

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Joe Reynolds, Interim General Counsel  
Jessica Zuba, Deputy Executive Administrator  
Annette Mass, Assistant General Counsel

**FROM:** T. Clay Schultz, Ph.D., Director, Regional Water Project Development  
Jeff Taylor, Manager, Regional Water Project Development

**DATE:** May 6, 2020

**SUBJECT:** Correction to City of Anton Resolution No. 15-065

**ACTION REQUESTED**

Amend TWDB Resolution No. 15-065 for the City of Anton (Hockley County) to include water system improvements.

**BACKGROUND**

On July 2, 2015, the TWDB, through Resolution No. 15-065 (Attachment 2), approved \$3,000,000 in financing from the Texas Water Development Fund II (DFund) for the City. The project scope as described in the application included planning, acquisition, design, and construction of a new wastewater plant and water system improvements. Besides the new wastewater treatment facility, the City intended to install a series of new equipment in its existing water system that included flow meters, a chlorination system, booster pump station controls, a backup generator, and a Supervisory Control and Data Acquisition (SCADA) system.

**KEY ISSUES**

The resolution signed on July 2, 2015 stated that the requested funding was to finance wastewater system improvements only and did not reference water system improvements.

The new wastewater treatment plant has been completed and the project has \$391,000 available. The City wishes to use those funds for water system improvements including:

- Installation of new flow meters at the City's wells, booster pump station, elevated storage tank, and at individual homes,
- Installation of a new chlorinator system,
- A new SCADA system,
- A backup generator,
- Replacement of 1,550 linear feet of a six-inch water transmission line along Main Street, and
- Replacement of approximately 430 old residential meters.

The resolution is being amended to include the water system improvements originally included in the City's application.

**RECOMMENDATION**

The Executive Administrator recommends that TWDB Resolution No. 15-065 be amended to add the planning, acquisition, design, and construction of water system improvements for the City of Anton. The request does not change the total amount of funding already committed to the City and will allow the City to utilize funds for the City's water system project needs.

Attachment(s):

1. Proposed TWDB Resolution (20- )
2. TWDB Resolution (15-065)
3. City's Request to Fund Water System Projects

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AMENDING TWDB RESOLUTION NO. 15-065  
FOR FINANCIAL ASSISTANCE TO THE CITY OF ANTON  
FROM THE FINANCIAL ASSISTANCE ACCOUNT OF  
THE TEXAS WATER DEVELOPMENT FUND

(20- )

WHEREAS, at its July 2, 2015 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 15-065 made a commitment to provide financial assistance to the City of Anton (City) for the purpose of financing improvements to the City's wastewater system in the amount of \$3,000,000 for Project No. 21754 (Project);

WHEREAS, the TWDB and City closed on this financing on September 17, 2015 through the TWDB's purchase of \$3,000,000 City of Anton, Texas Combination Tax and Surplus Revenue Certificates of Obligation Series 2015; and

WHEREAS, by letter dated March 17, 2020, the City has requested to use funds available to it to fund the City's water system improvements all as is described in the attached memorandum to this Resolution, to which express reference is made; and

WHEREAS, the TWDB hereby finds that amending TWDB Resolution No.15-065 to correct this error is reasonable, is in the public interest, and will serve a public purpose; and

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

1. that the public interest requires state assistance in the water supply project, in accordance with Texas Water Code § 17.125(1); and
2. that in its opinion the taxes 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(2).

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

1. The Resolution for Project No. 21754 is corrected to include improvements to the City's water system as proposed by the City's letter dated March 17, 2020; and
2. that all other terms and conditions of TWDB Resolution No. 15-065 shall remain in full force and effect.

