Texas Water Development Board

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TO: Board Members

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

FROM: Clay Schultz, Director, Regional Water Project Development
Luis Farias, Manager, Regional Water Project Development
Ashley Nwonuma, Assistant General Counsel

DATE: February 15, 2019

SUBJECT: City of Terrell Project Nos. 62808 and 73807 Request for Multi-year Closings and change CWSRF obligation to equivalency funding

ACTION REQUESTED

Approve by resolution a request from the City of Terrell (Kaufman County) to amend Texas Water Development Board Resolution Nos. 18-124 and 18-125 to convert the existing Clean Water State Revolving Fund and Drinking Water State Revolving Fund commitments to multi-year commitments, extend the expiration periods, and change the Clean Water State Revolving Fund obligation to equivalency funding.

BACKGROUND

On October 30, 2018, the Texas Water Development Board (TWDB), through Resolution Nos. 18-124 and 18-125 (Attachments 2 and 3), approved a commitment from the Clean Water State Revolving Fund (CWSRF) in the amount of $24,550,000 and the Drinking Water State Revolving Fund (DWSRF) in the amount of $7,385,000 to the City of Terrell (City) for the acquisition, design, and construction of water and wastewater system improvements that included a new 1.5 million water storage tank, replacement of water lines and improvements to its wastewater treatment plant (WWTP). These projects will allow the City to replace aging infrastructure and improve its treatment process at its existing WWTP. The City received a one-year commitment for both obligations that expire on October 31, 2019. Furthermore, the CWSRF obligation was approved by the TWDB as non-equivalency funding.

Our Mission

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

Board Members

Peter M. Lake, Chairman | Kathleen Jackson, Board Member | Brooke T. Paup, Board Member

Jeff Walker, Executive Administrator

KEY ISSUES

The TWDB did not authorize the commitments as multi-year commitments. The City is requesting that Resolution Nos. 18-124 and 18-125 be amended to allow for multi-year commitments for both the CWSRF and DWSRF. It was the City's intent to request multi-year commitments for both projects, but it was not indicated in their application for financial assistance. The requested amendments allow for the City to close on construction funds when needed, thereby reducing interest costs. The City requests to modify the existing commitments according to the table below:

CWSRF

Per Resolution 18-124	Proposed schedule	Expiration
$24,550,000	$5,215,000	October 31,2019
$0	$6,780,000	October 31,2020
$0	$10,045,000	October 31,2021
$0	$2,510,000	October 31,2022
$24,550,000	**$24,550,000**	

DWSRF

Per Resolution 18-125	Proposed schedule	Expiration
$7,385,000	$1,700,000	October 31,2019
$0	$1,535,000	October 31,2021
$0	$4,150,000	October 31,2022
$7,385,000	**$7,385,000**	

The City anticipates closing the proposed series for the CWSRF and DWSRF over a four year and three year period, respectively. To accommodate this schedule, the City requests extending the expiration dates for the remaining CWSRF and DWSRF commitments as noted in the tables above.

Additionally, the City was invited to apply for CWSRF equivalency funds but was inadvertently taken to the Board for approval as non-equivalency funding. The City has requested that TWDB change the CWSRF obligation to equivalency funding.

RECOMMENDATION

The Executive Administrator recommends amending TWDB Resolution Nos. 18-124 and 18-125 to convert the CWSRF and DWSRF commitments to multi- year commitments, extend the expiration periods, and change the CWSRF obligation to equivalency funding.

Attachments:

1. Proposed TWDB Resolution (19-)
2. TWDB Resolution (18-124)
3. TWDB Resolution (18-125)
4. Request from City of Terrell

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING THE COMMITMENTS MADE IN TWDB RESOLUTION NOS. 18-124 AND 18-125
TO THE CITY OF TERRELL

(19 -)

WHEREAS, at its October 30, 2018 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 18-124, made a commitment to provide financial assistance to the City of Terrell (City) to finance certain wastewater system improvements in the amount of $24,550,000 through the TWDB's proposed purchase of $24,550,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2019A, all as is more specifically set forth in TWDB Resolution No. 18-124 and accompanying documentation, to which documents express reference is made; and

