

# Texas Water Development Board

## PROJECT FUNDING REQUEST

BOARD DATE: July 26, 2018

TEAM MANAGER: Caaren Skrobarczyk

<b>APPLICANT</b>	Brushy Creek Regional Utility Authority, Inc.
<b>TYPE OF ASSISTANCE</b>	\$15,740,000 Financing
<b>LEGAL PLEDGE</b>	Contract Revenues

### STAFF RECOMMENDATION

Approve       No Action

### ACTION REQUESTED

Approve by resolution, a request from the Brushy Creek Regional Utility Authority, Inc. (Williamson and Travis Counties) for \$15,740,000 in financing consisting of \$8,770,000 in deferred and \$6,970,000 in low interest financing from the State Water Implementation Revenue Fund for Texas for planning and design of a regional water treatment and distribution project.

### PROJECT

Brushy Creek Regional Utility Authority, Inc.  
Regional Water Treatment and Distribution Project  
Project Number 51049

### BACKGROUND

Passed by the 83rd Legislature and approved by Texas voters through a constitutional amendment, the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT) were created to provide affordable, alternative financing options to develop projects that are recommended water management strategies in the State Water Plan. The program, referred to as SWIFT, provides financing through low interest loans, deferral of loan repayments, and incremental repurchase terms for projects with state ownership aspects. SWIFT projects presented for consideration have been scored and ranked utilizing prioritization criteria outlined in Texas Administrative Code Title 31 § 363.1304 and are included on the prioritized list of projects approved by the Board on April 5, 2018.

Brushy Creek Regional Utility Authority, Inc. (Authority) is a non-profit corporation of the State of Texas, created by the cities of Leander, Cedar Park, and Round Rock (Cities). The Authority is empowered to acquire and construct water facilities including water conservation, storage, transportation, treatment, and distribution facilities to deliver water to the Cities. The Cities are located a few miles north of the city of Austin in Williamson and Travis Counties. The Authority will provide water service to a population of approximately 266,591. The population is expected to grow to 336,772 by the year 2025.

**COMMITMENT PERIOD: FIVE (5) MONTHS TO EXPIRE DECEMBER 31, 2018.**

In 2009, the Authority closed on \$182,020,000 from the Texas Water Development Board's Water Development Fund to complete Phase 1A of the proposed project. Phase 1A consisted of a floating raw water intake on the Sandy Creek arm of Lake Travis, a raw water pipeline, 17 million gallons per day (MGD) water treatment plant, and several transmission lines. Phase 1B was a re-rate study whereby the Authority was authorized by the Texas Commission on Environmental Quality (TCEQ) to increase the capacity of the water treatment plant from 17 to 22 MGD and was completed in March of 2017. In November of 2017, the Authority closed on an additional \$16,995,000 from the Texas Water Development Board's State Water Implementation Fund of Texas for Phase 1C of the proposed project. Phase 1C consisted of expansion of the water treatment capacity of the plant to 32.5 MGD and improvements to the floating water intake, raw water intake pumps, and transmission pipelines.

The Authority now needs to complete the planning and design of the next intermediate step of the regional water supply system. The Authority is requesting financial assistance for the planning and design of Phases 1D and 2 and costs associated with electrical system improvements that must be completed prior to Phase 2 construction. Phase 2 consists of an additional water intake, pipelines, pumps, and increased treatment capacity of the water treatment plant from 32.5 MGD to 43 MGD.

## **FINANCIAL**

### Key Issues

None.

### Pledge and Repayment

The Authority is pledging contract revenues of the member cities for the repayment of the proposed financing. The Master Contract outlines the contracted revenues to be the gross revenues of the member cities' water and sewer systems as well as any other legally available funding sources, including capital contributions. The current combined average monthly water and wastewater rate of the member cities is \$105. Based on staff's analysis of financial documentation received, this rate produces revenues that are sufficient to meet current and proposed debt service requirements. Each member city will be responsible for repayment of the debt service based on the individual bond issuances as shown below:

<b>Member City</b>	<b>Share</b>	<b>Bond Issuance</b>
City of Leander	55.72%	\$8,770,000
City of Cedar Park	44.28%	\$6,970,000
<b>Total</b>	<b>100.00%</b>	<b>\$15,740,000</b>

The City of Round Rock will utilize remaining bond proceeds from the previous TWDB commitment for their pro-rata share of approximately \$6.9 million for this phase of the project. Therefore, they are not requesting 2018 funding.

