

## AGENDA ITEM MEMO

**BOARD MEETING DATE:** October 5, 2022

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Ashley Harden, General Counsel  
Jessica Peña, Deputy Executive Administrator, Water Supply & Infrastructure

**FROM:** T. Clay Schultz, Ph. D., Director, Regional Water Project Development  
Mireya Loewe, Manager, South Region  
Michael Perez, Assistant General Counsel

**SUBJECT:** North Alamo Water Supply Corporation's Extension

### ACTION REQUESTED

Amend by resolution the previously adopted Texas Water Development Board Resolution No. 22-034, to modify the North Alamo Water Supply Corporation's Clean Water State Revolving Fund commitment expiration date.

### BACKGROUND

On April 11, 2022, the Texas Water Development Board (TWDB), through Resolution No. 22-034, approved a \$15,340,000 commitment to the North Alamo Water Supply Corporation (Corporation) from the Clean Water State Revolving Fund (CWSRF) for planning, acquisition, design, and construction of a first-time sewer project. The financial assistance consists of \$11,090,000 in financing and \$4,250,000 in principal forgiveness. The proposed project is to provide first-time sewer service to nine subdivisions with approximately 419 connections and an estimated population of 1,634. The commitment is set to expire on October 31, 2022.

In May 2022, the Corporation submitted an abridged application to the Economically Distressed Areas Program (EDAP) for construction funding of the same project. Per the draft 2022 EDAP Intended Use Plan (IUP), the Corporation could be eligible to receive either 50 or 70 percent in grant funding.

#### Our Mission

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

#### Board Members

Brooke T. Paup, Chairwoman | George B. Peyton V, Board Member

Jeff Walker, Executive Administrator

**KEY ISSUES**

The Corporation wishes to obtain the most advantageous funding and reduce the financing cost of the project to lessen the impact to its customers. Therefore, the Corporation wishes to delay the closing of its CWSRF commitment to find out how its EDAP abridged application for the project was ranked and whether the Corporation might be invited to apply soon. This information will allow the Corporation to assess whether they close on the full amount of the CWSRF commitment, or close on a portion of the commitment to start and cover the costs of planning, acquisition, and design, while applying for EDAP funding for the construction costs.

**RECOMMENDATION**

The Executive Administrator recommends that Resolution No. 22-034 be amended to extend the commitment period for six months, to April 30, 2023, which will provide the Corporation additional time to determine its likelihood of receiving EDAP funding and decide whether to pursue EDAP funding and potentially close on a smaller amount of the CWSRF commitment.

Attachments:

1. Resolution (22- )
2. Resolution (22-034)
3. Request for Extension Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AMENDING TWDB RESOLUTION NO. 22-034  
TO EXTEND THE COMMITMENT PERIOD FOR THE \$11,090,000 PROMISSORY NOTE AND  
LOAN AGREEMENT AND \$4,250,000 IN PRINCIPAL FORGIVENESS  
WITH THE NORTH ALAMO WATER SUPPLY CORPORATION

(22 - )

WHEREAS, at its April 11, 2022 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 22-034, made a commitment to provide financial assistance in the amount of \$15,340,000 to North Alamo Water Supply Corporation (Corporation) from the Clean Water State Revolving Fund to finance improvements to its wastewater system, to be secured by the TWDB's purchase of a Promissory Note in the amount of \$11,090,000 and execution of a Loan Agreement and \$4,250,000 in Principal Forgiveness, for Project No. 73923; and

WHEREAS, pursuant to TWDB Resolution No. 22-034, the commitment period will expire October 31, 2022; and

WHEREAS, the Corporation has submitted a request to extend the TWDB's commitment for an additional six (6) months to determine if the Corporation's Project will qualify for financing under an alternative TWDB program, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that granting an extension of six (6) months is in the public interest.

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 \$15,340,000, as authorized in TWDB Resolution No. 22-034, is amended to extend the commitment to April 30, 2023; and
2. all other terms and conditions of TWDB Resolution No. 22-034 shall remain in full force and effect.

