Texas Water Development Board

P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

TO: Board Members

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

FROM: T. Clay Schultz, Ph.D. Director, Regional Water Project Development
Dain Larsen, Team Manager, Central Region

DATE: February 5, 2019

SUBJECT: Creedmoor-Maha Water Supply Corporation Project No. 62805
Request for Multi-year Closings

ACTION REQUESTED

Approve by resolution a request from the Creedmoor-Maha Water Supply Corporation (Guadalupe, Hays, and Travis Counties) to amend Texas Water Development Board Resolution No. 18-119 to convert the Drinking Water State Revolving Fund commitment to a multi-year commitment and extend the expiration period.

BACKGROUND

On October 16, 2018, the Creedmoor-Maha Water Supply Corporation (Corporation) received a $9,335,000 commitment for financing from the Drinking Water State Revolving Fund for the planning, design, and construction of upgrades to water lines, including approximately 12 miles of water main. The Corporation received a one-year commitment that expires on October 31, 2019.

KEY ISSUES

The Texas Water Development Board (TWDB) did not authorize the commitment as a multi-year commitment. The Corporation requests to amend TWDB Resolution 18-119 to allow for a multi-year commitment with two closings. The requested amendment allows for the closing of construction funds when they are needed, thereby reducing the Corporation's interest cost. The Corporation requests to modify the existing commitments according to the table below:

Per Resolution 18-119	Proposed schedule	Expiration
$9,335,000	$4,667,500	October 31,2019
$0	$4,667,500	October 31,2020
$9,335,000	**$9,335,000**	

The Corporation anticipates closing the proposed series in March 2019 and 2020. To accommodate this schedule, the Corporation requests extending the expiration date for $4,667,500 of the original $9,335,000 commitment to October 31, 2020.

RECOMMENDATION

The Executive Administrator recommends amending TWDB Resolution No. 18-119 to convert the one-year commitment to a multi-year option with $4,667,500 expiring on October 31, 2019 and the remaining funds expiring on October 31, 2020.

Attachment(s):

1. Resolution (19-)
2. Resolution (18-119)
3. Extension Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
TO AMEND THE COMMITMENT IN TWDB RESOLUTION NO. 18-119
MADE TO THE CREEDMOOR-MAHA WATER SUPPLY CORPORATION

(19-)

WHEREAS, at its October 16, 2018 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 18-119, made a commitment to provide financial assistance to the Creedmoor-Maha Water Supply Corporation (Corporation) for the purpose of financing improvements to the Corporation's water system in the amount of $9,335,000 consisting of the TWDB's proposed purchase of a $9,335,000 promissory note and execution of a Loan Agreement, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, by letter dated January 8, 2019, the Corporation's representative requested that the TWDB amend the previous resolution, TWDB Resolution No. 18-119, to provide for a multi-year financing structure in accordance with the 2018 Intended Use Plan; and

WHEREAS, the Executive Administrator recommends that the commitment made to the Corporation through TWDB Resolution No. 18-119 is changed to a multi-year financing structure through the TWDB purchase of two proposed promissory notes, and the Corporation shall close on funds related to its first promissory note by March 31, 2019; and

WHEREAS, the TWDB hereby finds that the amendment(s) to the commitment of this loan is reasonable and that the request is in the public interest and will serve a public purpose; and

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

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

1. TWDB Resolution No. 18-119 is amended to provide for a multi-year financing structure for the Creedmoor-Maha Water Supply Corporation, as provided below:

    a. $4,667,500 to the Creedmoor-Maha Water Supply Corporation for the proposed purchase of a Promissory Note and the execution of a loan agreement, commitment to expire October 31, 2019; and

    b. $4,667,500 to the Creedmoor-Maha Water Supply Corporation for the proposed purchase of a Promissory Note and the execution of loan agreement, commitment to expire October 31, 2020; and

    c. The origination fee for each proposed Promissory Note will be determined and

set by the Executive Administrator in accordance with 31 Texas Administrative Code Chapter 371 and the applicable Intended Use Plan.

d. The Executive Administrator is delegated the authority to adjust the schedule of proposed installments as approved through this Resolution.