### Deferred Loans

The Authority, on behalf of the City of Leander, is requesting funding from the SWIFT program with the deferred repayment option. The deferred option allows the applicant to

defer payment of principal and interest up to 8 years or until construction is complete. The Authority, on behalf of the City of Cedar Park, is requesting the low-interest loan option.

#### Cost Savings

Based on a 20-year maturity and current interest rates, the Authority could save approximately \$955,703 over the life of the financing.

#### Internal Risk Score

Staff assigns a 2B to the Authority, and the proposed project to be funded by the TWDB. This means that the Authority's payment capacity is adequate. Staff's analysis also included a risk score for the member Cities resulting in the following: 2A for Cedar Park, 2A for Leander and 2B for Round Rock.

The results of the Authority's financial sustainability indicators are adequate. These more heavily weighted risk score indicators show the Authority's short-term and long-term ability to repay the debt. The revenues available for debt service provide a high coverage ratio, representing 1.14 times the current and proposed debt service requirements in the first year of principal repayment. The Authority's level of reinvestment in the assets of the utility's infrastructure is adequate with an asset condition ratio of 34 years. An asset condition ratio of 12 to 24 years is considered typical for utility systems.

The Authority's socioeconomic indicators are better than the state overall. The member Cities' total populations have increased at an average annual rate of 5.99 percent since 2010, compared to an increase at an average annual rate of 1.17 percent for the population of the state overall. The member Cities' average median household income is \$81,701, roughly one and a half times the median for the state overall. The average, unadjusted, unemployment rate for the member Cities was 2.9 percent in April 2018, compared to 3.8 percent in the state overall, and the national rate of 3.7 percent.

All the Authority's debt is supported by contract revenues of the member Cities. Therefore, the self-supporting debt compared to operating revenues, including the proposed loans, is high at 13.23. The system does maintain strong reserves with unrestricted cash and short-term investments of approximately 266 days of the operating expenses of the utility system. This is a very high level of liquidity. Any amount above 250 days is a very strong level of liquidity.

The financial management of the utility system is strong. The Authority currently has eight other bonds outstanding with its member Cities and has existing covenants requiring net revenues of at least 1.10 times the average annual debt service requirements, maintaining a reserve fund, and maintaining rates that are sufficient to pay any and all debt. These strong rate covenants, proactive management, and continued long-term financial planning further support the assigned risk score of 2B.

#### **LEGAL**

##### Key Issues

None.

Conditions

Standard SWIFT, tax-exempt, contract revenue conditions, and further conditioned as follows:

- Water Rights Certification

Attachments: 1. Project Data Summary  
2. Debt Service Schedule  
3. Engineering/Environmental Review  
4. Project Budget  
5. Resolution (18- )  
6. Water Conservation Review  
7. Location Map

