

# Texas Water Development Board

## PROJECT FUNDING REQUEST

**BOARD DATE:** November 17, 2022

**Team Manager:** Mireya Loewe

### ACTION REQUESTED

Approve by resolution a request from the City of Edinburg (Hidalgo County) \$44,000,000 in financial assistance consisting of \$43,925,000 in financing and \$75,000 in principal forgiveness from the Clean Water State Revolving Fund for planning, acquisition, design, and construction of a wastewater system improvements project.

### STAFF RECOMMENDATION

Approve       No Action

### BACKGROUND

The City of Edinburg (City) is the county seat of Hidalgo County and has a population of approximately 105,000. The City provides drinking water and wastewater services to approximately 30,500 water connections and 25,300 wastewater connections.

### PROJECT NEED AND DESCRIPTION

The City's wastewater treatment plant (WWTP) consists of four treatment trains with a combined permitted flow capacity of 12.3 million gallons per day (MGD). However, the plant can only operate within the permit parameters at a 9.3 MGD capacity. Flows are anticipated to reach 9.3 MGD by 2023. Title 30 of the Texas Administrative Code requires that planning for expansion of capacity start when the average daily flows reaches 75 percent of the permitted capacity for three consecutive months, and commence construction at 90 percent of capacity. Based on population projections, flows are expected to reach 90 percent of 12.3 MGD by 2030.

In addition, the City experiences sanitary sewer overflows along the existing 24-inch gravity line during wet weather events. Part of the sewer collection system is at or beyond its capacity during major wet weather events. Any future flows resulting from development will exceed the already full capacity of the collection line.

The proposed project has three phases. Phase one includes necessary improvements to the WWTP to meet all permit parameters at a flow of 13.5 MGD. Phases two and three will be implemented simultaneously. Phase two includes construction of a new 4.5 MGD plant on the north side of the City's service area. Phase three includes the construction of collection system improvements that will divert as much as 3.03 MGD of existing flow to the new WWTP. This will reduce flows to portions of the collection system with capacity issues and to the existing WWTP.

The project also includes the preparation of an emergency preparedness plan.

<b>COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE MAY 31, 2023</b>
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## **PROJECT SCHEDULE**

<b>Task</b>	<b>Schedule Date</b>
Closing	January 15, 2023
Engineering Feasibility Report Completion (End of Planning Phase)	April 30, 2023
Design Phase Completion	December 15, 2024
Start of Construction	August 15, 2023
Construction Completion	September 30, 2026

## **KEY ISSUES**

The City is eligible to receive \$75,000 in principal forgiveness from the Clean Water State Revolving Fund (CWSRF) for emergency preparedness. The remaining CWSRF funds will be in equivalency financing. The City will contribute \$251,750 in cash to pay for financial advisor, bond counsel, and closing costs. Furthermore, because the maximum funding a project could receive from the CWSRF in fiscal year (FY) 2022 was \$44 million, the City plans to apply for an additional \$7,625,250 in CWSRF financing in FY 2023 to complete the project.

## **LEGAL/SPECIAL CONDITIONS**

- Execution of Principal Forgiveness Agreement
- Return of excess funds

## Attachments

1. Financial Review
2. Project Budget
3. Resolution (22- )
4. Water Conservation Review
5. Location Map

# Financial Review City of Edinburg

Risk Score: 2A

Audit Reviewed: FY 2021

## Key Indicators

Indicator	Result	Benchmark
Population Growth, Average Annual 2010-2020	City: 2.66%	State: 1.49%
Top 10 Customers % of Total Revenue	7.77%	10-15%
Median Household Income as % of State	79%	100%
Days of Cash on Hand (3-year Average)	335 days	30-149 days
Net Fixed Assets/ Annual Depreciation	21 years	12-24 years
Debt Service Coverage Ratio	1.12x	1.0x
Debt-to-Operating Revenues	4.28x	4.00-5.99x
Unemployment Rate (August, 2022)	City: 5.80%	State: 4.20%
Working Capital Ratio	4.45	> 1.0

### Key Risk Score Strengths

- Water system revenues are adequate to maintain coverage of all existing and proposed debt.
- A high working capital ratio provides the City with ample resources to cover short-term liabilities and shows a strong liquidity position.
- The City's days of cash on hand is above the benchmark, indicating the City can pay its operating expenses with the cash it has available.

