

AFFIRMATION OF COMMITMENT

BOARD DATE: September 22, 2015
LOAN RECIPIENT: City of Fort Worth (73699)
ACTION REQUESTED: Affirm by resolution the commitment made in TWDB Resolution No. 14-106 with the addition of conditions listed in the Mitigative Measures section of this memorandum

Project Name: Wastewater System Improvements Project

Funding Elements: Planning Acquisition Design Construction

Benefits: The proposed project will allow the City to temporarily store excess flows during periods of peak flow.

Key Issues: None

Environmental Determination Type: Finding of No Significant Impact

Date Issued: August 21, 2015

- Project Elements Covered:
1. Construction of a 340-million-gallon peak flow storage basin that would be constructed within a portion of the City’s existing sludge-only landfill
 2. Installation of approximately 6,650 linear feet of 96-inch diameter pipeline to convey peak flows from the Village Creek Water Reclamation Facility to the storage basin and back
 3. Rehabilitation of 72-inch, 60-inch and 24-inch pipelines to handle return flows
 4. Odor control measures
 5. Improvements to the HRC and Chemical Sludge Handling Facility
 6. Modifications to existing junction box
 7. Construction of two new siphon boxes
 8. Construction of pipeline to Aeration Basins 1-6
 9. Modifications to existing drain piping to Primary Effluent Pump Station No. 2
 10. Rehabilitation of 72-inch, 60-inch, and 24-inch pipelines to handle return flows
 11. Improvements to metering, electrical, instrumentation, and controls

Our Mission : **Board Members**

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas :

Bech Bruun, Chairman | Kathleen Jackson, Member

Kevin Patteson, Executive Administrator

Affirmation of Commitment

September 22, 2015

Page 2

- Mitigative Measures:
1. Compliance with the terms and conditions of the U.S. Army Corps of Engineers Nationwide Permit 12 for Utility Line Activities (USACE Project No. SWF-2013-00399), including the following special condition: The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration;
 2. Standard emergency condition for the discovery of cultural resources; and,
 3. Standard emergency condition for the discovery of threatened and endangered species.

Environmental Finding includes all project components? Yes No

Additional review required for other project components? Yes No

Previous Findings issued? Yes No

TWDB FINANCIAL ASSISTANCE RELATED TO THIS PROJECT

Number	Program	Commitment
L1000345	Clean Water State Revolving Fund – Non-EQ	\$39,000,000

- Attachment:
1. Resolution No. (15-)
 2. Resolution No. (14-106)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO
TWDB RESOLUTION NO. 14-106 AND LOAN COMMITMENT
TO THE CITY OF FORT WORTH

(15- __)

WHEREAS, at its November 20, 2014 meeting, the Texas Water Development Board (TWDB), by Resolution No. 14-106, made a commitment to provide financial assistance in the amount of \$39,000,000 to City of Fort Worth (City), Texas, from the Clean Water State Revolving Fund, for the purpose of financing the wastewater system improvements identified as Project No. 73699 (Project); and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) § 375.92, and based on preliminary environmental data provided by the City, the TWDB may release funds for construction after receiving a favorable recommendation from its Executive Administrator that there appears to be no significant environmental impacts anticipated from the Project; and

WHEREAS, pursuant to 31 TAC Chapter 375, Subchapter E, funds for the construction 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 a portion of the Project on August 21, 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 commitment made to the City in TWDB Resolution No. 14-106; and
2. the TWDB approves the release of funds for construction for a portion of the project from the Clean Water State Revolving Fund loans to the City for proposed improvements to the City's wastewater treatment 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; and
2. the City must comply with the terms and conditions of the U.S. Army Corps of Engineers Nationwide Permit 12 for Utility Line Activities (USACE Project No. SWF-2013-00399), including the following special condition: The permittee understands and agrees

that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration; and

3. all other terms and conditions in TWDB Resolution No. 14-106 shall remain in full force and effect.

APPROVED and ordered of record this 22nd day of September, 2015.