**Project Data Summary**

<b>Responsible Authority</b>	Brushy Creek Regional Utility Authority, Inc. (BCRUA)
<b>Program</b>	State Water Implementation Fund for Texas
<b>Commitment Code</b>	L18814-Leander L18815-Cedar Park
<b>Project Number</b>	51049
<b>Intended Use Plan Year</b>	N/A
<b>Type of Pledge</b>	4- Contract Revenue
<b>Revenue Pledge Level</b>	First
<b>Legal Description</b>	\$8,770,000 BCRUA City of Leander, Texas Contract Revenue Bonds, Proposed Series 2018 \$6,970,000 BCRUA City of Cedar Park, Texas Contract Revenue Bonds, Proposed Series 2018
<b>Tax-exempt or Taxable</b>	Tax-exempt
<b>Refinance</b>	No
<b>Outlay Requirement</b>	No
<b>Disbursement Method</b>	Escrow
<b>Outlay Type</b>	N/A
<b>Population</b>	266,591
<b>Rural</b>	No
<b>Water Connections</b>	73,667
<b>Wastewater Connections</b>	71,316
<b>Qualifies as Disadvantaged</b>	N/A
<b>Disadvantaged Level</b>	9-N/A
<b>Clean Water State Revolving Fund Type</b>	N/A
<b>SWIFT Financing Type</b>	Low Interest & Deferred
<b>SWIFT Characteristic</b>	N/A
<b>Financial Managerial &amp; Technical Complete</b>	N/A
<b>Funding Phase Code</b>	Planning and Design
<b>Pre-Design</b>	Yes
<b>Project Consistent with Water Plan</b>	Yes
<b>Water Conservation Plan</b>	Exempt
<b>Water Rights Certification Required</b>	Yes
<b>Internal Risk Score</b>	2B
<b>External Ratings (for SRF rates)</b>	
<b>Standard and Poor's</b>	Leander: AA-, Cedar Park: AA+, Round Rock: AAA
<b>Moody's</b>	Non-Rated
<b>Fitch</b>	Non-Rated
<b>Special Issues</b>	None

**Project Team**

Team Manager	Caaren Skrobarczyk
Financial Analyst	Lina Linehan
Engineering Reviewer	James Bronikowski
Environmental Reviewer	Chris Caran
Attorney	Joe Reynolds

ISSUE BEING EVALUATED  
FOR ILLUSTRATION PURPOSES ONLY  
Brushy Creek Regional Utility Authority, Inc. (Regional Water Treatment and Distribution Project)

**\$8,770,000 Brushy Creek Regional Utility Authority, Inc. City of Leander, Texas Contract Revenue Bonds, Proposed Series 2018**

Dated Date: 11/15/2018  
 Delivery Date: 11/15/2018  
 First Interest: 2/1/2026  
 First Principal 8/1/2026  
 Last Principal: 8/1/2038  
 Fiscal Year End: 09/30

Source: SWIFT-Deferred  
 Insurance: No  
 Case: Contract Revenues  
 Admin.Fee: \$0  
 Admin. Fee Payment Date: N/A  
 Required Coverage: 1.0

**\$6,970,000 Brushy Creek Regional Utility Authority, Inc. City of Cedar Park, Texas Contract Revenue Bonds, Proposed Series 2018**

Dated Date: 11/15/2018  
 Delivery Date: 11/15/2018  
 First Interest: 2/1/2019  
 First Principal 8/1/2019  
 Last Principal: 8/1/2038  
 Fiscal Year End: 9/30

Source: SWIFT-LOW-20YR  
 Insurance: No  
 Case: Contract Revenues  
 Admin.Fee: \$0  
 Admin. Fee Payment Date: N/A  
 Required Coverage: 1.0