WHEREAS, at its October 30, 2018 meeting, the TWDB, by TWDB Resolution No. 18-125, made a commitment to provide financial assistance to the City of Terrell (City) to finance certain water system improvements in the amount of $7,385,000 through the TWDB's proposed purchase of $7,385,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2019B, all as is more specifically set forth in TWDB Resolution No. 18-125 and accompanying documentation, to which documents express reference is made; and

WHEREAS, by a letter dated December 20, 2018, the City requested that the TWDB amend the commitments to provide for a multi-year financing structure in accordance with the 2018 Intended Use Plan; and

WHEREAS, the City has further requested that the commitment in TWDB Resolution No. 18-124 be amended to provide the financial assistance from equivalency funding; and

WHEREAS, the Executive Administrator recommends that the commitments made through TWDB Resolution Nos. 18-124 and 18-125 be amended to provide for a multi-year financing structure; and

WHEREAS, the Executive Administrator recommends that the commitment made through TWDB Resolution No. 18-124 be amended to provide the financial assistance from equivalency funding;

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

WHEREAS, the TWDB hereby finds that amending the commitments made through TWDB Resolution Nos. 18-124 and 18-125 is reasonable, and that the City's request is in the public interest and will serve a public purpose.

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

1. TWDB Resolution No. 18-124 is amended to provide for a multi-year financing structure to the City of Terrell for financial assistance in the amount of $24,550,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of $24,550,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2019A through Proposed Series 2022A as follows:

    a. $5,215,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2019A, to expire on October 31, 2019;

    b. $6,780,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2020A, to expire October 31, 2020;

    c. $10,045,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2021A, to expire October 31, 2021;

    d. $2,510,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2022A, to expire October 31, 2022.

2. TWDB Resolution No. 18-125 is amended to provide for a multi-year financing structure to the City of Terrell for financial assistance in the amount of $7,385,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of $7,385,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2019B through Proposed Series 2022B as follows:

    a. $1,700,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2019B, to expire on October 31, 2019;

    b. $1,535,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2021B, to expire October 31, 2021;

    c. $4,150,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2022B, to expire October 31, 2022.

3. TWDB Resolution No. 18-124 is amended to provide the financial assistance from equivalency funding.

4. TWDB Resolution No. 18-124 is amended to include the following conditions:

   "36. 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;

   37. 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 City 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)."

5. That all other terms and conditions of TWDB Resolution Nos. 18-124 and 18-125 shall remain in full force and effect.

APPROVED and ordered of record this 5th day of March, 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 IN THE AMOUNT OF
$24,550,000 TO THE CITY OF TERRELL
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
$24,550,000 CITY OF TERRELL, TEXAS COMBINATION TAX AND WATERWORKS AND
SEWER SYSTEM (SURPLUS PLEDGE) REVENUE CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2019A

(18 -124)

WHEREAS, the City of Terrell (City), located in Kaufman County, has filed an application for financial assistance in the amount of $24,550,000 from the Clean Water State Revolving Fund (CWSRF) to finance the acquisition, design, and construction of certain wastewater system improvements identified as Project No. 73807; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of $24,550,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2019A (together with all authorizing documents, (Obligations)), 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 taxes and a surplus pledge of the City's waterworks and sewer system revenues as sufficient security for the repayment of the Obligations; 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 § 375.14; and

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 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 City has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB's rules;

4. that the City 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 City of Terrell for financial assistance in the amount of $24,550,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of $24,550,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2019A. This commitment will expire on October 31, 2019.

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 375;

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 remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds;

8. 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 and completion of a final accounting 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) deposit into a reserve fund;

9. 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;

10. 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;

11. 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;

12. 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;

13. 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;

14. 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;

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

Conditions Related to Tax-Exempt Status

16. the City's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion;

17. the City's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;

18. the 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 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 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 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;

20. the 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 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 Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;

22. the 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 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 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 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 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 31 TAC § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines;

31. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;

32. the City shall submit, prior to the release of funds, 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 projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

33. prior to or at closing, the City shall pay a 1.75% origination fee to the TWDB calculated pursuant 31 TAC Chapter 375 and the applicable Intended Use Plan;

34. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;

Pledge Conditions For The Loan

35. 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.

