

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Todd Chenoweth, General Counsel
Jessica Zuba, Deputy Executive Administrator

FROM: T. Clay Schultz, Director, Regional Water Project Development
Lee Huntoon, Team Manager, Panhandle/West Region

DATE: January 18, 2019

SUBJECT: Beechwood Water Supply Corporation Request for Reinstatement and Extension of Commitment of TWDB Project No. 62801 Urgent Need Water System Project and No. 73803 Emergency Relief Sanitary Sewer System Project

ACTION REQUESTED

Approve by resolution a request from the Beechwood Water Supply Corporation to reinstate and amend Texas Water Development Board Resolutions 18-102 and 18-103, and to extend the commitment period, to finance water system and sanitary sewer system improvements through the Drinking Water State Revolving Fund and Clean Water State Revolving Fund programs.

BACKGROUND

The Beechwood Water Supply Corporation (Corporation) received approximately 30 inches of rain during Hurricane Harvey, which caused damage to both the water and wastewater systems. To address this damage, two projects were approved by the Texas Water Development Board (TWDB) on September 6, 2018 for \$223,510 in principal forgiveness funding from the Drinking Water State Revolving Fund and \$297,000 in principal forgiveness from the Clean Water State Revolving Fund as Hurricane Harvey disaster relief projects. Because the funding for both projects includes principal forgiveness, the commitments were limited to three months and expired on December 31, 2018.

KEY ISSUES

The Corporation is located in a small rural county with very few banking options and was unable, after significant effort, to obtain an escrow account and complete the closing process prior to the commitment expiration date. The Corporation requested a two-month

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: Jeff Walker, Executive Administrator

extension which would extend the commitment period to February 28, 2019 for TWDB Resolutions 18-102 and 18-103 to enable the Corporation to close on both commitments.

RECOMMENDATION

The Executive Administrator recommends reinstating and amending TWDB Resolutions 18-102 and 18-103 to extend the commitment period for three months, to March 31, 2019, which will allow the Corporation sufficient time to close on the commitments.

Attachment(s):

1. Resolution (19-)
2. Resolution (18-102)
3. Resolution (18-103)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTIONS NO. 18-102 and 18-103
TO EXTEND THE COMMITMENT PERIOD FOR FINANCIAL ASSISTANCE
TO BEECHWOOD WATER SUPPLY CORPORATION FROM THE CLEAN WATER STATE
REVOLVING FUND THROUGH \$297,000 IN PRINCIPAL FORGIVENESS
AND FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH \$223,510 IN PRINCIPAL FORGIVENESS

(19 -)

WHEREAS, at its September 6, 2018 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 18-102, made a commitment to Beechwood Water Supply Corporation (Corporation) to provide financial assistance from the Clean Water State Revolving Fund in the amount of \$297,000 to finance the planning, design, and construction of certain wastewater system improvements identified as Project No. 73803; and

WHEREAS, at its September 6, 2018 meeting, the TWDB, by TWDB Resolution No. 18-103, made a commitment to the Corporation to provide financial assistance from the Drinking Water State Revolving Fund in the amount of \$223,510, to finance the planning, design, and construction of certain water system improvements identified as Project No. 62801; and

WHEREAS, pursuant to TWDB Resolutions No. 18-102 and 18-103, the commitment periods expired December 31, 2018; and

WHEREAS, the Corporation has submitted a request to extend the TWDB's commitments for an additional three (3) months to complete the steps necessary to close both commitments, 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 reinstating the TWDB's commitments in TWDB Resolutions No. 18-102 and 18-103 and granting an extension of three (3) months from the commitment expiration date is in the public interest.

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

1. the commitment of the TWDB to provide financial assistance in the amount of \$297,000, as authorized in TWDB Resolution No. 18-102, is reinstated and amended to extend the commitment to March 31, 2019; and
2. the commitment of the TWDB to provide financial assistance in the amount of \$223,510, as authorized in TWDB Resolution No. 18-103, is reinstated and amended to extend the commitment to March 31, 2019.

3. All other terms and conditions of TWDB Resolutions No. 18-102 and 18-103 shall remain in full force and effect.

APPROVED and ordered of record this the 4th day of February 2019.

TEXAS WATER DEVELOPMENT BOARD

Peter M. Lake, Chairman

DATE SIGNED:_____

ATTEST:

Jeff Walker, Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE
TO BEECHWOOD WATER SUPPLY CORPORATION
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH \$297,000 IN PRINCIPAL FORGIVENESS

(18 - 102)

WHEREAS, the Beechwood Water Supply Corporation, located in Sabine County (Corporation), has filed an application for financial assistance in the amount of \$297,000 from the Clean Water State Revolving Fund (DWSRF) to finance the planning, design and construction of certain wastewater system improvements identified as Project No. 73803; and

WHEREAS, the Corporation seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$297,000 with 100% to be forgiven, as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the Corporation will be sufficient to meet all the Obligations assumed by the Corporation, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;
3. that the Corporation is exempt from requirements to adopt a water conservation program because the TWDB's financial assistance will be \$500,000 or less; (No resolution condition required)
4. that the Corporation has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007;

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

A commitment is made by the TWDB to the Beechwood Water Supply Corporation for financial assistance in the amount of \$297,000 from the Clean Water State Revolving Fund with 100% to be forgiven. 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 Corporation's compliance with all applicable requirements contained in 31 TAC Chapter 375;
3. the Principal Forgiveness Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Principal Forgiveness Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
4. financial assistance funds are public funds and, as such, the Principal Forgiveness Agreement 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;
5. financial assistance funds proceeds shall not be used by the Corporation when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Principal Forgiveness Agreement shall include an environmental indemnification provision wherein the Corporation 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 Corporation, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
6. prior to closing, and if not previously provided with the application, the Corporation 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;
7. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the Corporation 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;

