P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

AGENDA ITEM MEMO

BOARD MEETING DATE: October 17, 2024

TO: Board Members

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

FROM: Clay Schultz, Ph.D., Director, Regional Water Project Development
Theresa Finch, P.G., Manager, Regional Water Project Development

SUBJECT: Amendment to the Loma Alta Water Supply Corporation Commitment Expiration Date

ACTION REQUESTED

Consider amending the resolution previously adopted Texas Water Development Board Resolution No. 24-040 to extend Loma Alta Water Supply Corporation's Drinking Water State Revolving Fund's funding commitment to February 28, 2025.

BACKGROUND

On June 12, 2024, the Texas Water Development Board (TWDB) approved a $300,000 commitment to the Loma Alta Water Supply Corporation (Corporation) from the Drinking Water State Revolving Fund program for acquisition, planning, design and construction of a water supply improvement project with 100 percent principal forgiveness.

KEY ISSUES

The Corporation requests an extension of the expiration date of its commitment of October 31, 2024. The Corporation requests a four-month extension to obtain a water supply agreement from an adjacent water supply corporation and complete the closing process.

The project includes installation of a new 2-inch water supply line from an adjacent water supply corporation to a proposed 5,000-gallon ground blending tank. By blending the purchased water with groundwater supplied from its existing Loma Alta well, the Corporation can reduce nitrates to compliant levels with Texas Commission on Environmental Quality requirements.

The Corporation has yet to obtain a water supply agreement from the adjacent water supply corporation due to the sale of the adjacent water supply system and not having an agreement with the new ownership of the adjacent water supply corporation.

RECOMMENDATION

The requested amendment does not change the total amount of financing to the Corporation.

To allow the Corporation time to execute a water supply contract prior to closing on the commitment, the Executive Administrator recommends that TWDB Resolution No. 24-040 be amended to extend the remaining commitment expiration date to February 28, 2025.

Attachments:

1. Proposed Resolution (24-)
2. Resolution No. 24-040
3. Request for extension of commitment's expiration date

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD AMENDING TWDB RESOLUTION NO. 24-040 TO EXEND THE FUNDING COMMITMENT EXPIRATION DATE FOR THE IN $300,000 PRINCIPAL FORGIVENESS TO BE ISSUED TO LOMA ALTA WATER SUPPLY CORPORATION

(24 -)

Recitals:

The Texas Water Development Board (TWDB), at its June 12, 2024 meeting, by TWDB Resolution No. 24-040, made a commitment to provide financial assistance in the amount of $300,000 to Loma Alta Water Supply Corporation (Corporation) from the Drinking Water State Revolving Fund with 100 percent to be forgiven, to finance the planning, acquisition, design, and construction of certain water system improvements identified as Project No. 62988.

Pursuant to TWDB Resolution No. 24-040, the commitment period will expire October 31, 2024.

The Corporation has submitted a request to extend the TWDB's commitment for an additional four (4) months to obtain a water supply agreement from an adjacent water supply corporation and complete the closing process, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made.

Findings:

The TWDB hereby finds that the amendment to the term of this commitment 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.

The TWDB hereby finds that granting an extension of four 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 $300,000, as authorized in TWDB Resolution No. 24-040, is amended to extend the commitment to February 28, 2025.

2. All other terms and conditions of TWDB Resolution No. 24-040 shall remain in full force and effect.

APPROVED and ordered of record this the 17th day of October 2024.

TEXAS WATER DEVELOPMENT BOARD

____
Brooke T Paup, Chairwoman

DATE SIGNED:__________________________

ATTEST:

____
Bryan McMath, Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE TO THE LOMA ALTA WATER SUPPLY CORPORATION FROM THE DRINKING WATER STATE REVOLVING FUND THROUGH $300,000 IN PRINCIPAL FORGIVENESS

(24-040)

Recitals:

The Loma Alta Water Supply Corporation (Corporation), located in Hale County, has filed an application for financial assistance in the amount of $300,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, acquisition, design, and construction of certain water system improvements identified as Project No. 62988.

The Corporation seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of $300,000 with 100 percent to be forgiven, as is more specifically set forth in the application and in recommendations of the TWDB's staff.

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.

The Corporation requests a waiver of the requirement that a portion of the financial assistance received from the TWDB be used to mitigate the Corporation's system water loss because the Corporation will be using funds from this commitment to provide operational water meters.

Findings:

1. No debt obligations are to be assumed by the Corporation for the financial assistance and no taxes or revenues are required to be pledged by the Corporation in accordance with Texas Water Code § 15.607.

2. The application and assistance applied for meet the requirements of the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*.

