

**TO:** Board Members

**THROUGH:** Kevin Patteson, Executive Administrator  
 Jeff Walker, Deputy Executive Administrator, Water Supply and Infrastructure  
 Les Trobman, General Counsel

**FROM:** Jessica Zuba, Director, Regional Water Planning and Development  
 Nancy Richards, East Regional Manager, Regional Water Planning and Development  
 Annette Mass, Attorney, Office of General Counsel

**BOARD DATE:** January 29, 2015

**SUBJECT:** Airline Improvement District, Project No. 10440  
 Service Zone 1 Water and Wastewater  
 Request for Extension of Commitment

**ACTION REQUESTED**

Approve by resolution a request from the Airline Improvement District (District) to amend TWDB Resolution 14-10 by extending the commitment period for financing certain water and wastewater system improvements through the Economically Distressed Areas Program (EDAP).

**BACKGROUND**

At its February 20, 2014 meeting, the Board approved a commitment for the construction of the Service Zone 1 Water and Wastewater project to provide first time water and sewer service to residents of the Airline Improvement District in Harris County. The design phase of this project was previously funded with an EDAP grant commitment.

The proposed wastewater project includes the construction of a new sanitary sewer collection system and upgrade to the City of Houston's (City) Blue Bell lift station. Wastewater flows will be treated at the City's Imperial Valley Wastewater Treatment Plant. The proposed water project includes new water distribution lines, taps and metering facilities as well as decommissioning of private water wells. The project will connect to the City's existing water system. Water to serve the District will be surface water from the City's Northeast Water Treatment Plant.

**KEY ISSUES**

The District's commitment is set to expire on February 28, 2015. In order for the District to close on the project, the TWDB needs to sell EDAP bonds. The TWDB currently plans to issue EDAP bonds by April 2015. Therefore, the District is requesting an extension to August 31,

<p><b>Our Mission</b></p> <p>To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas</p>	<p><b>Board Members</b></p> <p>Carlos Rubinstein, Chairman   Bech Bruun, Member   Kathleen Jackson, Member</p> <p>Kevin Patteson, Executive Administrator</p>
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2015. An extension of the EDAP commitment to August 31, 2015 would provide the District the necessary time to close once the TWDB sells EDAP bonds.

**RECOMMENDATION**

The Executive Administrator recommends amending TWDB Resolution No. 14-10 to extend the expiration to August 31, 2015 from February 28, 2015 for the Economically Distressed Areas Program commitment.

Attachments:

- 1) Resolution (15- )
- 2) Resolution (14-10)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AMENDING TWDB RESOLUTION NO. 14-10  
TO EXTEND THE LOAN COMMITMENT PERIOD FOR CLOSING  
ON THE \$5,361,916, AIRLINE IMPROVEMENT DISTRICT  
SALES TAX REVENUE BONDS, PROPOSED SERIES 2014,  
AND THE EXECUTION OF A GRANT AGREEMENT

(15- )

WHEREAS, at its February 20, 2014, Board Meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 14-10, made a commitment to provide financial assistance in the amount of \$5,361,916 to the Airline Improvement District, located in Harris County, Texas (Airline) from the Economically Distressed Areas Program Account of the Texas Water Development Fund II (EDAP), to finance first-time water and wastewater service. The commitment is to be secured by the TWDB's purchase of \$277,000 Airline Improvement District Sales Tax Revenue Bonds and a grant in the amount of \$5,084,916, under Project No. 10440; and

WHEREAS, pursuant to TWDB Resolution No. 14-10, the commitment period will expire on February 28, 2015; and

WHEREAS, the TWDB must issue bonds from the EDAP Account in order to fund its commitment to Airline; and

WHEREAS, the TWDB hereby finds that granting an extension of time 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 as authorized in TWDB Resolution No. 14-10, is amended to extend the commitment to August 31, 2015; and
2. All other terms and conditions of TWDB Resolution No. 14-10 shall remain in full force and effect.

APPROVED and ordered of record this the 29<sup>th</sup> day of January, 2015.