8. the Executive Administrator may require that the Corporation execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

State Revolving Fund Conditions

9. the Corporation shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
10. the Principal Forgiveness Agreement 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 Corporation, 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;
11. the Principal Forgiveness Agreement must include a provision stating that the Corporation 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 Corporation 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 the term of the Principal Forgiveness Agreement;
12. the Principal Forgiveness Agreement shall provide that all funds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the Corporation will adhere to the approved project schedule;
13. the Principal Forgiveness Agreement must contain a covenant that the Corporation 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 31 TAC § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines;

Clean Water State Revolving Fund Conditions

14. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102(2)(A)(C), the Corporation must provide documentation

that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 *et seq* and 33 U.S.C. § 1382(b)(14);

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

Special Conditions:

1. the Corporation must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by conversion to a conservation and reclamation district or a sale-transfer-merger with another retail public utility;
2. the Obligations must include a provision requiring that, prior to any action by the Corporation to convey its Obligations held by the TWDB to another entity, the conveyance and the assumption of the Obligations must be approved by the TWDB.
3. prior to closing, the Corporation shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
4. the Principal Forgiveness Agreement must include a provision stating that the Corporation shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator;
5. prior to the release of acquisition, design, and construction funds, the Corporation shall complete the consultations required by the Endangered Species Act and the National Historic Preservation Act.

APPROVED and ordered of record this 6th day of September, 2018.

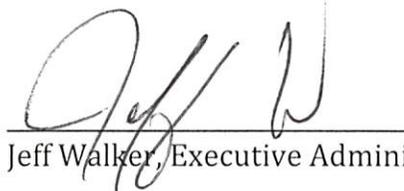
TEXAS WATER DEVELOPMENT BOARD



Peter M. Lake, Chairman

DATE SIGNED: 9/6/18

ATTEST:



Jeff Walker, Executive Administrator



100-443887-100

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE
TO BEECHWOOD WATER SUPPLY CORPORATION
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH \$223,510 IN PRINCIPAL FORGIVENESS

(18 - 103)

WHEREAS, the Beechwood Water Supply Corporation, located in Sabine County (Corporation) has filed an application for financial assistance in the amount of \$223,510 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, design and construction of certain water system improvements identified as Project No. 62801; and

WHEREAS, the Corporation seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$223,510 with 100% to be forgiven, as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 371.13; and

WHEREAS, the TWDB hereby finds:

1. that no debt obligations are to be assumed by the Corporation for the financial assistance and no taxes or revenues are required to be pledged by the Corporation;
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 Corporation is exempt from requirements to adopt a water conservation program because the TWDB's financial assistance will be \$500,000 or less;
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 Corporation and filed with the TWDB in accordance with Texas Water Code § 16.053(j);
6. that the Corporation meets the definition of an Urgent Need project in accordance with the applicable Intended Use Plan and is therefore eligible for principal forgiveness through the DWSRF.

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

A commitment is made by the TWDB to the Beechwood Water Supply Corporation for financial assistance in the amount of \$223,510 from the Drinking Water State Revolving Fund with 100% to be forgiven. 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 Corporation's compliance with all applicable requirements contained in 31 TAC Chapter 371;
3. the Principal Forgiveness Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Principal Forgiveness Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
4. financial assistance funds are public funds and, as such, the Principal Forgiveness Agreement 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;
5. financial assistance funds proceeds shall not be used by the Corporation when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Principal Forgiveness Agreement shall include an environmental indemnification provision wherein the Corporation 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 Corporation, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
6. prior to closing, and if not previously provided with the application, the Corporation 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;

7. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the Corporation 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;
8. the Executive Administrator may require that the Corporation execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

State Revolving Fund Conditions

9. the Corporation shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
10. the Principal Forgiveness Agreement 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 Corporation, 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;
11. the Principal Forgiveness Agreement must include a provision stating that the Corporation 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 Corporation 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 the term of the Principal Forgiveness Agreement;
12. the Principal Forgiveness Agreement shall provide that all funds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the Corporation will adhere to the approved project schedule;
13. the Principal Forgiveness Agreement must contain a covenant that the Corporation 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 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions

14. 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 Corporation has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of these Principal Forgiveness Agreement;
15. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the Corporation 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;

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

Special Conditions:

1. the Corporation must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by conversion to a conservation and reclamation district or a sale-transfer-merger with another retail public utility;
2. the Obligations must include a provision requiring that, prior to any action by the Corporation to convey its Obligations held by the TWDB to another entity, the conveyance and the assumption of the Obligations must be approved by the TWDB.
3. prior to closing, the Corporation shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
4. the Principal Forgiveness Agreement must include a provision stating that the Corporation shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator;

APPROVED and ordered of record this 6th day of September, 2018.



TEXAS WATER DEVELOPMENT BOARD

A handwritten signature in blue ink, appearing to be "P. M. Lake", written over a horizontal line.

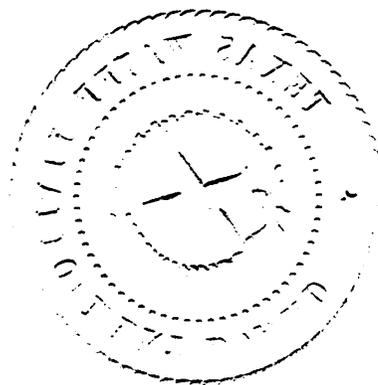
Peter M. Lake, Chairman

DATE SIGNED: 9/6/18

ATTEST:

A handwritten signature in black ink, appearing to be "Jeff Walker", written over a horizontal line.

Jeff Walker, Executive Administrator



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