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
Annette Mass, Assistant General Counsel

FROM: T. Clay Schultz, Ph.D., Director, Regional Water Project Development
Nancy Richards, Manager, Regional Water Project Development

DATE: February 26, 2020

SUBJECT: Amendment to the City of Nassau Bay project scope, extension of commitment, and close in two series.

ACTION REQUESTED

Amend by resolution the previously adopted Texas Water Development Board (TWDB) Resolution No. 19-035, to modify the City of Nassau Bay's (City) Texas Water Development Fund project scope, extend the commitment, and close in two series.

BACKGROUND

On March 28, 2019, the TWDB, through Resolution No. 19-035 (Attachment 2), approved $3,000,000 in financing from the Texas Water Development Fund (DFund) for the City. The project scope included planning, design, and construction of water and wastewater improvements, including replacement of 21,700 linear feet of water lines and 12,350 linear feet of concrete sewer lines. The City's commitment expires March 31, 2020.

Shortly after receiving the commitment from the TWDB, the City was advised of its financial obligations, via the Clear Lake City Water Authority, related to the Southeast Transmission Line (SETL) project. The SETL is a regional project that will provide water from the City of Houston's Southeast Water Purification Plant to its nine member cities and districts in southern Harris and Galveston counties. Design of the SETL regional project is scheduled to start in late 2020, and construction is scheduled to be complete by 2023. The City submitted a $1,985,000 abridged application for the 2020 State Water Implementation Fund for Texas (SWIFT) funding cycle for its share of the SETL project on January 28, 2020. If the City's SWIFT abridged application is prioritized, a full financial application will be due by early May 2020.

KEY ISSUES

The City is seeking greater flexibility in the use of its DFund commitment by requesting to amend Resolution No. 19-035 to include the SETL project in the project scope. This will allow the City to secure DFund financing before the SWIFT abridged applications are prioritized and applications are due. The DFund commitment expires March 31, 2020.

The City intends to continue with the original water and wastewater system improvements approved by the TWDB; however, the amount of work will be downscaled in order to accommodate financial obligations for the SETL project. The City anticipates completing approximately 7,000 linear feet of water line and 4,000 linear feet of sewer line replacements.

In addition to amending the project scope, the City is requesting to close on the financing in two separate series. The City anticipates closing on $1,000,000 in late 2020 to fund the water and wastewater rehabilitation, and $2,000,000 in late 2021 for its portion of the SETL project. Therefore, the City requests an extension of the commitment to December 2021.

If the City's abridged application for SWIFT funding is prioritized and the TWDB commits the City's full amount requested, the City intends to close the remaining $2,000,000 from the DFund commitment to fund the full scope of water and wastewater system improvements originally committed.

RECOMMENDATION

The Executive Administrator recommends that TWDB Resolution No. 19-035 be amended to add the planning, design, and construction phases of the SETL project to the current project scope and allow the City to close in two series, thereby extending the commitment to 2021. The request does not change the total amount of funding already committed to the City and will provide greater flexibility with the available financing for the City's project needs.

Attachment(s):
1. Proposed TWDB Resolution (20-)
2. TWDB Resolution (19-035)
3. City's request to amend project scope

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 19-035 TO EXPAND THE SCOPE OF THE PROJECT AND PROVIDE MULTI-YEAR FUNDING FOR THE PROPOSED PURCHASE OF $3,000,000 CITY OF NASSAU BAY WATER AND SEWER SYSTEM REVENUE BONDS, PROPOSED SERIES 2020 AND 2021

(20 -)

WHEREAS, at its March 28, 2019 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 19-035, made a commitment to provide financial assistance to the City of Nassau Bay (City) for the purpose of financing improvements to the City's water and wastewater system in the amount of $3,000,000, consisting of the TWDB's purchase of $3,000,000 City of Nassau Bay Water and Sewer System Revenue Bonds, Proposed Series 2019, from the Financial Assistance Account of the Texas Water Development Fund II, established by Texas Water Code § 17.959, to finance water and wastewater system improvements, all as is more specifically set forth in the TWDB's Resolution No. 19-035 and accompanying documentation, to which documents express reference is made; and

WHEREAS, by email dated July 23, 2019, the City has requested that the TWDB amend TWDB Resolution No. 19-035, to modify the commitment made by the TWDB to a multi-year commitment and to expand the scope of the project to include planning, design, and construction for the City's participation in the City of Houston's Southeast Transmission Line Project;

WHEREAS, the TWDB hereby finds that the amendments proposed to the financial assistance are within the public interest and will serve a public purpose;

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

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

1. the commitment made in TWDB Resolution No. 19-035 for financial assistance in the amount of $3,000,000 from the Financial Assistance Account of the Texas Water Development Fund II, established by Texas Water Code § 17.959, will be evidenced by the TWDB's proposed purchase of: $3,000,000 City of Nassau Bay Water and Sewer System Revenue Bonds as follows:

    a. $1,000,000 Proposed Series 2020, to expire on December 31, 2020; and

    b. $2,000,000 Proposed Series 2021, to expire on December 31, 2021; and

2. The scope of the project as committed through TWDB Resolution No. 19-035 includes planning, design, and construction for the City's participation in the City of Houston's Southeast Transmission Line Project; and

3. All other terms and conditions of TWDB Resolution No. 19-035 shall remain in full force and effect.

APPROVED and ordered of record this, the 12th day of March 2020.

