

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Todd Chenoweth, General Counsel
Jessica Zuba, Deputy Executive Administrator, Water Supply and Infrastructure
Clay Schultz, Director, Regional Water Project Development

FROM: Mireya Loewe, Team Manager, South Region
Joe Reynolds, Assistant General Counsel

DATE: June 25, 2018

SUBJECT: Additional Bonds Test for the City of McAllen

ACTION REQUESTED

Approve by resolution a request from the City of McAllen to amend the Additional Bonds Test related to the parity debt held by the Texas Water Development Board.

BACKGROUND

The Texas Water Development Board (TWDB) currently holds \$97,652,000 in bonds of the City of McAllen (City) secured by a pledge of the net revenues of the City’s waterworks and sewer system (see Attachment 2). Additionally, the TWDB is currently processing three applications from the City for \$7,000,000 from the Clean Water State Revolving Fund (CWSRF), \$12,000,000 from the Drinking Water State Revolving Fund (DWSRF), and \$6,900,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT) (the "Series 2018 Bonds"). The Series 2018 Bonds will be issued on parity with the City’s currently outstanding bonds (the "Parity Bonds").

As the majority holder of the City’s outstanding parity bonds, the TWDB has the authority to modify existing covenants of the Parity Bonds. Therefore, in connection with the current applications, the City has requested the TWDB to consent to an amendment of each of the Parity Bond Ordinances in order to modify one section of the Additional Bonds Test.

The Additional Bonds Test has two sections: coverage based on historical revenues and coverage based on proposed increases. Presently, all Parity Bond ordinances require the following for the section based on historic calculations: “an independent certified public accountant or independent firm of certified public accountants acting by and through a certified public accountant” to certify that the City has, over the preceding year, collected Net

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: Jeff Walker, Executive Administrator

Revenues that were at least 1.25 times an amount equal to the average annual principal and interest requirements for the outstanding obligations and the pending obligations. This language appears in all the outstanding bond series since 2005. Beginning with the 2012 Parity Bonds, the TWDB allowed a “springing covenant” that changed the certification of the coverage based on the previous year’s collections of Net Revenues to be done by the City’s Finance Director. That covenant will “spring” into effect by its own terms once the City’s Series 2009 Bonds and Series 2012 Bonds are either defeased or no longer outstanding. There are a total of nine series of outstanding Parity Bonds, including the Series 2009 and Series 2012.

KEY ISSUES

The requested change is to amend the outstanding ordinances to allow the “springing” covenant related to the historical calculation to become permanent prior to the Series 2009 and Series 2012 no longer being outstanding. Allowing the City Finance Director to certify already collected and accounted for Net Revenues will allow the City greater efficiency than having to wait until the springing covenant is in effect. The greater efficiencies could expedite closing times and save costs. The City is not requesting any change to the other sections of the Additional Bonds Test that require a third-party CPA.

Although the amendment would occur, in time, given the springing covenant, the City would like to realize the costs savings and efficiencies as soon as possible. Therefore, the City requests that the TWDB approve the amendment to take effect now for all Parity Bond Ordinances.

RECOMMENDATION

The requested amendment does not change any other requirements relating to the issuance of additional bonds, including coverage ratios. Additionally, the reviews both by TWDB staff and the Texas Attorney General prior to closing provide assurance that the City is meeting its obligations. Therefore, the Executive Administrator has determined that allowing the springing covenant language to become the governing covenant at this time does not negatively impact the application of the Additional Bonds Test.

- Attachment(s):
1. TWDB Resolution No. 18-__
 2. TWDB McAllen Loan and Grant Summary

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING THE ADDITIONAL BONDS TEST FOR ALL OUTSTANDING
CITY OF MCALLEN WATERWORKS AND SEWER SYSTEM REVENUE BONDS

(18-)

