Texas Water Development Board

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AFFIRMATION OF COMMITMENT

BOARD DATE: April 29, 2015

LOAN RECIPIENT: City of Hubbard (62512)

ACTION REQUESTED: Affirm by resolution the commitment made in TWDB Resolution No. 11-101 with the addition of conditions listed in the Mitigative Measures section of this memorandum

Project Name: Water System Improvements Project - Use of Remaining Funds

Funding Elements: ☒ Planning ☐ Acquisition ☒ Design ☒ Construction

Benefits: The proposed project will use remaining unused funds to replace the metering system to an automated meter reading system (AMR) that collects readings through a mobile collector. The AMR system will be more efficient and expedite recognition and repair of leaks. The proposed replacement generator at the water treatment plant will power the entire plant site including the water well, treatment units, and high service pumps, instead of just the pumps. This proposed water line conversion will improve the water distribution system.

Key Issues: None.

Environmental Determination Type: Categorical Exclusion

Date Issued: December 23, 2014

Project Elements Covered:

1. Replace all water meters in the water distribution system (residential and commercial) with an AMR system that collects reading through a mobile collector. Meter boxes and other appurtenances will be replaced on an as needed basis.
2. If funds are sufficient after the AMR bids complete, the City of Hubbard will also: (a) install an electrical generator at the water treatment plant, and/or (b) convert an abandoned raw water line to a potable water distribution line on South Cypress Avenue from Northeast Third Street to Southeast Third Street.

Our Mission

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas

Board Members

Carlos Rubinstein, Chairman | Bech Bruun, Member | Kathleen Jackson, Member

Kevin Patteson, Executive Administrator

Mitigative Measures:

1) Standard emergency condition for the discovery of cultural resources; and,
2) Standard emergency condition for the discovery of threatened and endangered species.

Environmental Finding includes all project components? ☐ Yes ☒ No

Additional review required for other project components? ☐ Yes ☒ No

Previous Findings issued? ☒ Yes ☐ No

TWDB FINANCIAL ASSISTANCE RELATED TO THIS PROJECT

Number	Program	Commitment
L120003	Drinking Water State Revolving Fund	$1,500,000

Attachment:

1) Resolution No. (15 -)
2) Resolution No. (11-101)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO TWDB RESOLUTION NO. 11-101 AND LOAN COMMITMENT TO THE CITY OF HUBBARD, TEXAS

(15-)

WHEREAS, at its December 15, 2011 meeting, the Texas Water Development Board (TWDB), by Resolution No. 11-101, made a commitment to provide financial assistance in the amount of $1,500,000 to the City of Hubbard (the City) from the Drinking Water State Revolving Fund, for the purpose of financing the water system improvements identified as Project No. 62512 (the Project); and

WHEREAS, pursuant to TWDB Resolution No. 11-101, the TWDB's commitment to the City included the release of funds through the pre-design commitment option after receiving a favorable recommendation from its Executive Administrator that there appeared to be no significant environmental impacts anticipated from the Project, based on preliminary environmental data provided by the City; and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) Chapter 371, Subchapter E of the rules of the TWDB, funds for the design of the Project may not be released until an environmental review has been completed; and

WHEREAS, the Executive Administrator has informed the TWDB of the issuance of a Categorical Exclusion for the Project on December 23, 2014, such finding being subject to the following conditions including the standard emergency discovery conditions for threatened and endangered species and cultural resources in Project contract documents.

NOW THEREFORE, based on these considerations, the Texas Water Development Board resolves as follows:

1. the TWDB concurs in the environmental finding made by the Executive Administrator and affirms the commitments made to the City in TWDB Resolution No. 11-101; and

2. the TWDB approves the release of funds for design and construction from the Drinking Water State Revolving Fund loans to the City for proposed improvements to the City's water supply system.

PROVIDED, however, such commitments and TWDB resolution are further conditioned as follows:

1. the City must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources as more fully specified in the final environmental finding of the Executive Administrator; and

2. all other terms and conditions of TWDB Resolution No. 11-101 shall remain in full force and effect.

APPROVED and ordered of record this 29th day of April, 2015.

TEXAS WATER DEVELOPMENT BOARD

_____
Carlos Rubinstein, Chairman

DATE SIGNED: _____

ATTEST:

_____
Kevin Patteson
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE FROM THE DRINKING WATER STATE REVOLVING FUND THROUGH THE PROPOSED PURCHASE OF $1,500,000 CITY OF HUBBARD, TEXAS COMBINATION TAX AND WATERWORKS AND SEWER SYSTEM REVENUE CERTIFICATES OF OBLIGATION, PROPOSED SERIES 2012

(11-101)

WHEREAS, the City of Hubbard, located in Hill County, Texas, (the "*City*"), has filed an application seeking financial assistance in the amount of $1,500,000 from the Drinking Water State Revolving Fund ("*DWSRF*") to finance water system improvements, identified as Project No. 62512; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (the "*TWDB*") through the TWDB's proposed purchase of $1,500,000 Combination Tax and Waterworks and Sewer System Revenue Certificates of Obligation, Proposed Series 2012 (together with all authorizing documents, the "*Obligations*"), all as is more specifically set forth in the application and in recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the City has offered a pledge of an ad valorem tax and surplus system revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, in accordance with Texas Water Code §15.607, the TWDB hereby finds:

1. that in its opinion the revenue and/or 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 Safe Drinking Water Act, 42 U.S.C. §§300f *et seq.* (1974), as amended, as well as state law, in accordance with Texas Water Code §15.607;

3. that the City has submitted a proposed 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 the TWDB's rules, in accordance with Texas Water Code §15.607;

4. that the current water audit required by §16.0121, Water Code, has been completed by the City and filed with the TWDB, in accordance with Texas Water Code §16.053(j); and

5. that 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).