TEXAS WATER DEVELOPMENT BOARD

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Carlos Rubinstein, Chairman

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

ATTEST:

\_\_\_\_\_  
Kevin Patteson  
Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$5,361,916 TO  
AIRLINE IMPROVEMENT DISTRICT  
FROM THE ECONOMICALLY DISTRESSED AREAS PROGRAM ACCOUNT OF  
THE TEXAS WATER DEVELOPMENT FUND II  
THROUGH THE PROPOSED PURCHASE OF \$277,000  
AIRLINE IMPROVEMENT DISTRICT SALES TAX REVENUE BONDS PROPOSED SERIES 2014  
AND  
THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$5,084,916**

(14-10)

WHEREAS, Airline Improvement District (District), located in Harris County, Texas, has filed an application seeking financial assistance in the amount of \$5,361,916 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II, to finance first-time water and wastewater service, identified as Project No. 10440; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (the TWDB) through the TWDB's proposed purchase of \$277,000 Airline Improvement District Sales Tax Revenue Bonds (together with all authorizing documents (Obligations)) and a grant of \$5,084,916 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II, all as is more specifically set forth in the application and in recommendations of TWDB's staff; and

WHEREAS, the District has offered a pledge of sales tax revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB has carefully considered all matters required by law and in particular the following:

1. the feasibility of creating a conservation and reclamation district to provide and finance the water supply or sewer services, in accordance with Texas Water Code § 16.346;
2. the need of the economically distressed area to be served by the water supply and sewer services in relation to the need of other political subdivisions requiring economically distressed areas financing, and the relative costs and benefits of all applications, in accordance with Texas Water Code § 17.929(a)(1);
3. the availability to the political subdivision of revenue from alternative sources for the payment of the cost of the proposed project, in accordance with Texas Water Code § 17.929 (a)(2);
4. financing of the proposed water supply or sewer project, in accordance with Texas Water Code § 17.929(a)(3);
5. the feasibility of achieving cost savings by providing a regional facility for water supply and wastewater service and the feasibility of financing the facilities by using funds from the

economically distressed areas account or any other financial assistance, in accordance with Texas Water Code § 17.929(a)(5);

6. the rates, fees and charges that the average customer to be served by the project will be able to pay, sources of funding available to the District, and any local funds of the District, in accordance with Texas Water Code § 17.933(d)(1);
7. sources of funding available to the District from federal and private funds and from other state funds, in accordance with Texas Water Code § 17.933(d)(2);
8. any local funds of the District to be served by the project if the economically distressed area to be served is within the boundary of the District, in accordance with Texas Water Code § 17.933(d)(3);
9. the just, fair, and reasonable charges for water and wastewater service as provided in the Texas Water Code, in accordance with Texas Water Code § 17.933(d)(4);

WHEREAS, the TWDB hereby finds:

1. that the District has agreed that the system constructed with funds provided through this grant and loan will connect to and be operated and maintained by the City of Houston's water and wastewater services, and the City of Houston has adopted and is implementing 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;
2. that the area to be served by the proposed project has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available, in accordance with Texas Water Code § 17.929(b);
3. that the County has adopted model subdivision rules as promulgated by the TWDB pursuant to Texas Water Code § 16.343 and the manner of enforcement, in accordance with Texas Water Code § 17.929(a) (4);
4. that the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and that 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, in accordance with Texas Water Code § 16.053(j);
5. that the District has considered cost-effective innovative, nonconventional methods of treatment and will evaluate alternatives in greater detail through the planning phase of the project, in accordance with Texas Water Code § 17.189(b); and
6. that the public interest will benefit from state assistance in the financing of the treatment works, in accordance with Texas Water Code § 17.277;

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

A commitment is made by the TWDB to the Airline Improvement District for financial assistance in the amount of \$5,361,916 from the Economically Distressed Areas Account of the Texas Water Development Fund II through the TWDB's proposed purchase of \$277,000 Airline Improvement District Sales Tax Revenue Bonds, Proposed Series 2014 and a grant of \$5,084,916. This commitment will expire on February 28, 2015.