### Key Risk Score Concerns

- The median household income is below the benchmark, and the unemployment rate is greater than the benchmark. However, the City maintains a low top ten customers as a percentage of total revenue indicating they do not have a concentration risk.

### PLEDGE

Legal Pledge Name	Senior Lien Revenues
Type of Pledge	<input type="checkbox"/> Tax <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Tax & Revenue <input type="checkbox"/> Contract <input type="checkbox"/> Other
Revenue Pledge Level	<input checked="" type="checkbox"/> First <input type="checkbox"/> Second <input type="checkbox"/> Third <input type="checkbox"/> N/A

### RATES AND CHARGES

Average Residential Use	Gallons/Month	Current Rates	Projected Rates (Year 2023)	Current Household Cost Factor	Projected Household Cost Factor
WATER	8,500	\$24.48	\$24.48	1.01	1.01
WASTEWATER	8,500	\$16.47	\$16.47		

**TAXES**

	2021 Tax Year Rate	Max Projected Tax Rate (Year 2023)	Maximum Allowable Rate	3-Year Avg Current Tax Collections	Assessed Valuation
Maintenance & Operation	\$0.5477	\$0.5477	\$1.50	97%	\$5,676,651,028
Interest & Sinking	\$0.1353	\$0.1353			
Total Tax Rate	\$0.6830	\$0.6830			

Cost Savings

Based on a 30-year maturity schedule and current interest rates, the City could save approximately \$10,785,974 over the life of the financing. The City is also saving \$75,000 in principal forgiveness.

<b>Responsible Authority</b>	Edinburg
<b>Program</b>	CWSRF
<b>Commitment Number</b>	L1001566, LF1001567
<b>Project Number</b>	73931
<b>List Year</b>	2022
<b>Type of Pledge</b>	Revenue Pledge
<b>Pledge Level (if applicable)</b>	First Lien
<b>Legal Description</b>	\$43,925,000 City of Edinburg, Texas Utility System Revenue Improvement Bonds, Proposed Series 2023, \$75,000 Principal Forgiveness Agreement
<b>Tax-exempt or Taxable</b>	Tax-Exempt
<b>Refinance</b>	No
<b>Outlay Requirement</b>	Yes
<b>Disbursement Method</b>	Escrow
<b>Outlay Type</b>	Outlay = Escrow Release
<b>Qualifies as Disadvantaged</b>	No
<b>State Revolving Fund Type</b>	Equivalency
<b>Financial Managerial &amp; Technical Complete</b>	N/A
<b>Phases Funded</b>	Planning, Acquisition, Design, and Construction
<b>Pre-Design</b>	Yes
<b>Project Consistent with State Water Plan</b>	N/A
<b>Water Conservation Plan</b>	Adopted
<b>Overall Risk Score</b>	2A

### PROJECT TEAM

<b>Team Manager</b>	<b>Financial Analyst</b>	<b>Engineering Reviewer</b>	<b>Environmental Reviewer</b>	<b>Attorney</b>
Mireya Loewe	Arnoldo Rubio	Sam Kiger	Lauren Dill	Michael Perez

ISSUE BEING EVALUATED  
FOR ILLUSTRATION PURPOSES ONLY  
City of Edinburg

**\$43,925,000 City of Edinburg, Texas Utility System Revenue Improvement Bonds, Proposed Series 2023**

<b>Dated Date:</b>	1/15/2023	<b>Source:</b>	CWSRF-EQUIVALENCY
<b>Delivery Date:</b>	1/15/2023	<b>Rate:</b>	2.25%
<b>First Interest:</b>	3/1/2023	<b>IUP Year:</b>	2022
<b>First Principal:</b>	3/1/2023	<b>Case:</b>	First Lien Revenue
<b>Last Principal:</b>	3/1/2052	<b>Admin.Fee:</b>	\$755,467
<b>Fiscal Year End:</b>	09/30	<b>Admin. Fee Payment Date:</b>	1/15/2023
<b>Required Coverage:</b>	1.0		

