



City of San Antonio

Agenda Memorandum

File Number:14-2603

Agenda Item Number: 5.

Agenda Date: 10/30/2014

In Control: City Council A Session

DEPARTMENT: Finance

DEPARTMENT HEAD: Troy Elliott

COUNCIL DISTRICT(S) IMPACTED: City Wide

SUBJECT:

Vista Ridge Water Supply Agreement with the San Antonio Water System (SAWS)

SUMMARY:

The City Council will be asked to consider the proposed Vista Ridge Water Supply Agreement that would annually provide up to 50,000 acre feet of non-Edwards Aquifer water to San Antonio likely beginning in 2020.

BACKGROUND INFORMATION:

In 2011, SAWS issued a request for competitive sealed proposals (RFCSP) for non-Edwards Aquifer water in order to diversify its water supplies and to obtain water that the community will need to accommodate expected future increases in water demand. After the 2012 Water Management Plan update, SAWS issued an addendum to the RFCSP calling for 50,000 acre feet of water. After reviewing the nine proposals that it received, SAWS selected a proposal submitted by the Vista Ridge Consortium. The Vista Ridge Consortium is a partnership between Abengoa and BlueWater Systems, which has assembled approximately 3,400 leases for water rights with local landowners in Burleson and Milam Counties. Abengoa is a Spanish multi-national corporation which includes companies in the domains of energy, telecommunication, transportation, and the environment. Abengoa designs and constructs water infrastructure and facilities, including desalination and water treatment plants, and water distribution and transportation infrastructure. BlueWater is a Texas based entity that possesses groundwater rights and production and transport permits, and specializes in development and delivery of municipal water supplies in Central Texas.

On July 1, 2014, the SAWS Board of Trustees accepted the proposal from the Vista Ridge Consortium and began negotiations on a Water Transmission and Purchase Agreement (WTPA). In order to provide

transparency to the process, SAWS held seven negotiation meetings that were publically posted and open to the public. On September 29, 2014, the SAWS Board of Trustees authorized execution and approval of the proposed Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement (“contract”) in substantially final form and requested approval of the proposed contract from the San Antonio City Council. Subsequently, on October 15, 2014, the SAWS Board approved various clarifying and conforming modifications to the contract.

Some of the key terms of the contract include the following:

- Vista Ridge agrees to deliver up to 50,000 acre-feet per year of groundwater from the Carrizo & Simsboro Aquifers in Bureson County for a term of 30 years. The term may be extended up to an additional 20 years in certain uncontrollable circumstances (i.e., force majeure events).
- SAWS will only pay for the water that is made available and which meets Federal and State drinking water standards.
- The contract value over the 30 year term is expected to be approximately \$3.5 billion.
- Vista Ridge will build well-field infrastructure, pipeline, and transfer facilities at an estimated cost including financing of \$844 million.
- SAWS will construct a pipeline, tank, and related infrastructure to accept and integrate the water delivered into SAWS distribution system at an estimated cost of \$100 million.
- SAWS has the ability to terminate the contract for convenience at any time during the contract term. During the period from the commercial close date (the time of contract execution by the City/SAWS) to the financial closing date (issuance of bonds by Vista Ridge and commitment of Vista Ridge’s equity), if SAWS exercises this option, it must reimburse Vista Ridge for costs that it has incurred during that time up to a maximum of \$40.1 million. Also, if SAWS enters into a similar deal within 5 years, it must pay an additional \$10 million project assumption fee. If SAWS exercises its termination option after financial close, SAWS must pay the outstanding debt, return of/on equity and any contract breakage costs, and all the assets will be transferred to SAWS. SAWS would then operate the project as if it were a SAWS project.
- Vista Ridge can terminate the contract prior to the financial closing date for any reason. Also, if Vista Ridge is unable to achieve financial close within 30 months after commercial close, SAWS can terminate the contract. In either event, Vista Ridge must reimburse costs incurred by SAWS up to a maximum of \$2 million.
- A 5 member O&M Budget Panel shall be established to determine the appropriate annual operating and maintenance expenditures during the project term. The Panel would consist of two (2) Vista Ridge & SAWS appointees, two (2) panelists selected by the appointees and one (1) panelist selected by the two “selected” panelists
- Vista Ridge is paid a management fee equal to 11.1% of the total Compensable Costs of the O&M budget for each billing period, excluding bonds and insurance.
- Vista Ridge agrees to establish a Small, Minority, and Women-Owned Business participation goal of 15%.
- SAWS will take ownership of the pipeline built by Vista Ridge at the end of the contract term.
- SAWS has an exclusive right to purchase the water for a period of 30 years following the expiration of the contract. The purchase price shall be set at the price per acre foot equal to the rolling 5-year average of all 2-year term groundwater leases entered for Edwards Aquifer water to which SAWS is a party.
- The interest rate assigned to the Vista Ridge bond issue will be set at financial close, however, the contract has capped the rate so that the maximum rate on any bond issue would be 6.04%. Additionally, SAWS may lock in the interest rate at any time after 18 months from the commercial closing date if Vista Ridge has not yet reached financial close. This would allow SAWS to lock in an advantageous rate should it be less than 6.04%.
- SAWS has the option but is not obligated to purchase the bonds issued by Vista Ridge. This option

