TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Jessica Zuba, Deputy Executive Administrator
Annette Mass, Assistant General Counsel

FROM: T. Clay Schultz, Ph.D., Director, Regional Water Project Development
Jeff Taylor, Manager, Regional Water Project Development

DATE: May 5, 2020

SUBJECT: Change in funding for City of Alto, Resolution No. 20-033

ACTION REQUESTED
Amend TWDB Resolution No. 20-033 for the City of Alto (Cherokee County) to include $400,000 in Principal Forgiveness and $1,795,000 zero-percent interest financing.

BACKGROUND
On April 9, 2020 the Texas Water Development Board (Board) approved a commitment of $2,200,000 in financing for the City of Alto (City) through the Clean Water State Revolving Fund (CWSRF).

Program Administration and Reporting (PAR) has determined that additional funds have become available and has issued a revised Funding Determination Letter informing the City that it is eligible for $400,000 Principal Forgiveness and zero-percent financing for the remaining $1,795,000 commitment under the Disadvantaged – Small/Rural program.

KEY ISSUES
The City is requesting to amend the commitment to allow it to receive the Principal Forgiveness funds and the zero-percent financing as laid out in the revised Funding Determination Letter.
RECOMMENDATION
The Executive Administrator recommends the TWDB Resolution No. 20-033 be amended to reflect the terms outlined in the revised funding determination letter for which the City is eligible.

Attachment(s):

1. Proposed TWDB Resolution (20- )
2. TWDB Resolution (20-033)
3. TWDB Funding Determination Letter dated April 1, 2020
4. TWDB Revised Funding Determination Letter dated April 9, 2020
A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 20-033
TO INCLUDE PRINCIPAL FORGIVENESS AND ZERO PERCENT FINANCING FOR THE
$2,200,000 CITY OF ALTO, TEXAS COMBINATION TAX AND SURPLUS REVENUE
CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2020 TO BE ISSUED BY THE CITY OF ALTO

(20- )

WHEREAS, at its April 9, 2020 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 20-033, made a commitment to provide financial assistance to the City of Alto (City) for the purpose of financing improvements to the City’s wastewater system in the amount of $2,200,000, consisting of the TWDB’s purchase of $2,200,000 City of Alto, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2020, 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; and

WHEREAS, by letter dated April 9, 2020, the Program Administration and Reporting Division issued a revised Funding Determination Letter to the City, providing the availability of $400,000 in Principal Forgiveness and $1,795,000 in zero percent interest financing; and

WHEREAS, the City would like to take advantage of the Principal Forgiveness funds and the zero percent financing terms now available, therefore, it is necessary to revise TWDB Resolution No. 20-033, to include the Principal Forgiveness and zero percent interest financing; and

WHEREAS, the TWDB hereby finds that the amendment to provide $400,000 in Principal Forgiveness and zero percent financing is reasonable and that the request is in the public interest and will serve a public purpose; and

WHEREAS, 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:

A commitment is made by the TWDB to the City of Alto for financial assistance in the amount of $2,200,000 from the Clean Water State Revolving Fund through the TWDB’s proposed purchase of $1,795,000 City of Alto, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2020 and the execution of a Principal Forgiveness Agreement in the amount of $400,000. This commitment will expire on December 31, 2020.
Such commitment is conditioned as follows:

1. that the City meets the definition of a “Disadvantaged Community” in 31 TAC § 375.1(23) and is therefore eligible for principal forgiveness in the amount of $400,000 and that the City qualifies as a “small” or “rural” system as determined by the applicable IUP, and the project is therefore eligible for a reduced interest rate of zero percent;

2. the 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 § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines;

3. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;

4. 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

5. that all other terms and conditions of TWDB Resolution No. 20-033 shall remain in full force and effect

APPROVED and ordered of record this the 4th day of June, 2020.

TEXAS WATER DEVELOPMENT BOARD

_______________________________
Peter M. Lake, Chairman

DATE SIGNED:_____________________

ATTEST:

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Jeff Walker
Executive Administrator
A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
$2,200,000 TO THE CITY OF ALTO
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
$2,200,000 CITY OF ALTO, TEXAS COMBINATION TAX AND SURPLUS REVENUE
CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2020

(20-033)

WHEREAS, the City of Alto (City), located in Cherokee County has filed an
application for financial assistance in the amount of $2,200,000 from the Clean Water State
Revolving Fund (CWSRF) to finance the planning, design, and construction of certain
wastewater system improvements identified as Project No. 73860; and

WHEREAS, the City seeks financial assistance from the Texas Water Development
Board (TWDB) through the TWDB’s proposed purchase of $2,200,000 City of Alto, Texas
Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2020
(together with all authorizing documents, “Obligations”), 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 tax and surplus revenue 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 § 375.14.

WHEREAS, the TWDB hereby finds:

1. that the revenue and 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 Federal
Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., as well as state law, in
accordance with Texas Water Code § 15.607;

3. that the City has adopted and implemented a water conservation program 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 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 Alto for financial assistance in the amount of $2,200,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of $2,200,000 City of Alto, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2020. This commitment will expire on April 30, 2021.

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 375;

4. the Obligations must provide that the City agrees to comply with all of the conditions set forth in the TWDB Resolution, which conditions are incorporated herein;

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 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;
the Obligations must contain a provision requiring the City to levy a tax and/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;

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;

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 in a manner as approved by the Executive Administrator;

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;

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;

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;

prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges and/or the levy of an interest and sinking tax rate (if applicable) sufficient for the repayment of all system debt service requirements;
14. 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;

15. 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;

16. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to 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 section 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 section 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 section 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 section 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 section 148(f) of the Code, section 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 section 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 Obligations must contain a provision that the City will refrain from using 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);

26. 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;

27. 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

28. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;

29. 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;
30. 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
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;

31. 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;

32. the Obligations 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 § 375.3, 33 U.S.C. § 1388, and
related State Revolving Fund Policy Guidelines;

33. the Obligations must contain language detailing compliance 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, as
applicable, in accordance with generally accepted accounting principles (GAAP).
These standards and principles also apply to the reporting of underlying
infrastructure assets;

34. the City shall submit, prior to the release of funds, a schedule of the useful life of the
project components prepared by an engineer as well as a certification by the
applicant that the average weighted maturity of the obligations purchased by the
TWDB does not exceed 120% of the average projected useful life of the project, as
determined by the schedule;

**Clean Water State Revolving Fund Conditions**

35. the City shall pay at closing an origination fee approved by the Executive
Administrator of the TWDB pursuant 31 TAC Chapter 375;

36. at the TWDB's option, the TWDB may fund the financial assistance under this
Resolution with either available cash-on-hand or from bond proceeds. 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;

37. 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;

38. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102(2)(A)-(C), the City must provide documentation that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 et seq and 33 U.S.C. § 1382(b)(14).

Pledge Conditions for the Loan

39. the Obligations must contain a provision that provides 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 include a requirement that the City transfer and deposit in 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 such time as 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 include a requirement that for each year the Obligations are outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient surplus pledged revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Obligations; and
      
iii. the Obligations must include a requirement 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 such 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.

APPROVED and ordered of record this 9th day of April, 2020.

TEXAS WATER DEVELOPMENT BOARD

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Peter M. Lake, Chairman

DATE SIGNED: 4/10/20

ATTEST:

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Jeff Walker, Executive Administrator