2. That all other terms and conditions of TWDB Resolution No. 18-119 shall remain in full force and effect.

APPROVED and ordered of record this the 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 TO
THE CREEDMOOR-MAHA WATER SUPPLY CORPORATION
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
A PROMISSORY NOTE IN THE AMOUNT OF $9,335,000 AND
THE EXECUTION OF A LOAN AGREEMENT

(18 -119)

WHEREAS, the Creedmoor-Maha Water Supply Corporation (Corporation), located in Guadalupe, Hay, and Travis Counties has filed an application for financial assistance in the amount of $9,335,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, design, and construction of certain water system improvements identified as Project No. 62805; and

WHEREAS, the Corporation seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of a Promissory Note in the amount of $9,335,000 and execution of a Loan Agreement, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the Corporation has offered a pledge of a first lien on the net revenues of the Corporation and a mortgaged deed of trust on the Corporation's 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 revenues 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 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 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 Corporation 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 Creedmoor-Maha Water Supply Corporation for financial assistance in the amount of $9,335,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of a Promissory Note in the amount of $9,335,000 and execution of a Loan Agreement. 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. prior to closing, the Corporation must submit to the Executive Administrator an attorney's opinion confirming the legal authority for the Corporation to incur the Obligations that is acceptable to the Executive Administrator;

3. this commitment is contingent upon the Corporation's compliance with all applicable requirements contained in 31 TAC Chapter 371;

4. the Obligations must provide that the Corporation may prepay all or part of the amounts of principal and interest then due on the loan on any regularly scheduled payment date as specified in the Repayment Schedule, as revised, beginning no earlier than the first interest payment date that is 10 years from the date of the first delivery of funds from the TWDB to the Corporation pursuant to this Agreement;

5. the Corporation, 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 Corporation'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 Corporation's Obligations, if the TWDB sells or otherwise transfers such

Obligations, and the beneficial owners of the TWDB's bonds if the Corporation is an obligated person with respect to such bonds under SEC Rule 15c2-12;

6. the Obligations must contain a provision requiring the Corporation to l 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 Corporation 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 Corporation to submit a final accounting and disposition of any unused funds;

8. the Obligations must include a provision requiring the Corporation 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 Corporation 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 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;

12. prior to closing, the Corporation 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 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 under 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 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;

15. the Executive Administrator may require that the Corporation 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;

State Revolving Fund Conditions

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

18. 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 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;

19. the Obligations 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 which the Obligations are outstanding;

20. 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 Corporation will adhere to the approved project schedule;

21. the Obligations 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

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

23. 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 Obligations;

24. 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;

Water Supply Corporation Conditions

25. the Corporation's indebtedness to the TWDB shall be evidenced by loans specifically secured by:

    a. a first or parity lien on the net revenues of the Corporation's water system (System); and

    b. a first or parity lien mortgage on the System;

26. upon closing or within 20 days after closing, the Corporation must file a Deed of Trust with the County Clerk of the county in which the property is located, as required by Business and Commerce Code, Chapter 9, or a Utility Security Instrument with the Secretary of State's Office and corresponding notice with the County Clerk, as required by Business and Commerce Code, Chapter 261, as evidence of the TWDB's security interest in the Corporation's System. Within thirty (30) days of the date of

each filing, the Corporation shall submit a copy of the recorded instrument to the TWDB;

27. upon closing or within 20 days after closing, the Corporation must file a security instrument with the Secretary of State's Office, as required by Business and Commerce Code, Chapter 9 or Chapter 261 to evidence the TWDB's security interest in any personal property directly related to water supply and/or sewer service, owned or to be acquired by the Corporation. A copy of the recorded security instrument shall be submitted by the Corporation to the TWDB within thirty (30) days of its filing with the Secretary of State's Office;

28. prior to closing, the Corporation must obtain a commitment from a title insurance company in accordance with the standards established by the Texas Department of Insurance, resulting in the issuance of a mortgagee title insurance policy on the property owned in fee simple, upon which the TWDB will be given a first or parity lien mortgage. A copy of the mortgagee title insurance policy shall be submitted to the TWDB within thirty (30) days of its execution;