FISCAL YEAR	PROJECTED NET SYSTEM REVENUES	CURRENT DEBT SERVICE	\$8,770,000 ISSUE				\$6,970,000 ISSUE				TOTAL DEBT SERVICE	ACTUAL COVERAGE
			PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT		
2019	\$14,099,171	\$11,967,933	-	-	-	-	\$335,000	1.17%	\$94,378	\$429,378	\$12,397,311	1.14
2020	14,099,171	12,146,833	-	-	-	-	300,000	1.26%	128,800	428,800	12,575,633	1.12
2021	14,099,171	12,202,443	-	-	-	-	305,000	1.33%	125,020	430,020	12,632,463	1.12
2022	14,099,171	12,249,387	-	-	-	-	310,000	1.37%	120,963	430,963	12,680,350	1.11
2023	14,099,171	12,305,812	-	-	-	-	310,000	1.42%	116,716	426,716	12,732,528	1.11
2024	14,099,171	12,360,884	-	-	-	-	315,000	1.52%	112,314	427,314	12,788,198	1.10
2025	14,099,171	12,407,094	-	-	-	-	320,000	1.60%	107,526	427,526	12,834,620	1.10
2026	14,099,171	12,427,253	\$695,000	2.53%	\$156,651	\$851,651	325,000	1.66%	102,406	427,406	13,706,310	1.03
2027	14,099,171	12,466,569	565,000	2.59%	270,142	835,142	330,000	1.70%	97,011	427,011	13,728,722	1.03
2028	14,099,171	12,493,835	580,000	2.68%	255,509	835,509	335,000	1.76%	91,401	426,401	13,755,744	1.02
2029	14,099,171	12,525,352	595,000	2.88%	239,965	834,965	345,000	1.89%	85,505	430,505	13,790,821	1.02
2030	14,099,171	12,547,406	615,000	3.06%	222,829	837,829	350,000	2.00%	78,985	428,985	13,814,219	1.02
2031	14,099,171	12,566,768	635,000	3.20%	204,010	839,010	355,000	2.09%	71,985	426,985	13,832,762	1.02
2032	14,099,171	12,579,544	655,000	3.33%	183,690	838,690	365,000	2.18%	64,565	429,565	13,847,798	1.02
2033	14,099,171	12,592,307	675,000	3.44%	161,878	836,878	370,000	2.25%	56,608	426,608	13,855,793	1.02
2034	14,099,171	12,614,617	700,000	3.54%	138,658	838,658	380,000	2.32%	48,283	428,283	13,881,558	1.02
2035	14,099,171	12,633,134	725,000	3.63%	113,878	838,878	390,000	2.37%	39,467	429,467	13,901,479	1.01
2036	14,099,171	12,652,683	750,000	3.70%	87,561	837,561	400,000	2.42%	30,224	430,224	13,920,468	1.01
2037	14,099,171	12,664,598	775,000	3.76%	59,811	834,811	410,000	2.46%	20,544	430,544	13,929,953	1.01
2038	14,099,171	11,681,563	805,000	3.81%	30,671	835,671	420,000	2.49%	10,458	430,458	12,947,691	1.09
		\$ 248,086,010	\$8,770,000		\$2,125,249	\$10,895,249	\$6,970,000		\$1,603,157	\$8,573,157	\$267,554,416	

\$8,770,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	6.89 YEARS
NET INTEREST RATE	3.520%
COST SAVINGS	-
AVERAGE ANNUAL REQUIREMENT	\$838,096

\$6,970,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	10.77 YEARS
NET INTEREST RATE	2.136%
COST SAVINGS	\$955,703
AVERAGE ANNUAL REQUIREMENT	\$428,658

TOTAL AVERAGE ANNUAL REQUIREMENTS
\$13,377,721

Disclaimer: This is a working document and is provided as a courtesy. All information contained herein, including the proposed interest rate, is subject to change upon further review of the TWDB in accordance with 31 Texas Administrative Code Chapters 363, 371, 375, or 384, as applicable. The TWDB does not function as a financial advisor to anyone in connection with this financing. The information contained in this document is used by TWDB staff to analyze the application for financing is illustrative only and does not constitute any guaranty of future rates. The TWDB makes no claim regarding the applicability of the information at closing, at which time actual rates will be set.



**Brushy Creek Regional Utility Authority  
51049 Regional Water Treatment & Distribution  
System - Phase 1D & 2 Expansion  
Engineering and Environmental Review**

**Engineering:**Key Issues:

This loan request is submitted on behalf of two of the three member cities, Cedar Park and Leander. The third member city, Round Rock, intends to cover its share of the proposed project phases by utilizing the bulk of its remaining Phase 1A project savings.

Project Need/Description

**Project Need:** The Brushy Creek Regional Utility Authority (Authority) is a regional partnership of the fast growing cities of Cedar Park, Round Rock, and Leander. In the 2007 State Water Plan, a water supply need prior to 2020 for the member cities was identified. In order to meet the future needs of the member cities, the Authority began implementing Phase I of a three phase regional water supply project in 2008. Since that time the population in the area has continued to grow, increasing the need. The Authority needs to complete the next intermediate step of their regional water supply system.