APPROVED and ordered of record this 30th day of October, 2018.

TEXAS WATER DEVELOPMENT BOARD

Peter M. Lake, Chairman

DATE SIGNED: 10/30/18

ATTEST:

Jeff Walker, Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
$7,385,000 TO CITY OF TERRELL
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
$7,385,000 CITY OF TERRELL, TEXAS COMBINATION TAX AND WATERWORKS
AND SEWER SYSTEM (SURPLUS PLEDGE) REVENUE CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2019B

(18 -125)

WHEREAS, the City of Terrell (City), located in Kaufman County, has filed an application for financial assistance in the amount of $7,385,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the acquisition, design and construction of certain water system improvements identified as Project No. 62808; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of $7,385,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2019B (together with all authorizing documents (Obligations)), 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 taxes and a surplus pledge of the City's waterworks and sewer system as sufficient security for the repayment of the Obligations; 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 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 adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and 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).

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

A commitment is made by the TWDB to the City of Terrell for financial assistance in the amount of $7,385,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of 7,385,000 City of Terrell, Texas Combination Tax and Waterworks and Sewer System (Surplus Pledge) Revenue Certificates of Obligation, Proposed Series 2019B. This commitment will expire on October 31, 2019.

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 remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds;

8. 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 and completion of a final accounting 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) deposit into a reserve fund;

9. 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;

10. 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;

11. 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;

12. 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;

13. 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;

14. 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;

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

16. 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 To Tax-Exempt Status

17. the City's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion;

18. the City's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;

19. the 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);

20. the 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 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 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;

21. the 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 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;

22. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;

23. the 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;

24. 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 Obligations;

25. 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;

26. the 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 Obligations to be acquired from the City by the TWDB;

State Revolving Fund Conditions

27. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;

28. 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;

29. 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;

30. 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;

31. The Obligations 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 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions

32. prior to or at closing, the City shall pay a 2.15% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371 and the applicable Intended Use Plan;

33. 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;

34. 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 Loan

35. 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;

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

ii. 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.

APPROVED and ordered of record this 30th day of October, 2018.

TEXAS WATER DEVELOPMENT BOARD

Peter M. Lake, Chairman

DATE SIGNED: 10/30/18

ATTEST:

Jeff Walker, Executive Administrator

D.J. Ory
Mayor

Charles Whitaker
Mayor Pro Tem
District 4

Tim Royse
Deputy Mayor Pro Tem
District 5

Sandra Wilson
Council Member
District 3

Grady Simpson
Council Member
District 2

Mike Sims
Interim City Manager

December 20, 2018

Texas Water Development Board
Attention: Ben Munguia
1700 North Congress Avenue
P.O. Box 13231
Austin, Texas 78711-3231

Reference: SRF Loan Applications / Multi-Year Drawdown Revision

Dear Ben:

We were informed that the applications approved by the TWDB on October 30, 2018 apparently did not indicate a request for a multi-year drawdown. This has been our intention all along.

The City formally requests that required amendments to the applications are made by TWDB to indicate a Multi-Year drawdown schedule. We intend on awarding contracts at various timeframes. All work will be completed within 5 years from the loan closing date.

We understand this revision could be discussed at the February 7, 2019 board meeting. Please confirm once it has been placed on the agenda.

Revised drawdown schedules on form TWDB-1202 for both the DWSRF and CWSRF loans are attached. The costs are structured based on approximate month of award or first month of drawdown request. The amounts are estimates for the total cost of the design and construction projects.

Please let us know if this schedule needs to be more detailed.

Sincerely,

12/21/18

Mike Mikeska
Assistant City Engineer

C: Steve Rogers, City Engineer
John Rounsavall, City Secretary
Jason Hughes, Hilltop Securities, Financial Advisor
Lance Klement, Garver, Consulting Engineer