

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Les Trobman, General Counsel
Amanda Lavin, Assistant Executive Administrator
Jessica Zuba, Deputy Executive Administrator

FROM: T. Clay Schultz, Director, Regional Water Planning & Development
Caaren Skrobarczyk, Team Manager, Brazos Region
Joe Reynolds, Staff Attorney

DATE: October 20, 2016

SUBJECT: City of Seymour Project No. 62685 Water System Improvements Request for Extension and Amendment of Commitment

ACTION REQUESTED

Consider approving by resolution, a request from the City of Seymour (Baylor County) to amend TWDB Resolution No. 16-034, by extending the commitment period to finance water system improvements and amend the loan commitment amount to be 100% tax-exempt through the Drinking Water State Revolving Fund.

BACKGROUND

The project as approved by the Texas Water Development Board (TWDB) involves adding treatment capacity to the City of Seymour's (City) water treatment plant and constructing a new evaporation pond. The project was approved for a \$2,115,000 loan and \$885,476 in principal forgiveness funding as a disadvantaged community through the Drinking Water State Revolving Fund program by TWDB on April 13, 2016. Because the funding includes principal forgiveness funding, the City received a six-month commitment period that expires on October 31, 2016.

KEY ISSUES

The City partners with the Baylor Water Supply Corporation (Corporation), which owns capacity in the water treatment plant. The Corporation is in the process of converting to a special utility district, and expects to complete conversion in late 2016. Due to the benefit provided to the Corporation from the proposed project, a portion of the TWDB loan is considered to be a taxable issuance and carries a higher interest rate than a tax-exempt issuance. The conversion of the Corporation to a district will allow the City to issue all of the debt for the proposed project as a tax-exempt bond issuance. Using current market rates, the interest cost savings to fund the entire project with tax-exempt bond proceeds results in an additional cost saving of \$280,343.

The City's request is to grant an extension of time for the commitment to allow the Corporation to complete the conversion and thereby lower the City's interest cost for the proposed project, and amend Resolution No. 16-034 to remove the taxable loan portion proposed at the time of the commitment of funds to the City.

RECOMMENDATION

The Executive Administrator recommends amending TWDB Resolution No. 16-034 to extend the commitment to April 30, 2017 and to amend the loan commitment to be fully tax-exempt.

Attachment(s):

1. Resolution (16-)
2. Resolution (16-034)
3. Extension Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 16-034
TO EXTEND THE LOAN COMMITMENT PERIOD FOR THE \$3,000,476 LOAN AND TO
AMEND THE LOAN COMMITMENT AMOUNT TO BE FULLY TAX-EXEMPT

(16-)

WHEREAS, at its April 11, 2016 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 16-034, made a commitment to provide financial assistance in the amount of \$3,000,476 to City of Seymour (City) from the Drinking Water State Revolving Fund, to finance improvements to its water system, to be secured by the TWDB's purchase of \$1,060,000 City of Seymour, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2016A, and \$1,055,000 City of Seymour, Texas Combination Tax and Surplus Revenue Certificates of Obligation (Taxable), Proposed Series 2016B and the execution of a Principal Forgiveness Agreement in the amount of \$885,476 for Project No. 62685; and

WHEREAS, pursuant to TWDB Resolution No. 16-034, the commitment period will expire October 31, 2016; and

WHEREAS, the City partners with the Baylor Water Supply Corporation (Corporation), which owns capacity in the water treatment system; and

WHEREAS, the Corporation is converting to a special utility district, which will eliminate the need for a taxable component to the City's debt issue; and

WHEREAS, the City has submitted a request to extend the TWDB's commitment for an additional six months for the Corporation to complete its conversion and the City to complete the issuance process, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that granting an extension of six months is in the public interest.

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

1. the commitment made by the TWDB to provide financial assistance in the amount of \$3,000,476, as authorized in TWDB Resolution No. 16-034, is amended to provide for the TWDB's purchase of tax-exempt certificates of obligation entitled \$2,115,000 City of Seymour, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2016 and the execution of a Principal Forgiveness Agreement in the amount of \$885,476; and
2. the commitment is extended to April 30, 2017.

3. all other terms and conditions of TWDB Resolution No. 16-034 shall remain in full force and effect.

APPROVED and ordered of record this the 20th day of October, 2016.

TEXAS WATER DEVELOPMENT BOARD

Bech K. Bruun, Chairman

DATE SIGNED: _____

ATTEST:

Jeff Walker
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE
IN THE AMOUNT OF \$3,000,476 TO CITY OF SEYMOUR
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF \$1,060,000
CITY OF SEYMOUR, TEXAS COMBINATION TAX AND SURPLUS REVENUE
CERTIFICATES OF OBLIGATION, PROPOSED SERIES 2016A AND \$1,055,000
CITY OF SEYMOUR, TEXAS COMBINATION TAX AND SURPLUS REVENUE
CERTIFICATES OF OBLIGATION (TAXABLE), PROPOSED SERIES 2016B
AND \$885,476 IN LOAN FORGIVENESS

(16-034)

WHEREAS, the City of Seymour (City) has filed an application for financial assistance in the amount of \$3,000,476 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, design, and construction of certain water system improvements identified as Project No. 62693; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$1,060,000 City of Seymour, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2016A and \$1,055,000 City of Seymour, Texas Combination Tax and Surplus Revenue Certificates of Obligation (taxable), Proposed Series 2016B (together with all authorizing documents (Obligations)), and the execution of a Loan Forgiveness Agreement in the amount of \$885,476, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the City has offered a pledge of ad valorem tax and a lien on the surplus net revenues of the waterworks and sewer system as sufficient security for the repayment of the Obligations; and

WHEREAS, the loan is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds will be subject to 31 TAC Chapter 371;

WHEREAS, the TWDB hereby finds:

1. that 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.* as well as state law, in accordance with Texas Water Code § 15.607;
3. that the City has submitted a proposed program of water conservation 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;

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 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. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.053(j); and
6. that the City meets the definition of Disadvantaged Community in 31 TAC § 371.1(24) and is therefore eligible for subsidy through the DWSRF.