**Project Description:** To address the current and near future water supply needs of the cities, the Authority is requesting financial assistance for the planning and design of Phases 1D and 2 and costs associated with early electrical system improvements that must be completed prior to Phase 2 construction. The Phase 2 project includes an additional water intake, pipelines, pumps, and increased treatment capacity of the water treatment plant from 32.5 to 43 MGD.

**Project Schedule:**

<b>Project Task</b>	<b>Schedule Date</b>
Closing	11/15/2018
Start of Electrical Utility Upgrades	1/31/2020
Electrical Utility Upgrades Completion	6/30/2021
Design Phases 1D and 2 Complete	6/30/2021

**Environmental Section:**Key Issues:

None known at this time.

Environmental Summary:

As set forth in the preliminary environmental information submitted by the applicant, there are no known environmental, social, or permitting issues that would preclude completion of the project. Based on this initial environmental review, it is not anticipated that the proposed project's primary environmental impacts should be significant or adverse, nor should they affect project implementation.

Pursuant to the requirements of 31 Texas Administrative Code § 363.14, all financial assistance shall be conditioned that funding for design and construction of specific project elements will not be released until an environmental review has been completed and a favorable environmental determination has been issued.



**Project Budget Summary**  
**Brushy Creek Regional Utility Authority**  
**51049 - Regional Water Treatment and Distribution**  
**Project**

Budget Items	Previous Commitments	This Commitment	Total
<b>Construction</b>			
Construction	\$119,127,465.00	\$0.00	\$119,127,465.00
<b>Subtotal for Construction</b>	<b>\$119,127,465.00</b>	<b>\$0.00</b>	<b>\$119,127,465.00</b>
<b>Basic Engineering Services</b>			
Construction Engineering	\$5,925,093.00	\$60,000.00	\$5,985,093.00
Design	\$17,747,455.00	\$12,477,945.00	\$30,225,400.00
Planning	\$3,633,084.00	\$1,795,000.00	\$5,428,084.00
<b>Subtotal for Basic Engineering Services</b>	<b>\$27,305,632.00</b>	<b>\$14,332,945.00</b>	<b>\$41,638,577.00</b>
<b>Special Services</b>			
Geotechnical	\$10,000.00	\$0.00	\$10,000.00
Environmental	\$2,192,976.00	\$0.00	\$2,192,976.00
Permits	\$120,000.00	\$0.00	\$120,000.00
Project Management (by Engineer)	\$1,198,729.00	\$0.00	\$1,198,729.00
Inspection	\$2,855,221.00	\$0.00	\$2,855,221.00
O&M Manual	\$10,000.00	\$0.00	\$10,000.00
Testing	\$50,000.00	\$0.00	\$50,000.00
<b>Subtotal for Special Services</b>	<b>\$6,436,926.00</b>	<b>\$0.00</b>	<b>\$6,436,926.00</b>
<b>Fiscal Services</b>			
Bond Counsel	\$521,225.00	\$60,000.00	\$581,225.00
Financial Advisor	\$518,162.66	\$37,555.00	\$555,717.66
Bond Reserve Fund	\$6,187,300.00	\$0.00	\$6,187,300.00
Capitalized Interest	\$9,879,733.00	\$0.00	\$9,879,733.00
Fiscal/Legal	\$8,391.50	\$15,000.00	\$23,391.50
Issuance Costs	\$21,387.50	\$15,000.00	\$36,387.50
<b>Subtotal for Fiscal Services</b>	<b>\$17,136,199.66</b>	<b>\$127,555.00</b>	<b>\$17,263,754.66</b>
<b>Other</b>			
Other (Attorney General Fee)	\$13,410.00	\$9,500.00	\$22,910.00
Other (Electrical Utility Upgrades)	\$0.00	\$1,070,000.00	\$1,070,000.00
Land/Easements Acquisition	\$8,086,191.00	\$0.00	\$8,086,191.00
<b>Subtotal for Other</b>	<b>\$8,099,601.00</b>	<b>\$1,079,500.00</b>	<b>\$9,179,101.00</b>
<b>Contingency</b>			
Contingency	\$20,909,176.34	\$200,000.00	\$21,109,176.34
<b>Subtotal for Contingency</b>	<b>\$20,909,176.34</b>	<b>\$200,000.00</b>	<b>\$21,109,176.34</b>
<b>Total</b>	<b>\$199,015,000.00</b>	<b>\$15,740,000.00</b>	<b>\$214,755,000.00</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$15,740,000 TO THE BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.  
FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS  
THROUGH THE PROPOSED PURCHASE OF  
\$6,970,000 BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC., CITY OF CEDAR PARK,  
TEXAS CONTRACT REVENUE BONDS, PROPOSED SERIES 2018 (BRUSHY CREEK  
REGIONAL WATER TREATMENT AND DISTRIBUTION PROJECT) AND  
\$8,770,000 BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC., CITY OF LEANDER,  
TEXAS CONTRACT REVENUE BONDS, PROPOSED SERIES 2018 (BRUSHY CREEK  
REGIONAL WATER TREATMENT AND DISTRIBUTION PROJECT)