FISCAL YEAR	PROJECTED	CURRENT	\$43,925,000 ISSUE				TOTAL DEBT	
	NET SYSTEM REVENUES	DEBT SERVICE	PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	SERVICE	COVERAGE
2023	\$5,968,364	\$4,120,134	-	-	\$579,494	\$579,494	\$4,699,629	1.27
2024	5,968,364	4,123,707	\$260,000	1.01%	921,775	1,181,775	5,305,482	1.12
2025	5,968,364	4,123,063	265,000	1.05%	919,071	1,184,071	5,307,134	1.12
2026	5,968,364	4,139,970	265,000	1.12%	916,196	1,181,196	5,321,166	1.12
2027	5,968,364	4,368,985	265,000	1.15%	913,188	1,178,188	5,547,172	1.08
2028	5,968,364	4,388,355	565,000	1.27%	908,076	1,473,076	5,861,431	1.02
2029	5,968,364	4,125,439	935,000	1.31%	898,364	1,833,364	5,958,803	1.00
2030	5,968,364	3,837,076	1,240,000	1.36%	883,808	2,123,808	5,960,884	1.00
2031	5,968,364	3,833,250	1,260,000	1.40%	866,556	2,126,556	5,959,806	1.00
2032	5,968,364	2,523,943	1,545,000	1.45%	846,535	2,391,535	4,915,478	1.21
2033	5,968,364	2,523,931	1,565,000	1.63%	822,579	2,387,579	4,911,510	1.22
2034	5,968,364	2,521,133	1,595,000	1.77%	795,708	2,390,708	4,911,842	1.22
2035	5,968,364	1,900,397	1,620,000	1.87%	766,446	2,386,446	4,286,843	1.39
2036	5,968,364	1,898,951	1,650,000	1.96%	735,129	2,385,129	4,284,080	1.39
2037	5,968,364	1,605,571	1,675,000	2.03%	701,957	2,376,957	3,982,528	1.50
2038	5,968,364	1,603,654	1,705,000	2.09%	667,139	2,372,139	3,975,793	1.50
2039	5,968,364	1,599,523	1,740,000	2.14%	630,704	2,370,704	3,970,227	1.50
2040	5,968,364	1,603,104	1,770,000	2.19%	592,704	2,362,704	3,965,808	1.50
2041	5,968,364	-	1,800,000	2.25%	553,073	2,353,073	2,353,073	2.54
2042	5,968,364	-	1,835,000	2.29%	511,812	2,346,812	2,346,812	2.54
2043	5,968,364	-	1,870,000	2.32%	469,109	2,339,109	2,339,109	2.55
2044	5,968,364	-	1,910,000	2.35%	424,975	2,334,975	2,334,975	2.56
2045	5,968,364	-	1,945,000	2.36%	379,581	2,324,581	2,324,581	2.57
2046	5,968,364	-	1,980,000	2.39%	332,969	2,312,969	2,312,969	2.58
2047	5,968,364	-	2,020,000	2.41%	284,967	2,304,967	2,304,967	2.59
2048	5,968,364	-	2,060,000	2.42%	235,700	2,295,700	2,295,700	2.60
2049	5,968,364	-	2,100,000	2.44%	185,154	2,285,154	2,285,154	2.61
2050	5,968,364	-	2,145,000	2.45%	133,258	2,278,258	2,278,258	2.62
2051	5,968,364	-	2,165,000	2.46%	80,352	2,245,352	2,245,352	2.66
2052	5,968,364	-	2,175,000	2.47%	26,861	2,201,861	2,201,861	2.71
		\$54,840,187	\$43,925,000		\$17,983,237	\$61,908,237	\$116,748,424	

<b>AVERAGE (MATURITY) LIFE</b>	<b>18.21 YEARS</b>
<b>NET INTEREST RATE</b>	<b>2.249%</b>
<b>COST SAVINGS</b>	<b>\$10,785,974</b>
<b>AVERAGE ANNUAL REQUIREMENT</b>	<b>\$2,063,608</b>

*Disclaimer: This is a working document and is provided as a courtesy. All information contained herein, including the proposed interest rate, is subject to change upon further review of the TWDB in accordance with 31 Texas Administrative Code Chapters 363, 371, 375, or 384, as applicable. The TWDB does not function as a financial advisor to anyone in connection with this financing. The information contained in this document is used by TWDB staff to analyze the application for financing is illustrative only and does not constitute any guaranty of future rates. The TWDB makes no claim regarding the applicability of the information at closing, at which time actual rates will be set.*