3. The Corporation is exempt from requirements to adopt a water conservation program because the TWDB's financial assistance will be $500,000 or less.

4. 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. Based on the conditions described above, the Corporation is satisfactorily addressing its system water loss, which supports a waiver of the requirement that a portion of the financial assistance received from the TWDB be used to mitigate system water loss in accordance with Texas Water Code § 16.0121(g).

6. The Corporation meets the definition of a very small system in accordance with the current Intended Use Plan and is therefore eligible for principal forgiveness in the amount of $300,000.

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

1. For the reasons stated above, the TWDB waives the requirements of Texas Water Code § 16.0121(g).

2. A commitment is made by the TWDB to the Loma Alta Water Supply Corporation for financial assistance in the amount of $300,000 from the Drinking Water State Revolving Fund with 100 percent to be forgiven. This commitment will expire on October 31, 2024.

The 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 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. This commitment is contingent upon the Corporation's compliance with all applicable requirements contained in 31 TAC Chapter 371.

3. This commitment is contingent on the Corporation executing a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator.

4. The Corporation shall return any principal forgiveness funds determined to be surplus funds in a manner determined by the Executive Administrator.

5. The Principal Forgiveness Agreement must contain a provision that the Corporation agrees to comply with all of the conditions set forth in the TWDB Resolution that incorporates those conditions.

6. The Principal Forgiveness Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the

Principal Forgiveness Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect.

7. Financial assistance funds are public funds and, as such, the Principal Forgiveness Agreement must include a provision requiring that these proceeds be held at a designated state depository institution or other properly chartered institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257.

8. Financial assistance funds shall not be used by the Corporation when sampling, testing, removing, or disposing of contaminated soils or media at the project site. The Obligations must include a provision that states the Corporation is solely responsible for liability resulting from acts or omissions of the Corporation, 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 Corporation, its contractors, consultants, agents, officials, or employees as a result of activities relating to the Project to the extent permitted by law.

9. Before 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 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 under the contract, and acceptable to the Executive Administrator.

10. Before 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 the executed agreement to the TWDB.

11. 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:

12. The Corporation shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines.

13. the Principal Forgiveness Agreement 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 in this commitment shall insert in full, in any contract in excess of $2,000, the contract clauses as provided by the TWDB.

14. The Principal Forgiveness Agreement 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 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.

15. 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.

16. The 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 § 371.4 and related State Revolving Fund Policy Guidelines.

17. The Principal Forgiveness Agreement must contain a covenant that the Corporation will abide by all applicable requirements related to the Build America, Buy America Act, Public Law 117-58.

18. The 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.

Drinking Water State Revolving Fund Conditions:

19. Before 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 Corporation 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.

20. Before 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.

Water Supply Corporation Conditions:

21. The Corporation's indebtedness to the TWDB shall be evidenced by loans specifically secured by:

    a. a first or parity lien on the gross revenues of the Corporation's water system (System); and

    b. a first or parity lien mortgage on the System.

22. 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.

23. Upon closing or within 20 days after closing, the Corporation must 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.

24. Upon closing or within 20 days after closing, the Corporation must 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.

25. Before 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.

26. Before 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.

27. Before 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.

28. Before 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.

29. 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.

Special Conditions:

30. The Corporation must notify the Executive Administrator in writing, thirty (30) days before taking any actions to alter its legal status in any manner.

31. The Obligations must include a provision requiring that the Corporation notify the Executive Administrator in writing before taking any action 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.

APPROVED and ordered of record this 12th day of June, 2024.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup

Brooke T. Paup, Chairwoman

DATE SIGNED: June 20, 2024

ATTEST:

Bryan McMath, Interim Executive Administrator

Loma Alta

Water Supply Corporation

Alyssa Garza-Medina

Engineering Reviewer 1

Team 1, Panhandle/West

Regional Water Project Development

RE: Loma Alta WSC – Closing Extension Request

To whom it may concern:

As an update to the closing process for Loma Alta WSC, there have been some complications with obtaining the executed water supply contract from the nearby water supply (Grand Castle WSC). Due to recent administration changes at Grand Castle WSC, it is extremely unlikely that Grand Castle will execute the previously submitted draft water supply contract.

After the evaluation of other alternatives, it is believed that the best approach to adhere with the current funding resolution is to execute a water supply contract with a separate water supply corporation which lies due South of Loma Alta WSC. This approach will also rectify the health and compliance factors in which the project was ranked. Preliminary discussions have been made with the Board President, which appear favorable to produce an executed water supply contract.

To allow for water supply contract negotiations and execution, Loma Alta WSC formally requests a time extension to the funding resolution.

Sincerely,

Gary House
Loma Alta WSC - Water System Operator