(18 -\_\_)

WHEREAS, the Brushy Creek Regional Utility Authority, Inc. (Authority), located in Travis and Williamson Counties, has filed an application for financial assistance in the amount of \$15,740,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT) to finance the planning and design of certain water supply project(s) identified as Project No. 51049 (Project) to serve the Cities of Round Rock, Cedar Park, and Leander (Cities); and

WHEREAS, the Authority seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$6,970,000 Brushy Creek Regional Utility Authority, Inc., City of Cedar Park, Texas Contract Revenue Bonds, Proposed Series 2018 (Brushy Creek Regional Water Treatment and Distribution Project) and \$8,770,000 Brushy Creek Regional Utility Authority, Inc., City of Leander, Texas Contract Revenue Bonds, Proposed Series 2018 (Brushy Creek Regional Water Treatment and Distribution Project), (together with all authorizing documents (Obligations)), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the Authority seeks a combination of \$6,970,000 in low-interest financing and \$8,770,000 in deferred financing from the TWDB for the Project; and

WHEREAS, the Authority has offered a pledge of contract revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, subject to the Authority's use of an approved debt service structure, interest rate subsidies are available to the Authority at up to the following levels: 35% for financial assistance for a term of 20 years, 25% for financial assistance for a term of 21 to 25 years, and 20% for financial assistance for a term of 26 to 30 years. The interest rate subsidy applicable to each proposed series will be set through each financing agreement executed between the TWDB and the Authority, pursuant to this Resolution; and

WHEREAS, subject to the Authority's use of an approved debt service structure, the interest on and principal of the Obligations may be deferred for up to eight years; and

WHEREAS, the TWDB hereby finds:

1. that the application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M;
2. that the Project is a recommended water management strategy project in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a);
3. that the Authority satisfactorily completed all requests by the Executive Administrator or a regional planning group for information relevant to the Project, including a water infrastructure financing survey under Texas Water Code § 16.053(q), in accordance with 31 TAC § 363.1309(b)(2);
4. that the Authority has acknowledged its legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises and any applicable state law relating to contracting with historically underutilized businesses, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

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

1. A commitment is made by the TWDB to the Brushy Creek Regional Utility Authority, Inc. for financial assistance in the amount of \$15,740,000 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of \$6,970,000 Brushy Creek Regional Utility Authority, Inc., City of Cedar Park, Texas Contract Revenue Bonds, Proposed Series 2018 (Brushy Creek Regional Water Treatment and Distribution Project) and \$8,770,000 Brushy Creek Regional Utility Authority, Inc., City of Leander, Texas Contract Revenue Bonds, Proposed Series 2018 (Brushy Creek Regional Water Treatment and Distribution Project). This commitment will expire on December 31, 2018.