**Project Budget Summary**  
**Edinburg**  
**73931 - Wastewater Treatment 20-Year**  
**Improvements**

Budget Items	TWDB Funds	Local and Future Funding Request	Total
<b>Construction</b>			
Construction	\$33,796,500.00	\$6,480,500.00	\$40,277,000.00
<b>Subtotal for Construction</b>	<b>\$33,796,500.00</b>	<b>\$6,480,500.00</b>	<b>\$40,277,000.00</b>
<b>Basic Engineering Services</b>			
Construction Engineering	\$644,000.00	\$0.00	\$644,000.00
Design	\$2,574,000.00	\$0.00	\$2,574,000.00
Planning	\$140,000.00	\$0.00	\$140,000.00
<b>Subtotal for Basic Engineering Services</b>	<b>\$3,358,000.00</b>	<b>\$0.00</b>	<b>\$3,358,000.00</b>
<b>Special Services</b>			
Application	\$52,000.00	\$0.00	\$52,000.00
Environmental	\$126,000.00	\$0.00	\$126,000.00
Geotechnical	\$103,000.00	\$0.00	\$103,000.00
Inspection	\$325,000.00	\$0.00	\$325,000.00
O&M Manual	\$38,000.00	\$0.00	\$38,000.00
Permits	\$57,000.00	\$0.00	\$57,000.00
Surveying	\$114,000.00	\$0.00	\$114,000.00
Testing	\$148,000.00	\$0.00	\$148,000.00
<b>Subtotal for Special Services</b>	<b>\$963,000.00</b>	<b>\$0.00</b>	<b>\$963,000.00</b>
<b>Fiscal Services</b>			
Bond Counsel	\$0.00	\$117,500.00	\$117,500.00
Financial Advisor	\$0.00	\$134,250.00	\$134,250.00
Fiscal/Legal	\$12,000.00	\$10,500.00	\$22,500.00
Issuance Costs	\$10,000.00	\$1,500.00	\$11,500.00
Loan Origination Fee	\$755,467.00	\$140,000.00	\$895,467.00
<b>Subtotal for Fiscal Services</b>	<b>\$777,467.00</b>	<b>\$403,750.00</b>	<b>\$1,181,217.00</b>
<b>Other</b>			
Land/Easements Acquisition	\$115,000.00	\$0.00	\$115,000.00
Other (Emergency Preparedness Plan)	\$75,000.00	\$0.00	\$75,000.00
<b>Subtotal for Other</b>	<b>\$190,000.00</b>	<b>\$0.00</b>	<b>\$190,000.00</b>
<b>Contingency</b>			
Contingency	\$4,915,033.00	\$992,750.00	\$5,907,783.00
<b>Subtotal for Contingency</b>	<b>\$4,915,033.00</b>	<b>\$992,750.00</b>	<b>\$5,907,783.00</b>
<b>Total</b>	<b>\$44,000,000.00</b>	<b>\$7,877,000.00</b>	<b>\$51,877,000.00</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$44,000,000 TO THE CITY OF EDINBURG  
FROM THE CLEAN WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$43,925,000 CITY OF EDINBURG, TEXAS UTILITY SYSTEM REVENUE IMPROVEMENT  
BONDS, PROPOSED SERIES 2023  
AND  
\$75,000 IN PRINCIPAL FORGIVENESS

(22 - )

WHEREAS, the City of Edinburg (City), located in Hidalgo County, has filed an application for financial assistance in the amount of \$44,000,000 from the Clean Water State Revolving Fund (CWSRF) to finance the planning, acquisition, design, and construction of certain wastewater system improvements identified as Project No. 73931; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$43,925,000 City of Edinburg, Texas Utility System Revenue Improvement Bonds, Proposed Series 2023 (together with all authorizing documents, (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of \$75,000, 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 a senior lien on 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;
5. that the City is receiving \$75,000 in principal forgiveness to conduct an Emergency Preparedness Evaluation as described in the 2022 IUP;
6. that the Executive Administrator issued a Categorical Exclusion on July 27, 2022, for phase one of the Project, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator;

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

A commitment is made by the TWDB to the City of Edinburg for financial assistance in the amount of \$44,000,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of \$43,925,000 City of Edinburg, Texas Utility System Revenue Improvement Bonds, Proposed Series 2023 and the execution of a Principal Forgiveness Agreement in the amount of \$75,000. This commitment will expire on May 31, 2023.

