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AGENDA ITEM MEMO

BOARD MEETING DATE: June 25, 2025

TO: Board Members

THROUGH: Bryan McMath, Executive Administrator
Ashley Harden, General Counsel
Jessica Peña, Deputy Executive Administrator, Water Supply and Infrastructure

FROM: T. Clay Schultz, Ph.D., Director, Regional Water Project Development
David Firgens, Manager, Regional Water Project Development

SUBJECT: Amendment to the City of Port Lavaca Commitment Expiration Date

ACTION REQUESTED

Consider amending by resolution the previously adopted Texas Water Development Board Resolution No. 24-070 to modify the City of Port Lavaca's Clean Water State Revolving Fund commitment to extend the commitment period.

BACKGROUND

In August 2024, the Texas Water Development Board (TWDB), through Resolution 24-070, approved a \$39,315,000 commitment to the City of Port Lavaca (City) from the Clean Water State Revolving Fund for the Lynn's Bayou Wastewater Treatment Plant Expansion Project, with anticipated closing prior to August 2025.

KEY ISSUES

The City's engineering consultant has completed 90 percent of the final design, environmental coordination documents, and contract documents. In February 2023, the City received a notice of outstanding alleged violation from the TCEQ for operating their plant over permitted capacity but have requested a waiver to delay any enforcement until August 31, 2026. The City is currently reviewing options to reduce the loan amount and still complete a successful project. The City is requesting a 9-month extension to provide additional time to review construction documents and continue to look for additional cost savings. They will also perform a rate study to allow them to assess options to generate additional needed revenue for the first bond payment.

Our Mission

Leading the state's efforts
in ensuring a secure
water future for Texas

Board Members

L'Oreal Stepney, P.E., Chairwoman | Tonya R. Miller, Board Member
Bryan McMath, Executive Administrator

RECOMMENDATION

The requested amendment does not change the total amount of financing offered to the City and allows them time to further evaluate options for reducing the impact of the project on the rate payers. The Executive Administrator recommends that TWDB Resolution No. 24-070 be amended to extend the commitment to May 31, 2026.

Attachments:

1. Proposed Resolution (25-)
2. Resolution (24-070)
3. Extension Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 24-070
TO EXTEND THE LOAN COMMITMENT PERIOD FOR THE
\$39,315,000 CITY OF PORT LAVACA, TEXAS COMBINATION TAX AND
SURPLUS REVENUE CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2025B
TO BE ISSUED BY
THE CITY OF PORT LAVACA

(25-)

Recitals:

At its August 15, 2024 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 24-070, made a commitment to provide financial assistance to the City of Port Lavaca (City) for the purpose of financing improvements to the City's wastewater system in the amount of \$39,315,000, consisting of the TWDB's purchase of \$39,315,000 City of Port Lavaca, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2025B, from the Clean Water State Revolving Fund program, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made.

By letter dated May 7, 2025, the City requested that the TWDB amend the previous resolution, TWDB Resolution No. 24-070, to allow the City additional time to finalize construction plans and continue to look for a better cost estimate and additional cost savings.

The TWDB hereby finds that the amendment to the term of this loan is reasonable and that the request is in the public interest and will serve a public purpose.

In accordance with the Texas Water Code, the TWDB has carefully considered all matters required by law.

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

1. the commitment of the TWDB to provide financial assistance in the amount of \$39,315,000, as authorized in TWDB Resolution No. 24-070, is amended to extend the commitment to May 31, 2026;
2. Before closing, the City shall submit to the escrow agent a closing memo signed by the Executive Administrator; and
3. that all other terms and conditions of TWDB Resolution No. 24-070 shall remain in full force and effect.

APPROVED and ordered of record this the 25th day of June 2025.

TEXAS WATER DEVELOPMENT BOARD

L'Oreal Stepney, P.E., Chairwoman

DATE SIGNED:_____

ATTEST:

Bryan McMath, Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$39,315,000 TO THE CITY OF PORT LAVACA
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$39,315,000 CITY OF PORT LAVACA, TEXAS
COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2024B

(24-070)

Recitals:

The City of Port Lavaca, Texas (City), located in Calhoun County has filed an application for financial assistance in the amount of \$39,315,000 from the Clean Water State Revolving Fund (CWSRF) to finance the planning, design, and construction of wastewater system improvement identified as Project No. 73963.

The City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$39,315,000 City of Port Lavaca, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2024B (Obligations) (together with all authorizing documents), all as is more specifically set forth in the application and in recommendations of the TWDB's staff.

The City has offered a pledge of ad valorem taxes and surplus revenue of the City's water and sewer system as sufficient security for the repayment of the Obligations.

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 § 375.14.

Findings:

1. The revenue 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. The application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*
3. The term of the Obligations does not exceed the expected useful life of the project proposed by the City.
4. 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.
5. The City has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007.