29. prior to closing, the Corporation must cure any defects or liens upon the property listed in Schedule C of the title insurance company commitment that the Executive Administrator deems necessary;

30. prior to release of funds for construction, the Corporation must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the Corporation has the legal authority necessary to complete the acquisitions;

31. prior to closing, the Corporation must submit to the Executive Administrator evidence that the Corporation's bylaws have been amended to include the following requirements:

    a. as long as the Corporation is indebted for a loan or loans made by or through the TWDB, the bylaws shall not be altered, amended or repealed without the prior written consent of the Executive Administrator; and

    b. the Corporation is a nonprofit Corporation; no part of the income of the Corporation will be distributed to the Corporation's members, directors, or officers;

32. prior to closing, if the Corporation is pledging a lien on real property that is to be on parity with a lien or liens on real property securing debt that will remain outstanding after closing the TWDB's loan, then the Corporation must execute a Parity Agreement with each entity that holds such debt that is acceptable in form and substance to the Executive Administrator; and

33. the Obligations shall include a special covenant prohibiting the Corporation from encumbering, pledging or otherwise impairing the revenues of the System in any manner with respect to the payment of any Obligations or with respect to any liability, except for the payment of the following: (1) maintenance and operating expenses payable within the current fiscal year with current revenues; and (2) additional debt, and that the Corporation shall in no way encumber, pledge or otherwise impair its title to the land used by or for the System or any interests therein, including improvements and facilities of the System, without prior TWDB approval;

Pledge Conditions for the Loan

34. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;

35. if the Corporation has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;

36. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net revenues are determined from the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant;

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

Special Conditions:

36. 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;

37. 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.

38. prior to the release of funds, the Corporation shall provide a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the

TWDB does not exceed 120% of the average estimated useful life of the project, as determined by the schedule;

APPROVED and ordered of record this 16th day of October, 2018.

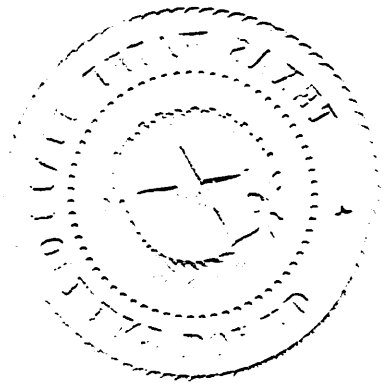
TEXAS WATER DEVELOPMENT BOARD

Peter M. Lake, Chairman

DATE SIGNED: 10/17/18

ATTEST:

for Jeff Walker, Executive Administrator



Creedmoor- Maha Water Supply Corp
12100 Laws Rd. Buda, Texas 78610
(512) 243-2113 | FAX: (512) 354-1444
www.creedmoormahawsc.com

Attachment 3

Dain Larsen, Manager
Team 5, Central (J/K/L/P)
Regional Water Project Development
Water Supply Infrastructure

Texas Water Development Board
1700 North Congress Avenue
P.O. Box 13231
Austin, Tx 78711-3231

8 January 2019

Re: **Project # 62805** **Commitment Code – L1000876**

Dain –

Thank you and your Team for all the assistance you have provided to Creedmoor WSC in successfully achieving our loan commitment on October 16, 2018.

With this letter, I am writing in regards to our Closing activities for the Loan. We are in the process of gathering, preparing, and reviewing all necessary documentation required before, at, and after closing occurs.

As we review our business needs and internal ability to respond, we have decided to request two separate closings. We would like to close on half of the Loan Commitment funds ($4,667,500) in March 2019 and close again on the remaining funds in March 2020. Please advise if this is acceptable and provide any additional guidance you feel is appropriate.

We look forward to working with you and your Team throughout this period of Creedmoor's growth. Thank you.

John F. Steib Jr.
General Manager

CC:
J Scarth, The MRB Group
D Norton, Lloyd Gosselink Law Firm

RECEIVED
JAN 14 2019
TWDB