could be financially beneficial to SAWS as SAWS will be able to issue debt at interest rates that are lower than Vista Ridge, however, a certain amount of additional risk exposure would also need to be considered prior to taking this action.

- If Vista Ridge refinances its bond issue at some point in the future, SAWS shall be entitled to receive a 25% share of any refinancing gains.

Following is a summary of the project description:

- Water Delivery - Up to 50,000 Acre feet of Water Annually, likely beginning in 2020
- Term 30 Years (Subject to extension of up to 20 years for uncontrollable circumstances)
- Commercial Close - Execution of Contract by the City/SAWS & Vista Ridge
- Development Period - Period of further project development, design, and exploration to include the time for Vista Ridge to secure permanent third-party financing
- Financial Close - Issuance of bonds by Vista Ridge & commitment of Vista Ridge's equity (likely 18-30 months after Commercial Close). If Financial Close does not occur within 910 days following the Commercial Close, SAWS shall not have any payment obligations to Vista Ridge
- Project Infrastructure
 - ⇒ 18 Wells
 - ⇒ 142 Miles of Water Main to be constructed by Vista Ridge
 - ⇒ Projected Cost including financing - \$844 million
 - ⇒ Anticipated financing includes \$762 million in Bond Financing and \$82 million in Equity Contribution by Vista Ridge
- SAWS Integration Infrastructure Projected at \$100 million - includes 82,000 ft. of pipe, potentially three storage tanks, a new pump station, pump station upgrades, and water treatment infrastructure.
- Project Construction (approximately 42 months following financial close)

The table below outlines the expected price components of the 50,000 acre feet of water in 2020.

Estimated cost per Acre Foot	
<i>Price Components</i>	<i>2020</i>
Cost of Infrastructure and Water ¹	\$1,692 to \$1,959
Power ²	\$191
O&M ³	\$193
Total Price of Proposal ¹ Assumes interest rates between 4.54% and 6.04%. ² Cost to be negotiated and paid directly by SAWS. Amount listed is based upon Vista Ridge proposal escalated at 2% per year. ³ Cost to be determined by Budget Panel. Amount listed is based upon Vista Ridge proposal escalated at 2% per year.	\$2,076 to \$2,343

City Council held a public hearing regarding this matter on October 8th. SAWS briefed the City Council on the proposed project and contract on October 15th.

The City Council has not traditionally voted on SAWS water supply contracts; however, it has been asked to do so in this instance so that SAWS does not have to account for this obligation in connection with the Texas Attorney General's Bond Allowable Test until after Financial Close. The intent of this test is to ensure that SAWS possesses the financial ability to meet its payment obligations prior to the incurrence of the obligation.

In order to allow this financial obligation to be considered at financial close instead of at commercial close, the Attorney General's Office has requested that City Council formally approve the contract. The timing associated with accounting for this obligation is important in that it drives the timing of any SAWS rate adjustment requests that may be needed to support this project.

Due to the requirement that the City approve the contract, the City Attorney's Office worked with SAWS to include specific provisions in the agreement to protect and/or reduce risk to the City from potential liability. These provisions include protection against Vista Ridge making any claim against the City's general fund, general credit, and ad valorem taxing authority to satisfy a contractual dispute. The contract also includes a provision specifying that the City has no obligation to perform any SAWS requirement under the contract and Vista Ridge may not look to the City for satisfaction of any contractual duty other than through SAWS. Vista Ridge also indemnifies the City from any third party claim arising under the contract.

The contract provides that if the City passes any discriminatory ordinance that would prevent Vista Ridge from carrying out any contract obligation or that materially increases the cost of performance of any contract obligations, such an ordinance would be considered a SAWS fault under the contract for which Vista Ridge would look to SAWS for compensation.