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

A commitment is made by the TWDB to the City of Port Lavaca, Texas for financial assistance in the amount of \$39,315,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of \$39,315,000 City of Port Lavaca, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2024B. This commitment will expire on August 31, 2025.

The commitment is conditioned as follows.

Standard Conditions:

1. The commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand as determined by the TWDB. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution.
2. The commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all the requirements of the laws under which the Obligations are issued have been complied with; that the Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that the Obligations are valid and binding obligations of the City.
3. The commitment is contingent upon the City's compliance with all applicable requirements contained in 31 TAC Chapter 375.
4. The Obligations must provide that the City agrees to comply with all the conditions set forth in the TWDB Resolution.
5. The Obligations must provide that the Obligations can be called for early redemption 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.
6. 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, at a minimum and regardless of the amount of the Obligations, must agree to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by the 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 the rule, the 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 the Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to the bonds under SEC Rule 15c2-12.
7. The Obligations must require the City to levy a tax or maintain and collect sufficient rates and charges, as applicable, to produce system funds 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.

8. The Obligations must require the City to use any proceeds from the Obligations that are determined to be remaining unused funds 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. Remaining unused funds are those funds unspent after the original approved project is completed.
9. The Obligations must require the City to use any proceeds from the Obligations that are determined to be surplus funds in a manner approved by the Executive Administrator. Surplus funds are funds remaining after completion of the project and completion of a final accounting.
10. The Obligations must provide 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.
11. Proceeds of this commitment are public funds. Therefore, the Obligations must require 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.
12. Proceeds of this commitment must not be used by the City when sampling, testing, removing, or disposing of contaminated soils or media at the project site. The Obligations must provide that the City is solely responsible for liability resulting from acts or omissions of the City, its employees, contractors, or agents arising from the sampling, analysis, transport, storage, treatment, recycling, and disposition of any contaminated sewage sludge, contaminated sediments 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.
13. Before closing, the City must submit documentation evidencing the adoption and implementation of sufficient system rates and charges or the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements.
14. Before closing, and if not previously provided with the application, the City must 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.
15. Before closing, when any portion of the financial assistance is to be held in escrow or in trust, the City must 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.

16. The Executive Administrator may require the City to execute a separate financing agreement in form and substance acceptable to the Executive Administrator.
17. The Obligations must provide that the City must comply with all applicable federal laws and TWDB laws and rules related to the use of the financial assistance.
18. The Obligations must provide that the City must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued including the standard emergency discovery conditions for threatened and endangered species and cultural resources.
19. The Obligations must require the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project.
20. The City must immediately notify TWDB in writing of any suit against it by the Attorney General of Texas under Texas Government Code § 2.103 and Texas Penal Code § 1.10(f), related to federal laws regulating firearms, firearm accessories, and firearm ammunition.
21. The Obligations must provide that the City must submit annually, an audit prepared by a certified public accountant in accordance with generally accepted auditing standards.

Tax-Exempt Conditions:

22. 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.
23. The City's bond counsel opinion must state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion.
24. The Obligations must prohibit the City from using the financial assistance in a manner that would cause the Obligations to become "private activity bonds" within the meaning of section 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated under section 141 (Regulations).
25. The Obligations must provide that no portion of the proceeds of this financial assistance will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of section 148(a) of the Code and Regulations, including to acquire or to replace funds that were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) that produce a yield materially higher than the yield on the TWDB's

bonds that are issued to provide the financial assistance (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 the proceeds are needed for the facilities to be financed;
 - b. amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Regulations; and
 - c. amounts deposited in any reasonably required reserve or replacement fund to the extent the deposited 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.
26. The Obligations must require the City to 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 to satisfy the requirements of section 148 of the Code. The Obligations must provide that the City must:
- a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures, and investments) on its books of account separately and apart from all other funds, including receipts, expenditures, and investments, and retain all records of the 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 this financial assistance with other money of the City, provided that the City separately accounts for each receipt and expenditure of the Gross Proceeds and the obligations acquired those proceeds;
 - b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to this financial assistance, not less frequently than each Computation Date, in accordance with rules set forth in section 148(f) of the Code, section 1.148-3 of the Regulations, and related rulings. The City must maintain a copy of the calculations for at least six years after the final Computation Date;
 - c. as additional consideration for the making of this commitment, and to induce the financial assistance by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date; and
 - d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if an error is made, to discover and promptly to correct the error within a reasonable amount of time after

including payment to the United States of any interest and any penalty required by the Regulations.

27. The Obligations must prohibit 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.
28. 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 section 149(b) of the Code.
29. 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.
30. The Obligations must provide that the City will refrain from using the proceeds provided by this TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Obligations in contravention of the requirements of section 149(d) of the Code, relating to advance refundings.
31. The transcript must include evidence that the information reporting requirements of section 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 section 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.
32. The Obligations must provide that neither the City nor a related party 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.
33. Before closing, the City must provide certification that the average weighted maturity of the Obligations purchased by the TWDB does not exceed 120% of the average reasonably expected economic life of the Project.