TEXAS WATER DEVELOPMENT BOARD

Bech K. Bruun, Chairman

DATE SIGNED: _____

ATTEST:

Kevin Patteson
Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$39,000,000 TO THE CITY OF FORT WORTH
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$39,000,000 CITY OF FORT WORTH, TEXAS WATER AND SEWER SYSTEM REVENUE
BONDS,
PROPOSED SERIES 2015**

(14-106)

WHEREAS, the City of Fort Worth, located in Tarrant, Denton, Johnson, Parker, and Wise Counties, Texas (Fort Worth) has filed an application for financial assistance in the amount of \$39,000,000 from the Clean Water State Revolving Fund (CWSRF) to finance the construction of certain wastewater system improvements identified as Project No. 73699; and

WHEREAS, Fort Worth seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$39,000,000 City of Fort Worth, Texas Water and Sewer System Revenue Bonds, 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, Fort Worth has offered a pledge of the net revenues of the water and sewer systems as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by Fort Worth will be sufficient to meet all the Obligations assumed by Fort Worth 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 Fort Worth 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 Fort Worth has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007;

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

a commitment is made by the TWDB to the City of Fort Worth for financial assistance in the amount of \$39,000,000 from the Clean Water State Revolving Fund through the TWDB's

proposed purchase of \$39,000,000 City of Fort Worth, Texas Water and Sewer System Revenue Bonds, Proposed Series 2015. This commitment will expire on November 30, 2015.

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 Fort Worth;
3. this commitment is contingent upon Fort Worth's compliance with all applicable requirements contained in 31 TAC Chapter 375;
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. Fort Worth, 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 Fort Worth'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 Fort Worth's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if Fort Worth is an obligated person with respect to such bonds under SEC Rule 15c2-12;
6. the Obligations must contain a provision requiring Fort Worth 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 Fort Worth 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 Fort Worth 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 Fort Worth 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 Fort Worth, 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, Fort Worth 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 not previously provided with the application, Fort Worth 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;
13. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, Fort Worth 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;
14. the Executive Administrator may require that Fort Worth execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

Conditions Related To Tax-Exempt Status

15. Fort Worth'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 Fort Worth when rendering this opinion;

16. Fort Worth's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of Fort Worth when rendering this opinion;
17. the Obligations must include a provision prohibiting Fort Worth 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);
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) 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;
19. the Obligations must include a provision requiring Fort Worth to 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 Fort Worth 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. Fort Worth may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of Fort Worth, provided that Fort Worth 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. Fort

Worth 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 Fort Worth 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 Fort Worth 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 transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth Fort Worth's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
 - 23. 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;
 - 24. the Obligations must provide that neither Fort Worth 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 Fort Worth by the TWDB;

State Revolving Fund Conditions

- 25. Fort Worth shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
- 26. 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. Fort Worth, 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;

27. the Obligations must include a provision stating that Fort Worth 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. Fort Worth 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;
28. 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 Fort Worth will adhere to the approved project schedule;
29. The Obligations must contain a covenant that Fort Worth 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 the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines;

Clean Water State Revolving Fund Conditions

30. prior to or at closing, Fort Worth shall pay a 1.85% origination fee to the TWDB calculated pursuant 31 TAC Chapter 375;
31. 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;

Pledge Conditions For The Loan

32. 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;
33. if Fort Worth 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; and
34. that the ordinance authorizing the issuance of the obligations contain a provision that no additional revenue bonds may be issued by the City unless net system revenues for the last completed fiscal year or a twelve (12) consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional bonds, shall have been not less than

1.25 times the average annual debt service requirements and 1.10 times the debt service requirements for the year during which such requirements are scheduled to be the greatest, of all prior lien obligations, previously issued subordinate lien obligations, obligations and additional obligations to be outstanding after the issuance of the proposed additional bonds.

APPROVED and ordered of record this 20th day of November, 2014.

TEXAS WATER DEVELOPMENT BOARD



Carlos Rubinstein, Chairman

DATE SIGNED _____

11-20-14

ATTEST:



Kevin Patteson
Executive Administrator