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
$3,000,000 TO THE CITY OF NASSAU BAY
FROM THE FINANCIAL ASSISTANCE ACCOUNT OF
THE TEXAS WATER DEVELOPMENT FUND II
THROUGH THE PROPOSED PURCHASE OF
$3,000,000 CITY OF NASSAU BAY, TEXAS WATER AND SEWER SYSTEM REVENUE
BONDS,
PROPOSED SERIES 2019

(19 - 035)

WHEREAS, the City of Nassau Bay (City), located in Harris County, Texas, has filed an application for financial assistance in the amount of $3,000,000 from the Financial Assistance Account of the Texas Water Development Fund II, established by Texas Water Code § 17.959, to finance water and wastewater system improvements, identified as Project No. 21778; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of $3,000,000 through the TWDB's purchase of $3,000,000 City of Nassau Bay, Texas Water and Sewer System Revenue Bonds, Proposed Series 2019 (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 first lien on the net revenue 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 § 363.16; and

WHEREAS, in accordance with Texas Water Code §§ 17.124 and 17.275, the TWDB has considered all matters required by law and in particular the following:

1. the water quality needs of the waters into which effluent from the treatment works will be discharged, the benefit of the treatment works to such water quality needs, the relationship of the treatment works to the overall, statewide water quality needs, and the relationship of the treatment works to water quality planning for the state;

2. the needs of the area to be served by the water supply project, the benefit of the water supply project to the area, the relationship of the water supply project to the overall, statewide water needs, and the relationship of the water supply project to the approved regional and state water plans; and

3. the availability of revenue to the City, from all sources, for the ultimate repayment of the cost of the treatment works and water supply project, including interest.

WHEREAS, the TWDB hereby finds:

1. that the public interest requires state assistance in the water supply project, in accordance with Texas Water Code § 17.125(a)(1);

2. that the public interest will benefit from state assistance in the financing of this project, in accordance with Texas Water Code § 17.277(a);

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 in its opinion the tax and/or revenue pledged by the City will be sufficient to meet all the Obligations assumed by the City during the succeeding period of not more than 50 years, in accordance with Texas Water Code § 17.125(a)(2);

5. that the application and financial assistance requested meet the requirements of Texas Water Code, Chapter 17, Subchapters E, F, and L, and 31 TAC Chapter 363, Subchapter A;

6. that the current water audit required by Texas Water Code § 16.0121 has been completed by the City and filed with the TWDB, in accordance with Texas Water Code § 16.053(j); and

7. that any treatment works to be financed under the application will consider cost-effective innovative, nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation, or other methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority, in accordance with Texas Water Code § 17.189.

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

A commitment is made by the TWDB to the City of Nassau Bay for financial assistance in the amount of $3,000,000 from the Financial Assistance Account of the Texas Water Development Fund II, to be evidenced by the TWDB's purchase of $3,000,000 City of Nassau Bay, Texas Water and Sewer System Revenue Bonds, Proposed Series 2019. This commitment will expire on March 31, 2020.

Such commitment is conditioned as follows:

Standard Conditions

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;

2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that the City has complied with all of the requirements of the laws under which said Obligations were issued; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the City;

3. this commitment is contingent upon the City's compliance with all applicable laws, rules, policies, and guidance (as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement), including but not limited to 31 TAC Chapter 363;

4. the Obligations must provide that the Obligations can be called for early redemption (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 Obligations must include a provision wherein 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, 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 remaining after completion of a final accounting for the following purposes: (1) subject to waiver of the Early Redemption call date in the Obligations, 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) for those securities required to establish a reserve fund, deposit into a reserve fund;

8. 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;

9. financial assistance proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256 and the Public Funds Collateral Act, Government Code, Chapter 2257;

10. financial assistance 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;

11. 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;

12. prior to closing, and if required under the TWDB's financial assistance program and not previously provided with the application, the City shall submit an executed engineering contract as appropriate for the project scope of work, and an executed financial advisor contract and executed bond counsel contract as appropriate for the work to be performed in obtaining the TWDB's financial assistance for the project, in a form and substance that are satisfactory to the Executive Administrator. Fees to be reimbursed under any consulting contract must be reasonable in relation to the services performed, must be reflected in the contract, and must be acceptable to the Executive Administrator;