State Revolving Fund Conditions:

34. The City must submit outlay reports on a quarterly or monthly basis with sufficient documentation on costs in accordance with TWDB outlay report guidelines.
35. The Obligations must provide that all laborers and mechanics employed by contractors and subcontractors for projects 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 must 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 must insert in full in any contract in excess of \$2,000 the contract clauses as provided by the TWDB.

36. The Obligations must provide 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 Unique Entity Identification Number and shall register with System for Award Management (SAM) and maintain current registration at all times during which the Obligations are outstanding.
37. The Obligations must provide that all proceeds of this financial assistance will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and must provide that the City will adhere to the approved project schedule.
38. The Obligations must provide 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 § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines.
39. The Obligations must provide that the City must comply with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets.
40. The Obligations must provide that the City shall abide by the prohibition on certain telecommunications and video surveillance services or equipment as required by 2 CFR § 200.216.

Clean Water State Revolving Fund Conditions:

41. The City must pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant 31 TAC Chapter 375.

Pledge Conditions:

42. the Obligations must provide as follows:
 - a. if system revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied and collected may be reduced to the extent and by the amount of revenues then on deposit in the Interest and Sinking Fund; or
 - b. if surplus revenues are based upon budgeted amounts:
 - i. the Obligations must require that the City transfer and deposit into the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Obligations until the amount

on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Obligations; further, that the ordinance authorizing the issuance of the Obligations must include a requirement that the City shall not transfer any funds from the City's pledged system revenues to any fund other than the Interest and Sinking Fund until an amount equal to the annual debt service on the Obligations for the then-current fiscal year has been deposited in the Interest and Sinking Fund;

- ii. the Obligations must require that for each year the Obligations are outstanding, and before the time taxes are to be levied for that year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient surplus pledged revenues or tax revenues or both, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination of these, into the Interest and Sinking Fund for the repayment of the Obligations; and
- iii. the Obligations must require that the City shall at all times maintain and collect sufficient rates and charges in conjunction with any other legally available funds so that after payment of the costs of operating and maintaining the system, it produces revenues in an amount not less than 1.10 times debt service requirements of all outstanding Obligations of the City and other obligations of the City which are secured in whole or in part by the pledged revenues, for which the City is budgeting the repayment of the Obligations, or the City shall provide documentation which evidences the levy and collection of an ad valorem tax rate dedicated to the Interest and Sinking Fund, in conjunction with any other legally available funds, sufficient for the repayment of debt service requirements.

Special Condition:

- 43. Before closing, the City must adopt and implement the water conservation program approved by the TWDB.

APPROVED and ordered of record this 15th day of August 2024.

TEXAS WATER DEVELOPMENT BOARD



Brooke T. Paup, Chairwoman

DATE SIGNED: 8/15/24

ATTEST:



Bryan McMath, Interim Executive Administrator



CITY OF
PORT LAVACA



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May 7, 2025

Mr. Brian McMath
Executive Administrator
Texas Water Development Board
1700 North Congress Avenue
Austin, Texas 78701

Re: TWDB Clean Water State Revolving Fund Project #73963 – expansion of the Lynn Bayou Wastewater treatment plant, Port Lavaca, Texas

Dear Mr. McMath,

We are writing you regarding the Texas Water Development Board's ("TWDB") funding commitment for the City of Port Lavaca's (the "City") Lynn Bayou Wastewater treatment plant (TWDB Clean Water State Revolving Fund Project #73963).

On November 13, 2024, after discussions with representatives of the TWDB, the City authorized our engineering consultant, AECOM, to perform the following services associated with the above referenced project, which they expect to have 90% complete by the end of June 2025:

- Final Design
- TPDES Permit Amendment
- Bid Phase Documents
- Environmental Information Document

In addition, the City has been in communication with TCEQ Enforcement Division to request a waiver of enforcement until August 31, 2026 to provide additional time to finalize construction plans and continue to look for cost savings. This request is being drafted for submittal to TCEQ in the coming days.

The original TWDB commitment was approved on 8/15/24 with Resolution #24-070 and will expire on 8/31/2025. As we continue to work with our engineer and TCEQ related to this project, the City of Port Lavaca respectfully requests a 9-month extension of the expiration date of this commitment to 5/31/2026.

This is an important project for the City and we greatly appreciate TWDB's support. Please let us know if you need any additional information or if you have any questions. We look forward to hearing from you.

Respectfully,

JoAnna "Jody" P. Weaver, P.E.
Interim City Manager
jweaver@portlavaca.org