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 the Authority has complied with all of the requirements of the laws under which said Obligations were issued;

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 Authority;

3. this commitment is contingent upon the Authority's continued compliance with all applicable laws, rules, policies and guidance as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement;
4. this commitment is contingent upon the Authority executing a separate financing agreement, approved as to form and substance by the Executive Administrator, and submitting that executed agreement to the TWDB consistent with the terms and conditions described in the financing agreement;
5. interest rate subsidies for non-level debt service structure are subject to adjustment by the Executive Administrator;
6. the Authority shall use a paying agent/registrar in accordance with 31 TAC § 363.42(c)(2), and shall require the paying agent/registrar to provide a copy of all receipts documenting debt service payments to the TWDB and to the TWDB's designated Trustee;

The Following Conditions Must Be Included in the Obligations:

7. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, on any date beginning on or after the first interest payment date that 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;
8. the Obligations must include a provision wherein the Authority, 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 Authority'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 Authority's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Authority is an obligated person with respect to such bonds under SEC Rule 15c2-12;
9. the Obligations must include a provision requiring the Authority to use any 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) 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 (2) eligible costs for the Project as authorized by the Executive Administrator;

10. 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;
11. financial assistance 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;
12. financial assistance proceeds shall not be used by the Authority 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 Authority 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, recycling and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the Authority, its contractors, consultants, agents, officials and employees as a result of activities relating to the Project to the extent permitted by law;
13. the Obligations must include a provision stating that the Authority shall report to the TWDB the amounts of Project funds, if any, that were used to compensate historically underutilized businesses that worked on the Project, in accordance with 31 TAC § 363.1312;
14. the Obligations must contain a provision that the TWDB will purchase the Obligations, acting through the TWDB's designated Trustee, and the Obligations shall be registered in the name of Cede & Co. and closed in book-entry form in accordance with 31 TAC § 363.42(c)(1);
15. the Obligations must include a provision prohibiting the Authority from using the proceeds of this financial assistance in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
16. the Obligations must provide that no portion of the proceeds of the financial assistance 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 that were used, directly or

indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) that produce a yield materially higher than the yield on the TWDB's bonds that are issued to provide financing for the financial assistance (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;
17. the Obligations must include a provision requiring the Authority 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 Authority 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 Authority may, however, to the extent permitted by law, commingle Gross Proceeds of its financial assistance with other money of the Authority, provided that the Authority 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 financial assistance, 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 Authority shall maintain a copy of such calculations for at least six years after the final Computation Date;
  - c. as additional consideration for providing financial assistance, and in order to induce providing financial assistance 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;
18. the Obligations must include a provision prohibiting the Authority from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
19. the Obligations must provide that the Authority will not cause or permit the Obligations to be treated as “federally guaranteed” obligations within the meaning of § 149(b) of the Code;
20. the Obligations must contain a covenant that the Authority will refrain from using the proceeds of the Obligations to pay debt service on another issue of obligations of the borrower in contravention of section 149(d) of the Code (related to “advance refundings”);
21. the Obligations must provide that neither the Authority 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 Authority by the TWDB;
22. the Obligations must contain a provision requiring that, upon request by the Executive Administrator, the Authority shall submit annual audits of contracting parties for the Executive Administrator's review;
23. the Obligations must contain a provision requiring the Authority to maintain and enforce the contracts with the Cities so that the revenues paid to the Authority by the Cities are sufficient to meet the revenue requirements of the Authority’s obligations arising from the operation of the water system;
24. the Obligations must contain a provision that the pledged contract revenues from the Authority may not be pledged to the payment of any additional parity obligations of the Authority secured by a pledge of the same contract revenues unless the Authority demonstrates to the Executive Administrator’s satisfaction that the pledged contract revenues will be sufficient for the repayment of all Obligations and additional parity obligations;

Conditions to Close or for Release of Funds:

25. prior to closing, if not previously provided with the application, the Authority shall submit executed contracts for engineering and, if applicable, financial advisor and

bond counsel, 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;

26. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the Authority 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;
27. prior to closing, the Authority'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 Authority when rendering this opinion;
28. prior to closing, the Authority's bond counsel must prepare a written opinion that states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the Authority when rendering this opinion;
29. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the Authority's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
30. the transcript must include evidence that the information reporting requirements of § 149(e) of the Internal Revenue 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;
31. prior to closing, the Authority must submit executed contracts between the Authority and the contracting parties regarding the contract revenues pledged to the payment of the Authority's Obligations, in form and substance acceptable to the Executive Administrator. Such contracts shall include provisions consistent with the provisions of this Resolution regarding the contracting parties' annual audits, the setting of rates and charges and collection of revenues sufficient to meet the Authority's debt service obligations and additional parity obligations;