As part of the City's due diligence, the City Attorney's Office reviewed the entire contract and closely examined the allocation of risk to the City, through SAWS, in connection with entering into the contract, and the dispute resolution provisions. Under the contract, unless SAWS fails to perform its obligations, SAWS has no liability for Vista Ridge's failure to reach financial close. This risk lies with Vista Ridge. SAWS liability during the development phase stems largely from exercising its option to terminate the contract for convenience. Any dispute under the contract shall be resolved in the courts of Bexar County.

Potential Rate Impact

Under an assumption where the full 50,000 acre feet of water is delivered to SAWS and no water produced under the contract is sold to other parties, SAWS would require a projected system-wide increase of approximately 18% to 19%. The projected increase for a SAWS average residential customer using 7,788 gallons of water and 6,178 gallons of wastewater is approximately 16%. This amount was calculated by comparing the projected average residential bill in 2020 assuming the agreement is approved (\$88.21) to the projected average residential bill in 2020 assuming that the agreement is not approved (\$76.12). The actual rate impact will vary for those customers that use more or less than the average residential usage.

In order to minimize potential rate increases, SAWS will look for opportunities to sell any excess water to other communities. SAWS has already held preliminary discussions with several elected officials and utility representatives regarding this possibility. SAWS anticipates structuring any wholesale agreements so that the termination dates match the anticipated time period that SAWS will need the water to serve its customers.

The contract provides SAWS with the option, but not the obligation, to purchase the debt issued by Vista Ridge to finance the project. The structure of the debt that Vista Ridge will issue will be determined closer to the financial closing date. SAWS may elect to exercise this purchase option if it determines that the cost savings associated with financing at a lower cost outweighs the additional risk that would be assumed through the purchase of this debt.

Contract Termination Provisions

As previously indicated, SAWS has the ability to terminate the contract for convenience at any time during the contract. If SAWS exercises this option during the development period, it must reimburse Vista Ridge for

actual costs that it has incurred up to a maximum of \$40.1 million and if SAWS enters into a similar deal within 5 years, it must pay an additional \$10 million project assumption fee. If Vista Ridge is unable, or unwilling to proceed with the contract prior to the financial closing date, it can also terminate the contract; however, it must reimburse costs incurred by SAWS up to a maximum of \$2 million. In addition, SAWS may terminate the contract after the Financial Closing Longstop Date (30 months from Commercial Close) at which time it shall not have any obligation to reimburse Vista Ridge for its project expenditures; however, SAWS may recover its allowable reimbursable costs subject to the \$2 million cap. During the project development period, it is anticipated that Vista Ridge will spend a considerable amount on engineering, geotechnical and topography surveys, legal fees, right of way reservations and other professional fees. SAWS is not expected to incur significant cost until after the financial closing. If SAWS exercises its convenience termination option after financial close, SAWS must pay the outstanding debt, return of equity, as well as breakage costs, and all the assets will be transferred to SAWS. SAWS would then operate the project as if it were a SAWS project.

ALTERNATIVES:

The City Council could elect not to approve this agreement and have SAWS continue to explore other water resource options to meet future water demand.

FISCAL IMPACT:

The proposed contract will have no direct fiscal impact on the City of San Antonio. However, if financial close occurs, SAWS rate adjustments will likely be required in the future to support SAWS' additional O&M expenses under the contract as well as the additional capital expenditures for SAWS integration improvements.

RECOMMENDATION:

City staff reviewed several iterations and the final version of the Water Transmission and Purchase Agreement as well as the related appendixes and financial models prepared by SAWS and Vista Ridge. In addition, staff met several times with SAWS personnel, SAWS Board members, and SAWS Board Legal Counsel and Bond Counsel. City staff also attended the public negotiation meetings that were held.

Based on the analysis outlined above, Staff's professional recommendation is for approval of the proposed Vista Ridge Water Transmission and Purchase Agreement.

SAWS should work with its Rate Advisory Committee to develop a rate structure that protects customers who use low volumes of water from significant rate increases. In conjunction with this process, SAWS should also review its low income affordability programs. In addition, any revisions to the rate structure should ensure that adequate revenue is generated to recover the cost to service each rate class.

SAWS should work closely with Vista Ridge to ensure that it is able to minimize the infrastructure that SAWS will need to construct to connect to the Vista Ridge pipeline so as to minimize the need for rate adjustments.