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

A commitment is made by the TWDB to the City of Seymour for financial assistance in the amount of \$3,000,476 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$1,060,000 City of Seymour, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2016A and \$1,055,000 City of Seymour, Texas Combination Tax and Surplus Revenue Certificates of Obligation (taxable), Proposed Series 2016B, and the execution of a Loan Forgiveness Agreement in the amount of \$885,476. This commitment will expire on October 31, 2016.

Such 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 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 31 TAC Chapter 371;
4. 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;

5. 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, 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 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;
6. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce system 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;
7. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus funds 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;
8. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
9. loan proceeds are public funds and, as such, the Obligations 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;
10. 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 Obligations 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;

11. 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;
12. prior to closing, and if not previously provided with the application, the City 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, reflected in the contract, and acceptable to the Executive Administrator;
13. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
14. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
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 Executive Administrator;

Conditions Related Only To \$1,060,000 City of Seymour, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2016A (Tax-exempt Obligations)

16. the City's bond counsel must prepare a written opinion that states that the interest on the Tax-exempt 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;
17. the City's bond counsel opinion must also state that the Tax-exempt Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;
18. the Tax-exempt 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" within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
19. the Tax-exempt 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 Tax-exempt

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 Tax-exempt Obligations, 125% of average annual debt service on the Tax-exempt Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Tax-exempt Obligations;
20. the Tax-exempt Obligations must include a provision requiring the City take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Tax-exempt Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the City 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 City may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of the City, provided that the City 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 City 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 Tax-exempt Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Tax-exempt Obligations to be includable in gross income for federal income tax purposes;
22. the Tax-exempt 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 Code;
23. 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 Tax-exempt 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 Tax-exempt Obligations must provide that neither the City nor a related party thereto will acquire any of the TWDB’s Source Series Bonds in an amount related to the amount of the Tax-exempt Obligations to be acquired from the City by the TWDB;

State Revolving Fund Conditions

26. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
27. the Obligations 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 City, 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 as provided herein shall insert in full in any contract in excess of \$2,000 the contracts clauses as provided by the TWDB;

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, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;
29. 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 City will adhere to the approved project schedule;
30. The Obligations and Loan Forgiveness Agreement must contain a covenant that the City 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 the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions

31. prior to or at closing, the City shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;
32. prior to 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 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;
33. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City 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;

Pledge Conditions for the Loans

34. 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;

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

Special Conditions:

35. prior to closing, the City shall adopt and implement the water conservation program approved by the TWDB;
36. prior to closing, the City shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;

- 37. the Loan Forgiveness Agreement must include a provision stating that the City shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator;
- 38. prior to the release of funds, the City shall provide a schedule of the useful life 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.

APPROVED and ordered of record this 11th day of April, 2016.

TEXAS WATER DEVELOPMENT BOARD



Bech K. Bruun

Bech K. Bruun, Chairman

DATE SIGNED: _____

4-11-16

ATTEST:

Kevin Patteson

Kevin Patteson
Executive Administrator



301 North Washington Street • P.O. Box 31 • Seymour, Texas 76380
Phone: 940-889-3148 • Fax: 940-889-8882
www.cityofseymour.org

Caaren Skrobarczyk
Team Manager
Texas Water Development Board
1700 North Congress
Austin, TX 78711

On April 13, 2016 the City of Seymour (City) received approval and commitment for \$2,115,000 loan and \$885,476 loan forgiveness financial assistance through the Drinking Water State Revolving Fund (DWSRF). The combined commitment is scheduled to expire on October 31, 2016. Please find this letter as formal request to extend the DWSRF commitment for six months, through April 30, 2017.

As outlined in the April 11, 2016 TWDB Board write-up, the City requests additional time to allow Baylor Water Supply Corporation (Corporation), who owns capacity in the water treatment plant, to convert to a Special Utility District. The Corporation's conversion was approved by voters in May and the Corporation expects to have all items in place for complete conversion by the end of September. Extending the commitment would allow for the conversion to complete and then give the City time to complete the Certificate of Obligation notice, publication and issuance process.

Additionally, the City requests for an amendment to the current funding resolution (16-034) changing the full loan commitment component to be treated fully tax-exempt, based on the Corporation's conversion. Being able to treat the loan fully tax-exempt, without the need for a taxable component, will reduce the City's interest cost on the project.

The City appreciates the Board's willingness in providing financial assistance for its water system and respectfully requests that the Board consider this request for extension and resolution amendment at an upcoming Board meeting.

Respectfully,

Steven C. Biedermann
City Administrator
City of Seymour
P.O. Box 31
301 North Washington St.
Seymour, TX 76380