

AFFIRMATION OF COMMITMENT

BOARD DATE: December 14, 2015
LOAN RECIPIENT: City of Fort Worth (72275)
ACTION REQUESTED: Affirm by resolution the commitment made in TWDB Resolution No. 08-92 with the addition of conditions listed in the Mitigative Measures section of this memorandum.

Project Name: Sycamore Creek and Big Fossil Creek Sanitary Sewer Rehabilitation

Funding Elements: Planning Acquisition Design Construction

Benefits: The proposed project will address problems associated with aged and deteriorating pipelines including overflows and infiltration.

Key Issues: None.

Environmental Determination Type: Categorical Exclusion

Date Issued: October 30, 2015

Project Elements Covered: Rehabilitation or functional replacement of approximately 3.6 miles of sanitary sewer lines and one minor (220 linear feet) line extension.

Mitigative Measures:

1. Prior to construction in a 100-year floodplain, the City must acquire a floodplain development permit or documentation from the local floodplain administrator that a permit is not required for compliance with the National Flood Insurance Program;
2. Standard emergency condition for the discovery of cultural resources; and,
3. 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

Our Mission : **Board Members**

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

Bech Bruun, Chairman | Kathleen Jackson, Member

Kevin Patteson, Executive Administrator

TWDB FINANCIAL ASSISTANCE RELATED TO THIS PROJECT

Number	Program	Commitment
L090003	Clean Water State Revolving Fund	\$28,000,000

- Attachment:
1. Resolution No. (15-)
 2. Resolution No. (08-92)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO
TWDB RESOLUTION NO. 08-92 AND LOAN COMMITMENT
TO THE CITY OF FORT WORTH

(15-)

WHEREAS, at its September 23, 2008 meeting, the Texas Water Development Board (TWDB), by Resolution No. 08-92, made a commitment to provide financial assistance in the amount of \$74,515,000 to City of Fort Worth (City), Texas, from the Clean Water State Revolving Fund, for the purpose of financing the wastewater system improvements identified as Project No. 72275 (Project); and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) § 375.92 and based on preliminary environmental data provided by the City, the TWDB may release funds through the pre-design commitment option after receiving a favorable recommendation from its Executive Administrator that there appear to be no significant environmental impacts anticipated from the Project; and

WHEREAS, pursuant to 31 TAC Chapter 375, Subchapter E, funds for the design and construction 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 a portion of the Project on October 30, 2015, 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 TWDB resolves as follows:

1. the TWDB concurs in the environmental finding made by the Executive Administrator and affirms the commitment made to the City in TWDB Resolution No. 08-92; and
2. the TWDB approves the release of funds for design, acquisition, and construction of a portion of the Project from the Clean Water State Revolving Fund loan to the City for proposed improvements to the City's wastewater treatment system, after all other appropriate conditions of TWDB Resolution No. 08-92 have been met.

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;

2. prior to construction in a 100-year floodplain, the City must acquire a floodplain development permit or documentation from the local floodplain administrator that a permit is not required for compliance with the National Flood Insurance Program; and
3. all other terms and conditions in TWDB Resolution No. 08-92 shall remain in full force and effect.

APPROVED and ordered of record this 14th day of December, 2015.

TEXAS WATER DEVELOPMENT BOARD

Bech K. Bruun, Chairman

DATE SIGNED: _____

ATTEST:

Kevin Patteson
Executive Administrator



TEXAS WATER DEVELOPMENT BOARD



James E. Herring, *Chairman*
 Lewis H. McMahan, *Member*
 Edward G. Vaughan, *Member*

J. Kevin Ward
Executive Administrator

Jack Hunt, *Vice Chairman*
 Thomas Weir Labatt III, *Member*
 Joe M. Crutcher, *Member*

TO: File

FROM: Kenneth L. Petersen *KLP*
 General Counsel

DATE: July 26, 2010

SUBJECT: Notice of Error

Resolutions approved by the Texas Water Development Board in August 2008 and September 2008 were assigned duplicate numbers. The resolution numbers, entities affected, and Board approval dates are as follows:

Resolution Number	August 25, 2008	September 23, 2008
08-89	City of El Paso	Northeast Municipal Water District
08-90	City of Paducah	Town of Anthony
08-91	City of Houston	City of Commerce
08-92	Lamar County Water Supply District	City of Fort Worth
08-93	Evadale WCID #1	City of Fort Worth (Affirmation)
08-94	Birome Water Supply Corporation	City of Eastland
08-95	Salem-Elm Ridge WSC	El Paso County Tornillo WID
08-96	Richland SUD	City of Aledo
08-97	Agua Special Utility District	City of Nacogdoches
08-98	Agua Special Utility District	Surfside Beach

The duplicate numbers are a clerical error and have no effect on the substance of the Resolutions or actions taken by the Board or the entities. Since it is likely these Resolutions have been distributed to the public before the error was noticed, the Resolution numbers will not be altered. However, in order to avoid confusion, TWDB staff should be aware of the duplicates and refer to the date and entity when referring to one of these Resolutions.

Note that this memorandum is notice of the clerical error and does not need to be distributed with a copy of the Resolution in order for the Resolution to be considered effective.

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE FROM THE
CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$74,515,000 CITY OF FORT WORTH, TEXAS WATERWORKS AND SEWER
SYSTEM FIRST LIEN REVENUE BONDS, PROPOSED SERIES 2009

(08-92)

WHEREAS, the City of Fort Worth, Tarrant County, Texas (the "City") has filed an application for financial assistance in the amount of \$74,515,000 from the Clean Water State Revolving Fund to finance wastewater system improvements; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (the "Board") through the Board's proposed purchase of \$74,515,000 City of Fort Worth, Texas Waterworks and Sewer System First Lien Revenue Bonds, Proposed Series 2009, (the "Obligations"), all as is more specifically set forth in the application and in recommendations of the Board's Project Finance and Construction Assistance staff, to which documents express reference is made; and

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

1. that in its opinion the revenue pledged by the City will be sufficient to meet all the obligations assumed by the City;
2. that the application and financial assistance requested meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.* (1972), as amended, as well as state law;
3. that the City will consider cost-effective, innovative methods of treatment; and
4. that the City 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 Board's rules.