WHEREAS, at its December 17, 2009 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 09-179, made a commitment to provide financial assistance to the City of McAllen (City) for the purpose of financing improvements to the City's wastewater system in the amount of \$44,325,000, of which the City closed on and the TWDB purchased \$39,485,000 City of McAllen, Texas Waterworks and Sewer System Revenue Bonds, Series 2009, from the Clean Water State Revolving Fund program, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, at its April 19, 2012 meeting, the TWDB, by TWDB Resolution No. 12-39, made a commitment to provide financial assistance to the City for the purpose of financing improvements to the City's wastewater system in the amount of \$1,700,000, consisting of the TWDB's purchase of \$1,190,000 City of McAllen, Texas Waterworks and Sewer System Revenue Bonds, Series 2012 and \$510,000 in loan forgiveness from the Clean Water State Revolving Fund Program, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, at its September 20, 2012 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 12-78, made a commitment to provide financial assistance to the City for the purpose of financing improvements to the City's wastewater system in the amount of \$7,808,511, consisting of the TWDB's purchase of \$6,655,000 City of McAllen, Texas Waterworks and Sewer System Revenue Bonds, Series 2013 and \$1,153,511 in loan forgiveness from the Clean Water State Revolving Fund program, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, at its April 18, 2013 meeting, the TWDB, by TWDB Resolution No. 13-51, made a commitment to provide financial assistance to the City for the purpose of financing improvements to the City's wastewater system in the amount of \$434,000, consisting of the TWDB's purchase of \$217,000 City of McAllen, Texas Waterworks and Sewer System Revenue Bonds, Series 2013A and a \$217,000 grant from the Economically Distressed Areas Program, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, at its April 18, 2013 meeting, the TWDB, by TWDB Resolution No. 13-45, made a commitment to provide financial assistance to the City for the purpose of financing improvements to the City's wastewater system in the amount of \$3,245,393, consisting of the TWDB's purchase of \$2,995,000 City of McAllen, Texas Waterworks and Sewer System Revenue Bonds, Series 2013B and \$250,393 in loan forgiveness from the Clean Water State Revolving Fund Program, all as is more specifically set forth in the TWDB's Resolution and

accompanying documentation, to which documents express reference is made; and

WHEREAS, at its January 23, 2014 meeting, the TWDB, by TWDB Resolution No. 14-07, as amended on September 4, 2014, by TWDB Resolution No. 14-78, made a commitment to provide financial assistance to the City for the purpose of financing improvements to the City's wastewater system in the amount of \$40,202,322, consisting of the TWDB's purchase of \$40,000,000 City of McAllen, Texas Waterworks and Sewer System Revenue Bonds, Series 2015 and \$202,322 in loan forgiveness from the Clean Water State Revolving Fund Program, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, at its June 14, 2016 meeting, the TWDB, by TWDB Resolution No. 16-062, made a commitment to provide financial assistance to the City for the purpose of financing improvements to the City's wastewater system in the amount of \$8,349,567, consisting of the TWDB's purchase of \$7,110,000 City of McAllen, Texas Waterworks and Sewer System Revenue Bonds, Series 2016 and \$1,239,567 in loan forgiveness from the Clean Water State Revolving Fund Program, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, in addition to the series of bonds described above that are owned by the TWDB, the City has two other series of parity bonds outstanding, namely its City of McAllen, Texas Waterworks and Sewer System Revenue Refunding Bonds, Series 2015, currently outstanding in the principal amount of \$13,065,000, and its City of McAllen, Texas Waterworks and Sewer System Revenue Refunding Bonds, Series 2016, currently outstanding in the principal amount of \$20,035,000 which Bonds, together with the bonds described above that are owned by the TWDB, are referred to collectively herein as the "Outstanding Parity Bonds"; and

WHEREAS, the ordinances authorizing the issuance of the Outstanding Parity Bonds are referred to collectively as the "Parity Bond Ordinances"; and

WHEREAS, each Parity Bond Ordinance provides that

"[t]he holders of the Bonds Similarly Secured aggregating a majority in principal amount of the aggregate principal amount of then outstanding Bonds Similarly Secured shall have the right from time to time to approve any amendment to this Ordinance which may be deemed necessary or desirable by the City, provided, however, that without the consent of the holders of all of the affected Bonds Similarly Secured at the time outstanding, nothing herein contained shall permit or be construed to permit the amendment of the terms and conditions in this Ordinance or in the Bonds Similarly Secured so as to:

- (1) Make any change in the maturity of the outstanding Bonds Similarly Secured;*
- (2) Reduce the rate of interest borne by any of the outstanding Bonds Similarly Secured;*
- (3) Reduce the amount of the principal payable on the outstanding Bonds Similarly Secured;*
- (4) Modify the terms of payment of principal of or interest on the outstanding Bonds*

Similarly Secured or impose any conditions with respect to such payment;

(5) Affect the rights of the holders of less than all of the Bonds Similarly Secured then outstanding;

(6) Change the minimum percentage of the principal amount of Bonds Similarly Secured necessary for consent to such amendment;" and

WHEREAS, the content of the proposed amendment to the Parity Bond Ordinances does not require the consent of the holders of all Outstanding Parity Bonds; and