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

Special Conditions:

32. prior to the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, economic investigation, studies, surveys, or designs for that portion of the Project that proposes surface water or groundwater development, the

Executive Administrator must have either issued a written finding that the Authority has the right to use the water that the Project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction;

33. prior to the release of construction funds for that portion of a Project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that the Authority has the right to use the water that the Project financed by the TWDB will provide;

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

# WATER CONSERVATION REVIEW

Entity: \_\_\_\_\_

Review date: \_\_\_\_\_

**WATER CONSERVATION PLAN DATE:** **Approvable**      **Adopted**

	Total GPCD	Residential GPCD	Water Loss GPCD	Water Loss Percent
<b>Baseline</b>				
<b>5-year Goal</b>				
<b>10-year Goal</b>				

**WATER LOSS AUDIT YEAR:**

Total water loss (GPCD): \_\_\_\_\_      Total water loss (percent): \_\_\_\_\_      Wholesale Water  
 Total no. of connections: \_\_\_\_\_      Length of mains (miles): \_\_\_\_\_      Connections per mile: \_\_\_\_\_  
 If > 16 connections per mile and > 3,000 connections, Infrastructure Leakage Index (ILI): \_\_\_\_\_

**WATER LOSS THRESHOLDS:**

	Apparent Loss Gallons per connection per day	Real Loss Gallons per mile per day	Real Loss Gallons per connection per day	Apparent Threshold Gallons per connection per day	Real Threshold Gallons per mile per day	Real Threshold Gallons per connection per day
If population ≤ 10K, connections/mile < 32 :						
If population ≤ 10K, connections/mile ≥ 32 :						
If population > 10K :						

Does the applicant meet Water Loss Threshold requirements?      Yes      No      NA

**ADDITIONAL INFORMATION:**

**STAFF NOTES AND RECOMMENDATIONS:**

## DEFINITIONS

**Adopted** refers to a water conservation plan that meets the minimum requirements of the water conservation plan rules and has been formally approved and adopted by the applicant's governing body.

**Apparent loss** refers to unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

**Approvable** refers to a water conservation plan that substantially meets the minimum requirements of the water conservation plan rules but has not yet been adopted by the applicant's governing body.

**Best Management Practices** are voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

**GPCD** means gallons per capita per day.

**Infrastructure Leakage Index (ILI)** is the current annual real loss divided by the unavoidable annual real loss (theoretical minimum real loss) and only applies to utilities with more than 5,000 connections, average pressure greater than 35 psi, and a connection density of more than 32 connections per mile. The **ILI** is recommended to be less than 3 if water resources are greatly limited and difficult to develop, between 3 and 5 if water resources are adequate to meet long-term needs but water conservation is included in long-term water planning, and between 5 and 8 if water resources are plentiful, reliable, and easily extracted. The **ILI** is recommended as a benchmarking tool, but until there is increased data validity of the variables used in the calculation, the **ILI** should be viewed with care.

**NA** means not applicable.

**Produced water** is the total amount of water purchased or produced by the utility.

**Real loss** comes from main breaks and leaks, storage tank overflows, customer service line breaks, and leaks.

**Residential GPCD** is the amount of water per capita used solely for residential use and ideally includes both single and multi-family customer use.

**Total baseline GPCD** is the amount of all water purchased or produced by the utility divided by the service area population and then divided by 365.

**Total water loss** is the sum of the apparent and real water losses.

**Water loss** is the difference between the input volume and the authorized consumption within a water system. Water Loss consists of real losses and apparent losses.

**Water Loss Thresholds** are levels of real and apparent water loss determined by the size and connection density of a retail public utility, at or above which a utility receiving financial assistance from the Texas Water Development Board must use a portion of that financial assistance to mitigate the utility's system water loss.



# Brushy Creek Regional Utility Authority Williamson County

