

**TO:** Board Members

**THROUGH:** Kevin Patteson, Executive Administrator  
Les Trobman, General Counsel  
Jeff Walker, Deputy Executive Administrator

**FROM:** Nancy Richards, Manager, Regional Water Planning and Development  
Annette Lown Mass, Assistant General Counsel

**DATE:** October 26, 2015

**SUBJECT:** An Amendment to Previously Adopted TWDB Resolution No. 15-076

**ACTION REQUESTED**

Amend by resolution, the previously adopted Texas Water Development Board (TWDB) Resolution No. 15-076 to reflect a change in pledge of revenues related to the proposed Series 2015E bonds and to clarify language referencing required revenue coverage and additional bonds test.

**BACKGROUND**

On July 23, 2015, the City of Houston (City) received a multi-year commitment from the State Water Implementation Fund for Texas (SWIFT) for several water supply projects generally called the Luce Bayou Project. Based on the information submitted by the City in its Application, the Executive Administrator (EA) recommended and the Board made a commitment to purchase \$296,125,000 City of Houston, Texas Combined Utility System Revenue Bonds from the State Water Implementation Revenue Fund for Texas (SWIRFT) over six years.

**KEY ISSUES**

In review of the City’s proposed Ordinance Supplementing the Master Ordinance 2004-299 (Master Ordinance) providing for the issuance of the Series 2015E bonds to the TWDB, it was realized that the pledge provided in the application materials was incorrect.

TWDB Resolution No. 15-076 states that the City is pledging Combined Utility System Revenue Bonds for repayment of the debt which would be on parity with existing debt held by the TWDB through its Clean and Drinking Water State Revolving Fund programs. However, the City’s

intent for the SWIFT projects was to offer the same pledge it uses to pay the Coastal Water Authority (Authority) debt related to the Luce Bayou Project. Under the City's contract with the Authority for the Luce Bayou Project, the City pays the Authority's debt. The City pledged Net Revenues of the System held in the General Purpose Fund as defined in the Master Ordinance to pay the Authority's debt. Offering the same pledge to the TWDB for the Series 2015E bonds would be consistent with the method of payment the City is using for its other obligations related to the Luce Bayou Project, however, the pledge would be subordinate to all other obligations issued under the Master Ordinance, including outstanding debt held by the TWDB.

The proposed Series 2015E bonds are \$25,915,000 of the total \$296,125,000 committed under TWDB Resolution No. 15-076. The EA recommends amending the resolution to change the pledge of the proposed Series 2015E bonds from Net Revenues of the Combined Utility System to a Subordinate Lien on Net Revenues and synchronizing the language in TWDB Resolution No. 15-076 with the City's Series 2015E Supplemental Bond Ordinance. The EA proposes to bring recommendations for the remaining multi-year commitments prior to the issuance of those bonds in subsequent funding cycles of SWIFT.

The amendment will clarify that the City has pledged a subordinate lien on the net revenues of the system for the Series 2105E bonds.

Additionally, TWDB Resolution No. 15-076 conditions number twenty-one and twenty-four (related to coverage requirement and the issuance of additional bonds respectively) reference "Subordinate Lien Bond" while the reference should be to "Second Lien Bonds." This change is to correct a typographical error and is not related to the change in pledge.

### **RECOMMENDATION**

The Executive Administrator recommends the Board amend TWDB Resolution No. 15-076 to reflect the change in pledge and update the conditions.

#### Attachment(s):

1. TWDB Resolution No. 15-076
2. TWDB Resolution No. 15-XXX

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE TO THE CITY OF HOUSTON  
IN THE FORM OF A MULTI-YEAR COMMITMENT  
FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS  
THROUGH THE PROPOSED PURCHASE OF  
\$296,125,000 CITY OF HOUSTON, TEXAS COMBINED UTILITY SYSTEM REVENUE BONDS  
PROPOSED SERIES 2015 THROUGH PROPOSED SERIES 2020**

(15-076)

WHEREAS, the City of Houston, located in Harris County, Texas, (City) has filed an application for financial assistance in the amount of \$296,125,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT), to finance the planning, design and construction of certain water supply projects identified below; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the form of a multi-year commitment through the TWDB's proposed purchase of \$296,125,000 City of Houston, Texas Combined Utility System Revenue Bonds, Proposed Series 2015 through Proposed Series 2020 (together with all authorizing documents "Obligations"), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City has offered a pledge of net revenues of the combined utility system as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 363.1307; and

WHEREAS the commitment is approved for an interest rate subsidy through December 31, 2019; and

WHEREAS, interest rate subsidies are available to the City at the following levels: 35.5% for loans of a term of 20 years, 27% for loans of a term of 25 years, and 22% for loans of a term of 30 years. The interest rate subsidy applicable to each proposed series will be set through each financing agreement executed between the TWDB and the City, pursuant to this Resolution; and

WHEREAS, the City is requesting a waiver of the requirement that a portion of the financial assistance received from the TWDB be used to mitigate the City's system water loss because the City is currently using TWDB funds to mitigate its water loss; and

WHEREAS, the TWDB hereby finds:

1. that the application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M;
2. that the project is a recommended water management strategy in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a);