13. prior to closing, when any portion of financial assistance proceeds are to be held in escrow or in trust, the City shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;

14. 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

15. prior to closing, 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;

16. prior to closing, the City's bond counsel must prepare a written opinion that states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;

17. the Obligations must include a provision prohibiting the City from using the proceeds of this financial assistance in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);

18. 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) that 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;

19. 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;

20. 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;

21. 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;

22. the Obligations must contain a covenant that the City will refrain from using the proceeds of the Obligations to pay debt service on another issue of obligations of the borrower in contravention of section 149(d) of the Code (related to "advance refundings");

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;

Pledge Conditions For The Loan

26. 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;

27. if the City 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;

28. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if: (a) the Interest and Sinking Fund and Reserve Fund each contain the amount of money then required to be on deposit therein; (b) for either the preceding fiscal year or any consecutive 12-month period out of the 15-month period immediately preceding the month in which the bond ordinance authorizing the Additional Bonds is adopted, either the net system revenues, as certified by the Director of Finance of the City or the Deputy City Manager of the City, are at least one hundred and twenty five percent of the average annual debt service requirements after giving effect to the additional obligations; or net system revenues, adjusted to give effect to any rate increase or annexation of territory placed into effect or consummated prior to the adoption of the ordinance authorizing the additional bonds to the same extent as if such rate increase or annexation had been placed into effect or consummated prior to the commencement of the base period, would have been equal to at least the amount required above, as certified by the City Manager or a Deputy City Manager; and (c) provision is made in the bond ordinance authorizing the Additional Bonds then proposed to be issued for additional payments into the Interest and Sinking Fund

sufficient to provide for the payment of the increased principal of and interest on the Bonds resulting from the issuance of such Additional Bonds and additional payments into the reserve fund sufficient to provide for the accumulation therein of the increased reserve requirement resulting from the issuance of such Additional Bonds, by not later than sixty months from issuance of the Additional Bonds.

APPROVED and ordered of record this, the 28th day of March, 2019.

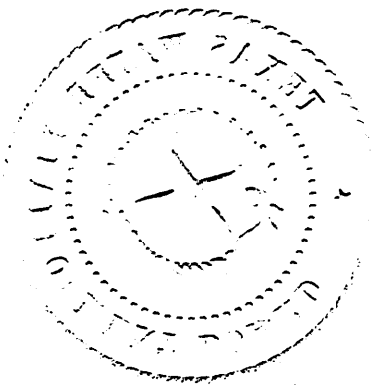
TEXAS WATER DEVELOPMENT BOARD

Peter M. Lake, Chairman

DATE SIGNED: 4/1/19

ATTEST:

Jeff Walker, Executive Administrator



NASSAU BAY
Charting New Horizons

Texas Water Development Board
1700 N. Congress Ave.
Austin, TX 78711

February 4, 2020

RE: City of Nassau Bay DFund Assistance Extension

To Whom It May Concern:

On March 28, 2019 the TWDB approved the City of Nassau Bay for financial assistance in the amount of $3 million to assist in the finance planning, design, and construction costs associated with water and wastewater improvements through the Texas Water Development Fund. Shortly after Nassau Bay made application for this funding, the City was also advised of financial obligations via the Clear Lake City Water Authority (CLCWA) related to the Southeast Transmission Line (SETL) project from the Southeast Water Purification Plant (SEWPP).

As the City made plans to begin our original water and wastewater improvement plans, it became evident that capital funding capacity might need to be split between these projects. We have been in ongoing discussions with local partners (SEWPP & CLCWA) regarding the SETL project timeline and projected costs. We have delayed issuing the $3M from the DFund to ensure that we are utilizing our debt capacity to the most immediate capital needs and obligations of the City. We have been working with the TWDB (Nancy Richards) to get the SETL project added to our list of approved projects for the DFund. Also, we have applied for the 2020 SWIFT Fund for the SETL project as well.

The City's goal is to finance needed capital projects with the most appropriate funding sources. Until the final determinations are made on the SETL project, the City would like to keep its funding options open and delay decisions on how much funding to use toward the internal Nassau Bay water and wastewater improvement projects. As such, we are requesting an extension of the March 31, 2020 deadline for utilizing the $3M DFund assistance. Also, we are requesting that the SETL project be added to the eligible projects for which the $3M DFund assistance can be used.

Thank you in advance for the cooperation and consideration as Nassau Bay works to find the best financing solution for all the needed water and wastewater projects.

Sincerely,

Jason E. Reynolds
City Manager

Mark A. Denman
Mayor

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Jason E. Reynolds
City Manager