NOW, THEREFORE, based on these considerations and findings, the Texas Water Development Board resolves as follows:

A commitment is made by the TWDB to the City of Hubbard for financial assistance in the amount of $1,500,000 from the Drinking Water State Revolving Fund through the TWDB's purchase of $1,500,000 Combination Tax and Waterworks and Sewer System Revenue Certificates of Obligation, Proposed Series 2012. This commitment will expire on December 31, 2012.

Such commitment is conditioned as follows:

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 the rules, regulations, and policies of the TWDB;

4. 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;

5. the City's bond counsel must also state in the written opinion that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;

6. 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";

7. the Obligations must include a provision requiring the City to comply with the provisions of §148 of the Internal Revenue Code of 1986 (relating to arbitrage);

8. the Obligations must include a provision requiring the City to make any required rebate to the United States of arbitrage earnings;

9. 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;

10. 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 §149(b) of the Internal Revenue Code;

11. 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;

12. the transcript must include evidence that the information reporting requirements of §149(e) of the Internal Revenue Code of 1986 will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. A completed copy of IRS Form 8038 must be provided to the Executive Administrator prior to release of funds;

13. 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;

14. 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, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission ("*SEC*") 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 owner 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;

15. the TWDB retains the option to purchase the Obligations in separate lots and/or on an installment basis, with delivery of the purchase price for each installment to be paid against delivery of the relevant installment of Obligations as approved by the TWDB's Executive Administrator;

16. if there are existing Obligations of the City outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the TWDB's loan shall be at least on a parity with lien or liens securing such outstanding debt;

17. the Obligations must contain a provision requiring the City to levy a tax and/or to maintain and collect sufficient rates and charges to produce net system revenues in an amount necessary to meet the debt service requirements of all outstanding revenue bonds and to maintain the funds established and required by this ordinance;

18. the Obligations must include a provision requiring the City to use any surplus proceeds from the Obligations 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 capitalized interest or principal on the obligations owned by the Board; or (3) eligible project costs as authorized by the Executive Administrator;

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

20. prior to closing, the City shall pay a 2.25% origination fee to the TWDB calculated pursuant to TWDB rules;

21. prior to closing, the Texas Commission on Environmental Quality, ("*TCEQ*"), must make a determination, the form and substance of which is satisfactory to the Executive Administrator, that the City 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;

22. prior to closing, and if required under the TWDB's financial assistance program and not previously provided with the application, the City shall submit an executed engineering contract as appropriate for the project scope of work, and an executed financial advisor contract and executed bond counsel contract as appropriate for the work to be performed in obtaining the TWDB's financial assistance for the project, in a form and substance that are satisfactory to the TWDB's Executive Administrator;

23. prior to closing, when any portion of loan proceeds are to be held in escrow or in trust, the City 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;

24. loan proceeds are public funds and, as such, 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, Chapter 2256, Government Code, (the "*PFIA*"), and the Public Funds Collateral Act, Chapter 2257, Government Code, (the "*PFCA*");

25. the Executive Administrator of the TWDB may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

26. 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 recipient, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon;

27. fees to be reimbursed under any consulting contract must be reasonable to the services performed and must be reflected in a contract acceptable to the Executive Administrator;

28. 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 Funding Accountability and Transparency Act of 2006, Pub. L. 109-282. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with Central Contractor Registration (CCR), and maintain current registration at all times during which the Obligations are outstanding;

29. 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 Authorizing Document 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;

30. the City shall submit outlay reports with sufficient documentation on costs (e.g.; invoices, receipts) on at least a quarterly basis pursuant to the TWDB's pre-design commitment option. The TWDB shall retain the right to request monthly project progress reports as the project proceeds through each project phase;

31. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by federal statute and EPA regulations, and also shall provide that the City will adhere to a project schedule, acceptable to the Executive Administrator, that facilitates the timely use of funds and project completion; and

32. should one or more of the provisions in this resolution be held to be null, void, voidable or, for any reason whatsoever, of no force and effect, such provision(s) shall be construed as severable from the remainder of this resolution and shall not affect the validity of all other provisions of this resolution which shall remain in full force and effect.

PROVIDED, however, the Obligations are subject to the following special conditions:

33. the loan is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to all of the TWDB's rules relating to such funding option;

34. prior to the release of funds, the City shall provide a schedule of the useful 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 estimated useful life of the project, as determined by the schedule;

35. prior to closing, the City must adopt and implement the water conservation program approved by the TWDB;

36. prior to release of funds for professional consultants, including, but not limited to, engineer, financial advisor, and bond counsel as appropriate, the City must provide documentation that it has met the procurement requirements under the Disadvantaged Business Enterprises Program; and

37. 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 15th day of December, 2011.

TEXAS WATER DEVELOPMENT BOARD

Edward G Vaughan, Chairman

ATTEST:

Melanie Callahan
Interim Executive Administrator