APPROVED and ordered of record this the 21<sup>st</sup> day of May, 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 TO  
CITY OF ANTON  
FROM THE FINANCIAL ASSISTANCE ACCOUNT OF  
THE TEXAS WATER DEVELOPMENT FUND II  
THROUGH THE PROPOSED PURCHASE OF  
\$3,000,000 CITY OF ANTON, TEXAS COMBINATION TAX AND SURPLUS  
REVENUE CERTIFICATES OF OBLIGATIONS  
PROPOSED SERIES 2015**

(15-065)

WHEREAS, the City of Anton, located in Hockley County, Texas, (City), 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 wastewater system improvements, identified as Project No. 21754; 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 Anton, Texas Combination Tax and Surplus Revenue Certificates of Obligations, Proposed Series 2015 (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 tax and surplus revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, 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, in accordance with Texas Water Code § 17.275(1);
2. the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the treatment works, including interest, in accordance with Texas Water Code § 17.275(2); and
3. that the City has not been designated, pursuant to Texas Water Code § 26.082, as a regional system to serve all or part of the waste disposal needs of a defined area, the development of such systems being the declared policy of the legislature, in accordance with Texas Water Code § 17.275(3); and

WHEREAS, the TWDB hereby finds:

1. that the public interest will benefit from state assistance in the financing of this project, in accordance with Texas Water Code § 17.277(a);
2. 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;
3. 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; and
4. 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 considerations and findings, the TWDB resolves as follows:

A commitment is made by the TWDB to the City of Anton for financial assistance in the amount of \$3,000,000 from the Financial Assistance Account; to be evidenced by the TWDB's proposed purchase of \$3,000,000 City of Anton, Texas Combination Tax and Surplus Revenue Certificates of Obligations, Proposed Series 2015. This commitment will expire on July 31, 2016.

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 363;
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, 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 surplus funds remaining after completion of the project 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) eligible project costs as authorized by the Executive Administrator;
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. 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;
10. 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;

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 loan 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;
15. 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

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;

Pledge Conditions For The Loan

26. 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;

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

Special Conditions:

27. 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 and manufactured goods produced in the United States, as required by Texas Water Code § 17.183.

APPROVED and ordered of record this, the 2<sup>nd</sup> day of July, 2015.

TEXAS WATER DEVELOPMENT BOARD



Bech K. Bruun

Bech K. Bruun, Chairman

DATE SIGNED: 7-2-15

ATTEST:



Kevin Patteson  
Executive Administrator

# CITY OF ANTON

P.O. BOX 127  
ANTON, TEXAS 79313-0127  
PHONE (806) 997-2801

March 17, 2020

Texas Water Development Board  
Attn: Jeff Taylor, Interim Manager, Team 1 – Panhandle/West Texas  
1700 North Congress Avenue, P.O. Box 13231  
Austin, Texas 78711-3231

Re: City of Anton, Water System Improvements, Request for Unused Funds and Priority Items

Dear Mr. Taylor,

The City of Anton is requesting approval from Texas Water Development Board (TWDB) to have access to the unused funds from the CID-01 project. The remaining fund is currently \$391,000 and we would like to use this money to improve our City in a variety of ways. Please see the prioritized improvements list:

- SCADA: Updating and expanding our automated controls system will allow the City to monitor our water losses and faster response time to outages. A new SCADA system will help our City staff to be more proactive in keeping our infrastructure in operation.
- Meters: Replacing approximately 430 residential water meters. The existing meters have exceeded their design life and are experiencing accuracy issues. The installation of new flow meters at the wells and booster pump station, will record and track the flow prior to entering the distribution system. The addition of these meters will allow the City to be more proactive in dealing with water loss issues and potentially water rate concerns. In addition to residential meters
- Water Lines: The City needs to replace approximately 1,550 linear feet of water transmission line along Main Street to Santa Fe Street. This portion of pipeline has continued to cause major water line breaks and interrupted service to residents. The City would like to abandon in place this segment of waterline and install a direct replacement with a new six-inch PVC, C900 pipe.

The improvements mentioned only enhance the City of Anton's ability to meet or exceed TCEQ requirements, provide a safe and reliable water supply to their citizens, help decrease water loss issues and respond to issues quicker. The City hopes to use the remaining funds in a proactive matter to betterment of their water system.

We appreciate your review of our prioritized improvements list. If you have any questions or concerns, please give me a call at 806-997-2801.

Sincerely,

City of Anton

By

  
Mike Sea  
City of Anton City Manager