This 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 District's compliance with all applicable requirements contained in 31 TAC Chapter 363;
3. the Obligations and Grant Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations and Grant Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
4. loan proceeds and grant funds are public funds and, as such, the Obligations and Grant Agreement 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;
5. loan proceeds and grant funds shall not be used by the District when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations and Grant Agreement shall include an environmental indemnification provision wherein the District 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 District, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
6. prior to closing, and if not previously provided with the application, the District 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, under the contract, and acceptable to the Executive Administrator;

7. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the District shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
9. the Executive Administrator may require that the District execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
10. 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 District;
11. if the term of the loan is more than 10 years, the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, and 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;
12. the District, 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 District'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 District's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the District is an obligated person with respect to such bonds under SEC Rule 15c2-12;
13. the Obligations must contain a provision requiring the District to levy and collect sales tax revenues 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;
14. the Obligations must include a provision requiring the District to use any loan proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) eligible project costs as authorized by the Executive Administrator;
15. prior to closing, the District shall submit documentation evidencing the continuing levy and collection of a sales tax rate sufficient for the repayment of all debt service requirements;

Conditions Related To Tax-Exempt Status

16. the District'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 District when rendering this opinion;
17. the District'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 District when rendering this opinion;
18. the Obligations must include a provision prohibiting the District from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code), and the Treasury Regulations promulgated thereunder (Regulations);
19. 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 § 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 § 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;
20. the Obligations must include a provision requiring the District 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 § 148 of the Code. The Obligations must provide that the District 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 District may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the District, provided that the District 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 § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The District 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;
- 21. the Obligations must include a provision prohibiting the District from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
  - 22. the Obligations must provide that the District will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
  - 23. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the District's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
  - 24. the transcript must include evidence that the information reporting requirements of § 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 § 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;
  - 25. the Obligations must provide that neither the District 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 District by the TWDB;

#### EDAP Conditions

- 26. The Grant Agreement and Obligations must include a provision that requires compliance with Texas Water Code § 16.356 that no revenues received from rates or fees collected from the

water/wastewater system to be constructed through this commitment shall be used for any purposes other than utility purposes and that the annual financial statement prepared by the District under Water Code § 49.191 shall include a specific report on compliance with this condition;

27. Prior to the release of funds provided for construction, the District must provide the TWDB with evidence satisfactory to the Executive Administrator that the District has received and will maintain a designation as an authorized agent of the Texas Commission on Environmental Quality, in compliance with Texas Health and Safety Code § 366.035;
28. the Grant Agreement and Obligations must include a provision that requires the District adequately enforce the authority granted to the District by Texas Water Code § 17.934(a)(2) to require and ensure that all property owners capable of receiving service from the system constructed with the funds provided by this resolution are actually connected to the sewer system constructed by these funds within a reasonable period of time not to exceed 90 days from the date the District notifies the property owner that service is available; provided, however, that the Executive Administrator may extend this time upon written request for good cause shown; and

#### Pledge Conditions for the Loan

29. 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;
30. if the District 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;
31. 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 a) 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; or b) the District certifies that the District is expected to continue to meet or exceed the net system revenue test with a minimum coverage of 1.25 times the average annual debt service requirement. An authorized representative of the District must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator.

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

32. the District must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by conversion to a conservation and reclamation district or a sale-transfer-merger with another retail public utility;

33. the Obligations must include a provision requiring that, prior to any action by the District 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;
34. prior to closing, the District and the Executive Administrator shall execute an Agreement that sets forth the terms and uses of the grant funds;
35. the Grant Agreement must include a provision stating that the District shall return any grant funds that are determined to be Surplus Funds in a manner determined by the Executive Administrator; and
36. the Obligations must contain a covenant that the District will abide by all applicable construction contract requirements related to the use of iron and steel products and manufactured goods produced in the United States, as required by Texas Water Code § 17.183.

APPROVED and ordered of record this 20<sup>th</sup> day of February, 2014.

TEXAS WATER DEVELOPMENT BOARD



\_\_\_\_\_  
Carlos Rubinstein, Chairman

ATTEST:



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Kevin Patteson  
Executive Administrator