APPROVED and ordered of record this the 5th day of October, 2022.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Brooke T. Paup, Chairwoman

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

ATTEST:

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

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$15,340,000 TO THE NORTH ALAMO WATER SUPPLY CORPORATION  
FROM THE CLEAN WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
A PROMISSORY NOTE IN THE AMOUNT OF \$11,090,000 AND EXECUTION OF A  
LOAN AGREEMENT  
AND  
\$4,250,000 IN PRINCIPAL FORGIVENESS**

(22-034)

WHEREAS, the North Alamo Water Supply Corporation (Corporation), located in Hidalgo County, has filed an application for financial assistance in the amount of \$15,340,000 from the Clean Water State Revolving Fund (CWSRF) to finance the planning, acquisition, design, and construction of certain wastewater system improvements identified as Project No. 73923; and

WHEREAS, the Corporation seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of a Promissory Note in the amount of \$11,090,000 and execution of a Loan Agreement (together with all authorizing documents, (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of \$4,250,000, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the Corporation has offered a pledge of a parity lien on the net revenues of the water and wastewater system and a mortgaged deed of trust on the Corporation's system 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; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the Corporation will be sufficient to meet all the Obligations assumed by the Corporation, 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 Corporation 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 Corporation has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007;
5. that the Corporation meets the definition of a "Disadvantaged Community" in 31 TAC § 375.1(23) and is therefore eligible for principal forgiveness in the amount of \$4,250,000.

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

A commitment is made by the TWDB to the North Alamo Water Supply Corporation for financial assistance in the amount of \$15,340,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of a Promissory note in the amount of \$11,090,000 and execution of a Loan Agreement and the execution of a Principal Forgiveness Agreement in the amount of \$4,250,000. This commitment will expire on October 31, 2022.

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. prior to closing, the Corporation must submit to the Executive Administrator an attorney's opinion confirming the legal authority for the Corporation to incur the Obligations that is acceptable to the Executive Administrator;
3. this commitment is contingent upon the Corporation's compliance with all applicable requirements contained in 31 TAC Chapter 375;
4. the Obligations must provide that the Corporation 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 Corporation may prepay all or part of the amounts of principal and interest then due on the loan on any regularly scheduled payment date as specified in the Repayment Schedule, as revised, beginning no earlier than the first interest payment date that is 10 years from the date of the first delivery of funds from the TWDB to the Corporation pursuant to this Agreement;
6. the Corporation, 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 Corporation'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 Corporation's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Corporation is an obligated person with respect to such bonds under SEC Rule 15c2-12;

7. the Obligations must contain a provision requiring the Corporation 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;
8. the Obligations must include a provision requiring the Corporation 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 Corporation to submit a final accounting and disposition of any unused funds;
9. the Obligations must include a provision requiring the Corporation 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;
10. 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;
11. 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;
12. loan proceeds shall not be used by the Corporation 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 Corporation 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 Corporation, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

13. prior to closing, the Corporation 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 Corporation 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 Corporation 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 Corporation execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
17. the Obligations must provide that the Corporation will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
18. the Obligations must provide that the Corporation 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 contain a provision requiring the Corporation to maintain insurance coverage sufficient to protect the TWDB's interest in the project;

**State Revolving Fund Conditions:**

20. the Corporation shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
21. 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 Corporation, 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;

22. the Obligations must include a provision stating that the Corporation 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 Corporation 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;
23. 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 Corporation will adhere to the approved project schedule;
24. the Obligations and Principal Forgiveness Agreement must contain a covenant that the Corporation 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;
25. 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;
26. The Obligations and Principal Forgiveness Agreement must contain a covenant that the Corporation shall abide by the prohibition on certain telecommunications and video surveillance services or equipment as required by 2 CFR § 200.216
27. the Corporation 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:

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

29. 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;
30. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the Corporation 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;
31. 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 Corporation 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).

Water Supply Corporation Conditions:

32. the Corporation's indebtedness to the TWDB shall be evidenced by loans specifically secured by:
  - a. a first or parity lien on the net revenues of the Corporation's water system (System); and
  - b. a first or parity lien mortgage on the System;
33. upon closing or within 20 days after closing, the Corporation must file a Deed of Trust with the County Clerk of the county in which the property is located, as required by Business and Commerce Code, Chapter 9, or a Utility Security Instrument with the Secretary of State's Office and corresponding notice with the County Clerk, as required by Business and Commerce Code, Chapter 261, as evidence of the TWDB's security interest in the Corporation's System. Within thirty (30) days of the date of each filing, the Corporation shall submit a copy of the recorded instrument to the TWDB;
34. upon closing or within 20 days after closing, the Corporation file a security instrument with the Secretary of State's Office, as required by Business and Commerce Code, Chapter 9 or Chapter 261 to evidence the TWDB's security interest in any personal property directly related to water supply and/or sewer service, owned or to be acquired by the Corporation. A copy of the recorded security

instrument shall be submitted by the Corporation to the TWDB within thirty (30) days of its filing with the Secretary of State's Office;