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 City agrees to comply with all of the conditions set forth in the TWDB Resolution, which conditions are incorporated herein;
5. the Obligations must provide that the Obligations can be called for early redemption 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;

6. 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;
7. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges, as applicable, to produce system funds 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;
8. 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;
9. 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 in a manner as approved by the Executive Administrator;
10. 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;
11. 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;
12. 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;

13. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges and/or the levy of an interest and sinking tax rate (if applicable) sufficient for the repayment of all system debt service requirements;
14. 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;
15. 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;
16. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
17. the Obligations must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
18. the Obligations must provide that the City must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;
19. the Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
20. the City must immediately notify the TWDB, in writing, of any suit against it by the Attorney General of Texas under Texas Penal Code § 1.10(f) (related to federal laws regulating firearms, firearm accessories, and firearm ammunition);

#### Conditions Related to Tax-Exempt Status:

21. 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;

22. 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;
23. 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 section 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
24. 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 section 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 section 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;
25. 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 section 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 section 148(f) of the Code, section 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;
26. 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;
27. 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 section 149(b) of the Code;
28. 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;
29. the Obligations must contain a provision that the City will refrain from using the proceeds provided by this TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Obligations in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);
30. the transcript must include evidence that the information reporting requirements of section 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 section 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;

31. 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:

32. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
33. 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;
34. 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;
35. 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;
36. the Obligations and Principal Forgiveness Agreement 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;
37. 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;

38. The Obligations and Principal Forgiveness Agreement must contain a covenant that the City shall abide by the prohibition on certain telecommunications and video surveillance services or equipment as required by 2 CFR § 200.216;
39. 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:

40. the City shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant 31 TAC Chapter 375;
41. 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;
42. 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;
43. 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).

Pledge Conditions for the Loan:

44. 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;

45. the Obligations must contain a provision in Section 13 of the Obligations pertaining to the reserve fund providing that notwithstanding the foregoing covenants in this Section 13, the City will comply with all Texas Water Development Board Program Rules and conditions in the TWDB Resolution in which financial assistance was committed to the City with respect to any Bonds Similarly Secured held by the Texas Water Development Board (the TWDB). To the extent any covenant of the City in this Section 13 conflicts with Texas Water Development Board Program Rules or the TWDB Resolution relating to any Bonds Similarly Secured then held by the TWDB, the City shall not exercise such right without first obtaining written consent of the TWDB. Specifically, so long as any Bonds Similarly Secured are held by the TWDB, the City will not satisfy all or any part of the Required Reserve by obtaining for the benefit of the Reserve Fund a Credit Agreement pursuant to Section 13E without first obtaining the written consent of the TWDB. Additionally, so long as any Bonds Similarly Secured are held by the TWDB, the requirements set forth above to fund the Reserve Fund in the amount of the Required Reserve for any Bonds Similarly Secured shall not be suspended upon satisfaction of the conditions set forth in Section 13F and the City will obtain the written consent of the TWDB prior to suspending the requirement to fund the Reserve Fund in the amount of the Required Reserve for any Bonds Similarly Secured.
46. 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;
47. the Obligations must contain a provision providing that for so long as the TWDB remains a Holder of the Bonds, or upon obtaining written consent from the TWDB, Additional Parity Bonds shall not be incurred unless the chief financial officer of the City executes a certificate to the effect that, according to the books and records of the City, the Net Earnings of the system, for the preceding Fiscal Year or for any 12 consecutive months of the 15 months immediate preceding the month the ordinance authorizing the Additional Parity Bonds is adopted, are at least equal to 1.25 times the Average Annual Debt Service for all Bonds Similarly Secured then Outstanding after giving effect to the issuance of the Additional Parity Bonds then proposed. In making a determination of the Net Earnings, the chief financial officer may take into consideration a change in the rates and charges for services and facilities afforded by the System that became effective at least sixty (60) days prior to the last day of the period for which Net Earnings are determined and, for purposes of satisfying the above Net Earnings test, make a pro forma determination of the Net Earnings of the System for the period of time covered by his certification or opinion based on such change in rates and charges being in effect for the entire period covered by the Accountant's certificate or opinion. The term "Net Earnings" as used herein shall mean all income and revenues derived from the operation and ownership of the System (including income and earnings from the investment of moneys in any special fund created for the payment and security of the Bonds Similarly Secured)

less expenses for the maintenance and operation thereof, but not deducting depreciation or other expenditures which, under generally accepted accounting principles, shall be charged to capital expenditures. Revenues and receipts resulting from grants, meter deposits, gifts and similar sources shall not be classed or included as income and revenues from the operation and ownership of the System for purposes of determining "Net Earnings";

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

Special Conditions:

48. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
49. the Principal Forgiveness Agreement must include a provision stating that the City shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator;

APPROVED and ordered of record this 17th day of November 2022.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Brooke T. Paup, Chairwoman

DATE SIGNED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Jeff Walker, Executive Administrator

Review Date:

Project ID:

Water  
Wastewater  
Other

**WATER CONSERVATION REVIEW**

Entity:

Other entity:

**WATER CONSERVATION PLAN DATE:****Approvable****Adopted**

	<b>Total GPCD</b>	<b>Residential GPCD</b>	<b>Water Loss GPCD</b>
<b>Baseline</b>			
<b>5-year Goal</b>			
<b>10-year Goal</b>			

**WATER LOSS AUDIT YEAR:**

Service connections:

Length of main lines (miles):

Water Loss

Retail population:

Connections per mile:

(gal/connection/day):

Water Loss GPCD:

ILI<sup>1</sup>:

1 – Infrastructure Leakage Index only applicable if > 16 connections per mile and > 3,000 service connections

**WATER LOSS THRESHOLDS**

Water Loss Project:

Wholesale Adjusted:

Threshold Type

Apparent Loss Gallons per connection per day	Real Loss Gallons per mile per day	Real Loss Gallons per connection per day	Apparent Loss Threshold Gallons per connection per day	Real Loss Threshold Gallons per mile per day	Real Loss Threshold Gallons per connection per day

Does the applicant meet Water Loss Threshold Requirements?

**Yes****No****NA****ADDITIONAL INFORMATION****STAFF NOTES AND RECOMMENDATIONS**

## DEFINITIONS

**Adopted** refers to a water conservation plan that meets the minimum requirements of the water conservation plan rules and has been formally approved and adopted by the applicant's governing body.

**Apparent losses** are paper losses that occur when the water reaches a customer, but the volume is not accurately measured and/or recorded due to unauthorized consumption, customer meter inaccuracy, or billing system and collection data errors.

**Approvable** refers to a water conservation plan that substantially meets the minimum requirements of the water conservation plan rules but has not yet been adopted by the applicant's governing body.

**Best Management Practices** are voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

**GPCD** means gallons per capita per day.

**Infrastructure Leakage Index (ILI)** is the current annual real loss divided by the unavoidable annual real loss (theoretical minimum real loss) and only applies to utilities with more than 3,000 connections and a connection density of more than 16 connections per mile. The **ILI** is recommended to be less than 3 if water resources are greatly limited and difficult to develop, between 3 and 5 if water resources are adequate to meet long-term needs but water conservation is included in long-term water planning, and between 5 and 8 if water resources are plentiful, reliable, and easily extracted. The **ILI** is recommended as a bench marking tool, but until there is increased data validity of the variables used in the calculation, the **ILI** should be viewed with care.

**NA** means not applicable.

**Real losses** are the physical losses, largely leakage, from the infrastructure: mains, valves, and storage tank overflows. Real loss constitutes background leakage (unreported and difficult to detect), unreported leakage (leaks that do not surface but could be detected), and reported leakage (leaks that often surface and those that are detected by the utility through leak detection).

**Residential GPCD** is the amount of residential water use (single and multi-family customer use) divided by the residential population divided by 365.

**Total GPCD** is the amount of total system input volume divided by the retail population divided by 365.

**Total water loss** is the sum of the apparent and real water losses.

**Water loss** is the difference between the input volume and the authorized consumption within a water system. Water Loss consists of real losses and apparent losses.

**Water Loss GPCD** is the amount of water loss divided by the retail population divided by 365.

**Water Loss per Connection per Day** Calculated as the water loss volume divided by the number service connections divided by 365. This indicator allows for reliable performance tracking in the water utility's efforts to reduce water losses. It replaces water loss percentage.

**Water Loss Thresholds** are levels of real and apparent water loss determined by the size and connection density of a retail public utility, at or above which a utility receiving financial assistance from the Texas Water Development Board must use a portion of that financial assistance to mitigate the utility's system water loss.

**Wholesale Adjusted** represents that some utilities provide large volumes of wholesale water to other providers that travel through the general distribution system, so a calculation has been established to adjust for that volume of wholesale water. These adjustments are only applicable for use in determining whether a utility meets or exceeds water loss thresholds in review of their application for financial assistance. These adjustments should not be used for performance tracking or benchmarking.



# City of Edinburg Hidalgo County