WHEREAS, the TWDB currently owns 71.4 percent of the Outstanding Parity Bonds (which are the "Bonds Similarly Secured" referenced in the Parity Bond Ordinances); accordingly, the TWDB's consent to the proposed amendment to all Parity Bond Ordinances will constitute the approval of "a majority in principal amount of the aggregate principal amount of then outstanding Bonds Similarly Secured" required to approve the amendment for all Parity Bond Ordinances; and

WHEREAS, by letter dated October 27, 2017 the City has requested that the TWDB approve the amendment of all Parity Bond Ordinances to permit the Finance Director of the City, instead of an independent certified public accountant, as currently required, to certify that necessary coverages have been met so that additional parity bonds may be issued; and

WHEREAS, in accordance with each of the Parity Bond Ordinances, the City published a notice of the proposed amendment in the Texas Bond Reporter on June 1, 2018 and June 8, 2013 (the "Notice of Amendment") and provided the amendment to the designated trust office of the registrar for each series of Outstanding Parity Bonds for inspection by all registered owners of Outstanding Parity Bonds; and

WHEREAS, the TWDB hereby finds that the amendment to the terms of the Parity Bond Ordinances is reasonable, and that the request is in the public interest and will serve a public purpose; and

WHEREAS, in accordance with the Texas Water Code, the TWDB has carefully considered all matters required by law;

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

1. The TWDB hereby consents to and approves the City's amendment of the Parity Bond Ordinances in the manner described by the Notice of Amendment and in substantially the form of the amendment on file with the designated trust office of the registrar for each series of parity bonds. More specifically, the TWDB consents that Section 27(b) of each of the Parity Bonds Ordinances be amended to read [Emphasis Added on Amended Language]:

*Additional Bonds shall be issued only in accordance with this Ordinance, but notwithstanding any provisions of this Ordinance to the contrary, no installment, Series or issue of Additional Bonds shall be issued or delivered unless . . . (b) **the Finance Director of the City** signs a written certificate to the effect that, in his or her opinion, during either the next preceding fiscal year, or any twelve consecutive calendar month period out of the 18-month period immediately preceding the month in which the ordinance authorizing such issuance of the then proposed Additional Bonds is passed, the Net Revenues were at least 1.25 times an amount equal to the average annual principal and interest requirements and 1.10 times the maximum annual principal and interest requirements of all Bonds Similarly Secured which are outstanding after the delivery of the proposed Additional Bonds. It is specifically provided, however, that in calculating the amount of Net Revenues for the purposes of this subsection (b) if there has been any increase in the rates or charges for any services of the System which is then in effect, but which is then in effect during all or any part of the entire period for which the Net Revenues are being calculated (hereinafter referred to as the "entire period") then an independent certified public accountant, or in lieu of the certified accountant a firm of consulting engineers, shall determine and certify the amount of Net Revenues as being the total of (i) the actual Net Revenues for the entire period, plus (ii) a sum equal to the aggregate amount by which the actual billings to customers of the System during the entire period would have been increased if such increased rates or charges had been in effect during the entire period.*

2. All other terms and conditions of the Parity Bond Ordinances shall remain in full force and effect.

APPROVED and ordered of record this the 26th day of July, 2018.

TEXAS WATER DEVELOPMENT BOARD

Peter M. Lake, Chairman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator



City of McAllen Outstanding Loan Summary

Commitment Number	Report Description	Commitment Date	Closing Date	Project Number	Commitment Amount	Outstanding Principal Balance	Outstanding Interest Balance
L100042	WATER & SS REVENUE BONDS, SERIES 2009	12/17/2009	02/02/2010	72933	\$39,485,000	\$29,775,000	\$0
L120016	WATER & SS REVENUE BONDS, SERIES 2012	04/19/2012	08/01/2012	73633	1,190,000.00	515,000.00	8,882.00
L1000022	WATER & SS REVENUE BONDS, SERIES 2013	09/20/2012	09/26/2013	73640	6,655,000.00	5,825,000.00	1,374,257.00
L1000169	WW & SS REV BNDS, SRS 2013B	04/18/2013	09/26/2013	73659	2,995,000.00	1,535,000.00	35,396.50
L1000148	WW & SS REV BONDS, SRS 2013A	04/18/2013	09/26/2013	10435	217,000.00	117,000.00	9,883.20
L1000237	WW & SS Rev Bonds, Series 2015	01/23/2014	04/23/2015	73659	40,000,000.00	37,870,000.00	8,092,626.00
L1000529	WW & SS REV BOND SER 2016	06/14/2016	12/14/2016	73731	7,110,000.00	7,090,000.00	1,472,693.00
Report Total:					\$97,652,000	\$82,727,000	\$10,993,738