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

A commitment is made by the Board to the City of Fort Worth for financial assistance in the amount of \$74,515,000 from the Clean Water State Revolving Fund, to be evidenced by the Board's proposed purchase of \$74,515,000 City of Fort Worth, Texas Waterworks and Sewer System First Lien Revenue Bonds, Proposed Series 2009. This commitment will expire on September 30, 2010.

Such commitment is conditioned as follows:

1. this commitment is contingent on a future sale of bonds by the Board or on the availability of funds on hand;
2. this commitment is contingent upon 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 and regulations of the Board;
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 District 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 District when rendering this opinion;
6. the ordinance/resolution authorizing the issuance of these obligations, (hereinafter referred to as the "*Authorizing Document*"), 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 Authorizing Document 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 Authorizing Document must include a provision requiring the City to make any required rebate to the United States of arbitrage earnings;
9. the Authorizing Document must include a provision prohibiting the City from taking any action which would cause the interest on the obligations to be includable in gross income for federal income tax purposes;
10. the Authorizing Document 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;

11. the Authorizing Document 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;
12. the bond 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;
13. the bond transcript must include evidence that the information reporting requirements of §149(e) of the Internal Revenue Code of 1986 will be satisfied. This requirement is currently satisfied by filing IRS Form 8038 with the Internal Revenue Service. A completed copy of IRS Form 8038 must be provided to the Executive Administrator of the Board prior to the release of funds;
14. the City, or an obligated person for whom financial or operating data is presented to the Board 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 Board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the Board and the beneficial owner of the City’s obligations, if the Board sells or otherwise transfers such obligations, and the beneficial owners of the Board’s bonds if the City is an obligated person with respect to such bonds under SEC rule 15c2-12;
15. 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;
16. prior to or at closing, the City shall pay a 1.85% origination fee to the Board calculated pursuant to Board rules;
17. 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; and
18. the City may be required to submit outlay reports with sufficient supporting documentation (e.g; invoices, receipts) on a quarterly basis. The Board shall

retain the right to request project progress reports and outlay reports monthly as the project proceeds through each project phase.

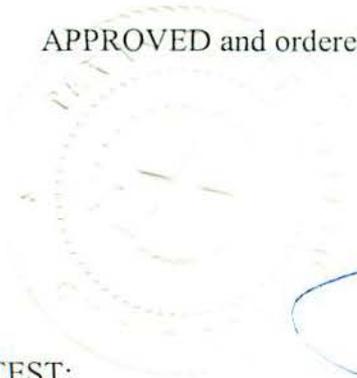
PROVIDED, however, the Authorizing Document is subject to the following special conditions:

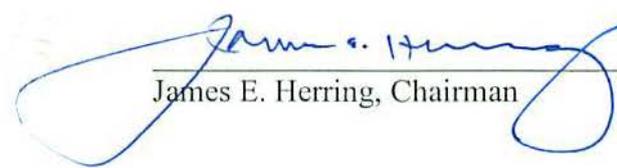
19. that the Authorizing Document contain a provision for the accumulation of a reserve fund in an amount equal to the greater of 0.50 times the average annual debt service requirements or 0.375 times the maximum annual principal and interest requirements for the obligations, to be accumulated in equal monthly installments over twelve (12) months following the issuance of the obligations, or will require that the City use a surety policy or municipal bond guarantee insurance policy in place of depositing cash in the reserve fund;
20. the Authorizing Document must contain a provision that requires the City to at all times 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;
21. the Authorizing Document must contain a provision that the City issue no additional revenue bonds unless the net system revenues for the last completed fiscal year or a 12 consecutive calendar month period out of the 18-month period immediately preceding the month in which the ordinance authorizing the issuance of the proposed additional bonds is passed, were at least 1.25x an amount equal to the average annual principal and interest requirements and 1.10x the maximum annual principal and interest requirements of all bonds and any additional bonds which are scheduled to be outstanding after the delivery of the proposed additional bonds
22. that if a municipal bond guarantee insurance policy is utilized:
 - (a) sixty (60) days prior to closing, a draft of said policy will be provided to the Executive Administrator of the Board for the determination of whether the policy is appropriate security in accordance with Board policies;
 - (b) prior to closing, the executed underlying documents of said policy will be provided, the form and substance of which is satisfactory to the Executive Administrator of the Board; and
 - (c) prior to closing, the Attorney General's Office will have approved the use of said policy as a part of its approval of the proposed bond issue;
23. the loan is approved for funding under the Board's pre-design funding option, as specified in 31 TAC §375.39 of the Board's rules, and initial and future releases of funds are subject to all rules of the Board relating to such funding option;

24. that prior to closing, the City shall adopt and provide an executed copy of a Trust Agreement, in a form acceptable to the Board's Executive Administrator, addressing the deposit of bond sales into a Trust Fund;
25. prior to closing, the City shall submit an executed financial advisor contract, the form and substance of which is satisfactory to the Board's Executive Administrator; and
26. prior to closing, the City shall submit a 2007 audit, the form and substance of which is satisfactory to the Board's Executive Administrator.

APPROVED and ordered of record this, the 23rd day of September, 2008.

TEXAS WATER DEVELOPMENT BOARD




James E. Herring, Chairman

ATTEST:


J. Kevin Ward
Executive Administrator