meets the definition of Disadvantaged Community in 31 TAC § 371.1(23) and is therefore eligible for principal forgiveness through the DWSRF; and
7. that the City meets the definition of a very small system in accordance with the current Intended Use Plan, and is therefore eligible for principal forgiveness through the DWSRF.
8. that the Executive Administrator issued a Finding of No Significant Impact on October 13, 2016, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator;

NOW, THEREFORE, based on these findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the City of Lawn for financial assistance in the amount of \$3,563,239 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$885,000 City of Lawn, Texas Combination Tax and Net Revenue Certificates of Obligation, Proposed Series 2018 and the execution of a Principal Forgiveness Agreement in the amount of \$2,678,239. This commitment will expire on September 30, 2018.

Such commitment is conditioned as follows:

Standard Conditions:

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;
2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the

Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the City;

3. this commitment is contingent upon the City's compliance with all applicable requirements contained in 31 TAC Chapter 371;
4. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;
5. the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;
6. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce system revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;
7. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds;
8. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for

the payment of interest or principal on the Obligations owned by the TWDB; or (3) deposit into a reserve fund;

9. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
10. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;
11. loan proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
12. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
13. prior to closing, and if not previously provided with the application, the City shall submit executed contracts for engineering and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;
14. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
15. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

16. the TWDB retains the option to purchase the Obligations in separate lots and/or on an installment basis, with delivery of the purchase price for each installment to be paid against delivery of the relevant installment of Obligations as approved by the Executive Administrator;

Conditions Related To Tax-Exempt Status:

17. the City's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion;
18. the City's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;
19. the Obligations must include a provision prohibiting the City from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
20. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB's bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:
  - a. proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
  - b. amounts invested in a bona fide debt service fund, within the meaning of § 1.148-1(b) of the Regulations; and
  - c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;

21. the Obligations must include a provision requiring the City take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the City will:
  - a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;
  - b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its Loan, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least six years after the final Computation Date;
  - c. as additional consideration for the making of the Loan, and in order to induce the making of the Loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;
  - d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;
22. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
23. the Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;

24. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
25. the transcript must include evidence that the information reporting requirements of § 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of § 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;
26. the Obligations must provide that neither the City nor a related party thereto will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the City by the TWDB;

State Revolving Fund Conditions:

27. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
28. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The City, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of \$2,000 the contracts clauses as provided by the TWDB;
29. the Obligations must include a provision stating that the City shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;
30. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the City will adhere to the approved project schedule;

31. The Obligations and Principal Forgiveness Agreement must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions:

32. prior to or at closing, the City shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;
33. prior to closing, the Texas Commission on Environmental Quality, must make a determination, the form and substance of which is satisfactory to the Executive Administrator, that the City has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of these Obligations;
34. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City must provide documentation that it has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program;

PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

35. prior to closing, the City shall adopt and implement the water conservation program approved by the TWDB;
36. prior to closing, the City shall submit 2016 and 2017 financial audits, the form and substance of which are satisfactory to the Executive Administrator;
37. prior to the release of construction funds for the shared portion of the project, the City shall submit an executed interlocal cooperative agreement with and evidence of sufficient funding among the other participants;
38. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
39. the Principal Forgiveness Agreement must include a provision stating that the City shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator; and

40. the City must comply with all conditions as specified in the final environmental finding of the Executive Administrator, including the standard emergency discovery conditions for threatened and endangered species and cultural resources.

APPROVED and ordered of record this 1st day of March 2018.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Peter Lake  
Authorized Representative of the  
Texas Water Development Board

DATE SIGNED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Jeff Walker  
Executive Administrator

# WATER CONSERVATION REVIEW

Entity: \_\_\_\_\_

Review date: \_\_\_\_\_

**WATER CONSERVATION PLAN DATE:** **Approvable**      **Adopted**

	Total GPCD	Residential GPCD	Water Loss GPCD	Water Loss Percent
<b>Baseline</b>				
<b>5-year Goal</b>				
<b>10-year Goal</b>				

**WATER LOSS AUDIT YEAR:**

Total water loss (GPCD): \_\_\_\_\_      Total water loss (percent): \_\_\_\_\_      Wholesale Water  
 Total no. of connections: \_\_\_\_\_      Length of mains (miles): \_\_\_\_\_      Connections per mile: \_\_\_\_\_  
 If > 16 connections per mile and > 3,000 connections, Infrastructure Leakage Index (ILI): \_\_\_\_\_

**WATER LOSS THRESHOLDS:**

	Apparent Loss Gallons per connection per day	Real Loss Gallons per mile per day	Real Loss Gallons per connection per day	Apparent Threshold Gallons per connection per day	Real Threshold Gallons per mile per day	Real Threshold Gallons per connection per day
If population ≤ 10K, connections/mile < 32 :						
If population ≤ 10K, connections/mile ≥ 32 :						
If population > 10K :						

Does the applicant meet Water Loss Threshold requirements?      Yes      No      NA

**ADDITIONAL INFORMATION:**

**STAFF NOTES AND RECOMMENDATIONS:**

## DEFINITIONS

**Adopted** refers to a water conservation plan that meets the minimum requirements of the water conservation plan rules and has been formally approved and adopted by the applicant's governing body.

**Apparent loss** refers to unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

**Approvable** refers to a water conservation plan that substantially meets the minimum requirements of the water conservation plan rules but has not yet been adopted by the applicant's governing body.

**Best Management Practices** are voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

**GPCD** means gallons per capita per day.

**Infrastructure Leakage Index (ILI)** is the current annual real loss divided by the unavoidable annual real loss (theoretical minimum real loss) and only applies to utilities with more than 5,000 connections, average pressure greater than 35 psi, and a connection density of more than 32 connections per mile. The **ILI** is recommended to be less than 3 if water resources are greatly limited and difficult to develop, between 3 and 5 if water resources are adequate to meet long-term needs but water conservation is included in long-term water planning, and between 5 and 8 if water resources are plentiful, reliable, and easily extracted. The **ILI** is recommended as a benchmarking tool, but until there is increased data validity of the variables used in the calculation, the **ILI** should be viewed with care.

**NA** means not applicable.

**Produced water** is the total amount of water purchased or produced by the utility.

**Real loss** comes from main breaks and leaks, storage tank overflows, customer service line breaks, and leaks.

**Residential GPCD** is the amount of water per capita used solely for residential use and ideally includes both single and multi-family customer use.

**Total baseline GPCD** is the amount of all water purchased or produced by the utility divided by the service area population and then divided by 365.

**Total water loss** is the sum of the apparent and real water losses.

**Water loss** is the difference between the input volume and the authorized consumption within a water system. Water Loss consists of real losses and apparent losses.

**Water Loss Thresholds** are levels of real and apparent water loss determined by the size and connection density of a retail public utility, at or above which a utility receiving financial assistance from the Texas Water Development Board must use a portion of that financial assistance to mitigate the utility's system water loss.



# City of Lawn Taylor County