35. prior to closing, the Corporation must obtain a commitment from a title insurance company in accordance with the standards established by the Texas Department of Insurance, resulting in the issuance of a mortgagee title insurance policy on the property owned in fee simple, upon which the TWDB will be given a first or parity lien mortgage. A copy of the mortgagee title insurance policy shall be submitted to the TWDB within thirty (30) days of its execution;
36. prior to closing, the Corporation must cure any defects or liens upon the property listed in Schedule C of the title insurance company commitment that the Executive Administrator deems necessary;
37. prior to release of funds for construction, the Corporation must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the Corporation has the legal authority necessary to complete the acquisitions;
38. prior to closing, the Corporation must submit to the Executive Administrator evidence that the Corporation's bylaws have been amended to include the following requirements:
  - a. as long as the Corporation is indebted for a loan or loans made by or through the TWDB, the bylaws shall not be altered, amended or repealed without the prior written consent of the Executive Administrator; and
  - b. the Corporation is a nonprofit Corporation; no part of the income of the Corporation will be distributed to the Corporation's members, directors, or officers;
39. prior to closing, if the Corporation is pledging a lien on real property that is to be on parity with a lien or liens on real property securing debt that will remain outstanding after closing the TWDB's loan, then the Corporation must execute a Parity Agreement with each entity that holds such debt that is acceptable in form and substance to the Executive Administrator; and
40. the Obligations shall include a special covenant prohibiting the Corporation from encumbering, pledging or otherwise impairing the revenues of the System in any manner with respect to the payment of any Obligations or with respect to any liability, except for the payment of the following: (1) maintenance and operating expenses payable within the current fiscal year with current revenues; and (2) additional debt, and that the Corporation shall in no way encumber, pledge or otherwise impair its title to the land used by or for the System or any interests therein, including improvements and facilities of the System, without prior TWDB approval;

Pledge Conditions for the Loan:

41. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;
42. if the Corporation has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;
43. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net revenues are determined from the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant;

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

Special Conditions:

44. the Corporation must notify the Executive Administrator in writing, thirty (30) days prior to taking any actions to alter its legal status in any manner.
45. the Obligations must include a provision requiring that the Corporation notify the Executive Administrator in writing prior to any action by it to convey its Obligations held by the TWDB to another entity, the conveyance and the assumption of the Obligations must be approved by the TWDB;
46. prior to closing, the Corporation shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
47. the Principal Forgiveness Agreement must include a provision stating that the Corporation shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator;
48. prior to final disbursement, the Corporation shall submit to the TWDB certification that it has developed and is currently implementing a fiscal sustainability plan for critical assets that are a part of the treatment works receiving financial assistance as outlined in 33 U.S.C. § 1383;

APPROVED and ordered of record this 11th day of April 2022.

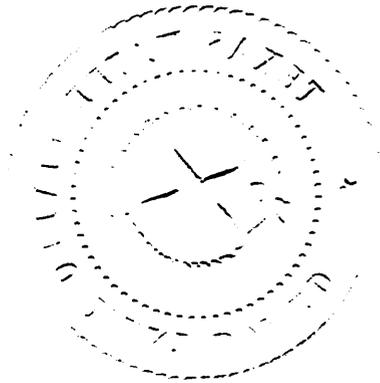
TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup  
Brooke T. Paup, Chairwoman

DATE SIGNED: April 11, 2022

ATTEST:

Jeff Walker  
Jeff Walker, Executive Administrator



**NORTH ALAMO WATER SUPPLY CORPORATION**

3/8 MILE S OF SH 107 ON DOOLITTLE ROAD  
420 S DOOLITTLE RD EDINBURG TX 78542-9707

TELEPHONE 956-383-1618  
FAX 956-383-1372

August 26, 2022

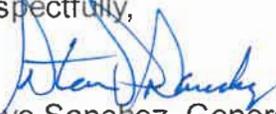
Mireya Loewe  
Manager, South Region  
Regional Water Project Development  
PO Box 13231  
Austin, Texas 78711-3231

Ref: Request for an Extension of Time for Loan Closing  
North Alamo Water Supply Corporation  
TWDB Commitment No. L1001513  
TWDB Commitment No. LF1001514

Dear Mireya,

The closing date for the above referenced TWDB Commitments are about to expire in October. North Alamo's intent was to proceed with closing on the loan commitments before the expiration date. Although before we close on the loan commitments, the Corporation wants to see if it potentially qualifies for grant funding under the EDAP program for this project. And since the rankings have not been published for the EDAP program, the Corporation is kindly requesting a 6-month extension of time to see if it will qualify for additional funding. We hope that our request will be granted. Should you need any additional information feel free to contact me at your convenience.

Respectfully,

  
Steve Sanchez, General Manager  
North Alamo WSC

Cc: Janie Sandoval, Controller  
North Alamo WSC

Allan F. Booe, P.E.  
Melden & Hunt, Inc.

Michael Hernandez  
Melden & Hunt, Inc.