

Affirmation of Commitment

March 26, 2015

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TWDB FINANCIAL ASSISTANCE RELATED TO THIS PROJECT

Number	Program	Commitment
LF1000139	Drinking Water State Revolving Fund	\$142,000.00

- Attachments:
1. Resolution No. (15-)
 2. Resolution No. (13-10)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO
TWDB RESOLUTION NO. 13-10 AND LOAN COMMITMENT
TO CITY OF NEW DEAL

(15-)

WHEREAS, at its January 31, 2013 meeting, the Texas Water Development Board (TWDB), by Resolution No. 13-10, made a commitment to provide financial assistance in the amount of \$142,000 to City of New Deal (City) from the Drinking Water State Revolving Fund, for the purpose of financing the water system improvements identified as Project No. 62570 (Project); and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) Chapter 371, Subchapter E, funds for the design of the Project may not be released until an environmental review has been completed; and

WHEREAS, the Executive Administrator has informed the TWDB of the issuance of a Finding of No Significant Impact (FNSI) for the Project on February 11, 2015, such finding being subject to the following conditions including the standard emergency discovery conditions for threatened and endangered species and cultural resources in Project contract documents.

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

1. the TWDB concurs in the environmental finding made by the Executive Administrator and affirms the commitments made to the City in TWDB Resolution No. 13-10; and
2. the TWDB approves the release of funds for acquisition and design from the Drinking Water State Revolving Fund loans to the City for proposed improvements to the City's water supply system.

PROVIDED, however, such commitments and TWDB resolution are further conditioned as follows:

1. the City must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources as more fully specified in the final environmental finding of the Executive Administrator;
2. design and construction of the standpipe must adhere to requirements of the local floodplain administrator, ensuring protection of the tank and piping in the event of flood inundation; and
3. all other terms and conditions of TWDB Resolution 13-10 shall remain in full force and effect.

APPROVED and ordered of record this 26th day of March, 2015.

TEXAS WATER DEVELOPMENT BOARD

Carlos Rubinstein, Chairman

DATE SIGNED: _____

ATTEST:

Kevin Patteson
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE TO
CITY OF NEW DEAL
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH A LOAN IN
THE AMOUNT OF \$142,000 WITH 100% LOAN FORGIVENESS

(13-10)

WHEREAS, the City of New Deal, located in Lubbock County, Texas, (the "City"), has filed an application seeking financial assistance in the amount of \$142,000 from the Drinking Water State Revolving Fund ("DWSRF") to finance planning, acquisition and design activities for certain water system improvements identified as TWDB Project No. 62570; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (the "TWDB") in the amount of \$142,000 with 100% to be forgiven, all as is more specifically set forth in the application and in recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds:

1. that no debt obligations are to be assumed by the City for the loan and no taxes or revenues are required to be pledged by the City;
2. that the application and assistance applied for meet the requirements of the Safe Drinking Water Act, 42 U.S.C. §§300f *et seq.* (1974), as amended, as well as state law, in accordance with Texas Water Code §15.607;
3. that the City is receiving \$500,000 or less in financial assistance and is therefore exempt from the requirement to provide a water conservation program;
4. that the current water audit required by Texas Water Code §16.0121, has been completed by the City and filed with the TWDB if the City is a retail public utility providing potable water, in accordance with Texas Water Code §16.053(j);
5. that the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and the needs to be addressed by the project will be addressed in a manner that is consistent with the approved regional and state water plans, as required by Texas Water Code §16.053(j);
6. that the City meets the definition of "Disadvantaged Community" set forth in Texas Water Code §15.602(5), and 31 TAC §371.1(23) of the TWDB's rules and is therefore eligible for subsidy through the DWSRF; and
7. that the Executive Administrator issued a Categorical Exclusion on December 18, 2012, such findings being subject to the standard emergency discovery conditions for

threatened and endangered species and cultural resources in the Project contract documents. The Board concurs with the environmental finding issued by the Executive Administrator.

NOW, THEREFORE, based on these considerations and findings, the Texas Water Development Board resolves as follows:

A commitment is made by the TWDB to the City of New Deal for financial assistance in the amount of \$142,000 from the Drinking Water State Revolving Fund with 100% of this loan to be forgiven. This commitment will expire on July 31, 2013.

Such commitment is conditioned as follows:

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 City's compliance with all applicable requirements contained in the rules and regulations of the TWDB;
3. prior to closing, the City shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
4. the Loan Forgiveness Agreement must include a provision stating that the City shall return any loan forgiveness funds that are determined to be Surplus Funds in a manner determined by the EA;
5. the Loan Forgiveness Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Loan Forgiveness Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
6. loan proceeds are public funds and, as such, the Loan Forgiveness Agreement 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, Chapter 2256, Government Code, (the "PFIA"), and the Public Funds Collateral Act, Chapter 2257, Government Code, (the "PFCA");
7. 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 Loan Forgiveness Agreement 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;

8. prior to closing, and if required for the Project and not previously provided with the application, the City shall submit an executed engineering contract as appropriate for the project scope of work. Prior to closing and if the City requires such services, the City shall submit an executed financial advisor contract and executed legal 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 TWDB's Executive Administrator. Fees to be reimbursed under any consulting contract must be reasonable in relation to the services performed and must be reflected in a contract acceptable to the Executive Administrator;
9. prior to closing, when any portion of loan proceeds are to be held in escrow, the City shall execute an escrow agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
10. the Executive Administrator of the TWDB may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
11. should one or more of the provisions in this resolution be held to be null, void, voidable or, for any reason whatsoever, of no force and effect, such provision(s) shall be construed as severable from the remainder of this resolution and shall not affect the validity of all other provisions of this resolution which shall remain in full force and effect;

State Revolving Fund Conditions

12. the Loan Forgiveness Agreement must include a provision stating that the City shall submit outlay reports with sufficient documentation on costs (e.g., invoices, receipts) on at least a quarterly basis in accordance with the TWDB's outlay report guidelines. The TWDB shall retain the right to request monthly project progress reports as the project proceeds through each project phase;
13. the Loan Forgiveness Agreement 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 recipient, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon;
14. the Loan Forgiveness Agreement 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. The City shall obtain a Data Universal Numbering System ("DUNS") Number and shall register with the System for Awards Management ("SAM"), and maintain current registration at all times during the term of the Loan Forgiveness Agreement;
15. the Loan Forgiveness Agreement shall provide that all loan proceeds will be timely and expeditiously used, as required by federal statute and EPA regulations, and also shall

provide that the City will adhere to an Executive Administrator-approved project schedule, which shall not be altered except for good cause shown and only with the written approval of the Executive Administrator;

Drinking Water SRF Conditions

16. prior to closing, the Texas Commission on Environmental Quality, ("TCEQ"), must make a determination, the form and substance of which is satisfactory to the Executive Administrator, that the City has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of this loan;
17. prior to release of funds for goods or professional services, the City must provide documentation that it has met the procurement requirements under the Disadvantaged Business Enterprises Program.

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

18. the City must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources, as more fully specified in the final environmental finding of the Executive Administrator.

APPROVED and ordered of record this 31st day of January, 2013.

TEXAS WATER DEVELOPMENT BOARD



Billy R. Bradford, Jr., Chairman

ATTEST:




Melanie Callahan
Executive Administrator