3. that a water conservation plan, if required by Texas Water Code § 11.1271, has been submitted and implemented in accordance with 31 TAC § 363.1309(b)(1);
4. that the City satisfactorily completed any request by the Executive Administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Texas Water Code § 16.053(q), in accordance with 31 TAC § 363.1309(b)(2);
5. that the current water audit, if required by Texas Water Code § 16.0121, has been completed by the City and filed with the TWDB in accordance with 31 TAC § 358.6;
6. that based on the conditions, as described above, the City is satisfactorily addressing the City's system water loss which warrants a waiver of the requirement that a portion of the financial assistance received from the TWDB be used to mitigate the City's system water loss in accordance with Texas Water Code § 16.0121 (g); and
7. that the City has acknowledged its legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises, and any applicable state law relating to contracting with historically underutilized businesses, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

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

A commitment is made by the TWDB to the City of Houston for financial assistance in the amount of \$296,125,000 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of City of Houston, Texas Combined Utility System Revenue Bonds, in accordance with the schedule proposed below:

- a) \$25,915,000 City of Houston, Texas Combined Utility System Revenue Bonds, Proposed Series 2015, to expire on December 31, 2015;
- b) \$31,400,000 City of Houston, Texas Combined Utility System Revenue Bonds, Proposed Series 2016, to expire on December 31, 2016;
- c) \$45,230,000 City of Houston, Texas Combined Utility System Revenue Bonds, Proposed Series 2017, to expire on December 31, 2017;
- d) \$161,150,000 City of Houston, Texas Combined Utility System Revenue Bonds, Proposed Series 2018, to expire on December 31, 2018;
- e) \$15,320,000 City of Houston, Texas Combined Utility System Revenue Bonds, Proposed Series 2019, to expire on December 31, 2019; and
- f) \$17,110,000 City of Houston, Texas Combined Utility System Revenue Bonds, Proposed Series 2020, to expire on December 31, 2020.

Further, the commitment described above consists of the following Projects:

- a) Project No. 51023 (North East Water Purification Plant Expansion) in the amount of \$183,635,000; and
- b) Project No. 51021 (Second Source Phase I) in the amount of \$112,490,000.

For the reasons stated above, the TWDB hereby waives the requirements of Texas Water Code § 16.0121(g).

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 continued compliance with all applicable laws, rules, policies and guidance as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement;
4. this commitment is contingent upon the City executing a separate financing agreement, approved as to form and substance by the Executive Administrator, and submitting that executed agreement to the TWDB consistent with the terms and conditions described in the financing agreement;
5. the City shall use a paying agent/registrar in accordance with 31 TAC Section 363.42(c)(2), and shall require the paying agent/registrar to provide a copy, to the TWDB and to the TWDB's designated Trustee, of all receipts documenting debt service payments.

**The Following Conditions Must Be Included in the Obligations:**

6. 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;
7. the Obligations must include a provision wherein the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City's Obligations or obligated persons, will, at a minimum, 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;

8. 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;
9. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) 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 (2) eligible costs for the project as authorized 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, recycling 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. the Obligations must include a provision stating that the City shall report to the TWDB the amounts of project funds, if any, that were used to compensate historically underutilized businesses that worked on the project, in accordance with 31 TAC § 363.1312;
14. the Obligations must contain a provision that the TWDB will purchase the Obligations, acting through the TWDB's designated Trustee, and the Obligations shall be registered in the name of Cede & Co. and closed in book-entry form in accordance with 31 TAC Section 363.42(c)(1);
15. 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 amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);

16. 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;
17. 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;
18. 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;
19. 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;
20. 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;

### **Revenue Pledge**

21. the Obligations shall contain a provision that the City will at all times maintain and collect sufficient rates and charges to produce net system revenues in each fiscal year at least equal to the greater of (A) (i) 120% of the combined debt service requirements scheduled to occur in such fiscal year on all Previous Ordinance Bonds and First Lien Bonds then outstanding; or (ii) 110% of the combined debt service requirements scheduled to occur in such fiscal year on all Previous Ordinance Bonds, First Lien and Subordinate Lien Bonds then outstanding, and (B) Net Revenues in each fiscal year at least equal to 100% of the combined debt service or contractual requirements scheduled to occur in such fiscal year on the Obligations and any other obligations (including contractual covenants) at parity with the Obligations, then outstanding, taking into account unrestricted accumulated Net Revenues from prior years in the General Purpose Fund;
22. 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 Obligations must contain a provision providing that 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;
23. the Obligations shall contain a provision for the accumulation of a reserve fund equal to 50% of the maximum annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty months following the issuance of the Obligations;
24. the Obligations shall contain a provision stating that no First lien or Subordinate lien bonds may be issued by the City unless net system revenues for the last completed fiscal year or any consecutive 12-month period out of the 18-month period immediately preceding the month in which the Supplemental Ordinance adopting such additional First Lien Bonds or additional Subordinate Lien Bonds was issued shall have been not less than the greater of (1) 120% of the combined maximum annual debt service requirements on all First Lien Bonds and any Previous Ordinance Bonds or (ii) 110% of the combined maximum annual debt service requirements on all

First Lien Bonds, Subordinate Lien Bonds and any Previous Ordinance Bonds, considering existing, outstanding bond ordinance language regarding calculation methodologies.

**Conditions to Close or for Release of Funds:**

25. 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;
26. 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;
27. prior to closing, when any portion of financial assistance is 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;
28. prior to release of funds for acquisition, design or construction for specific project elements, the environmental review must be completed and a favorable environmental finding must have been issued;
29. prior to closing, the City's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion;
30. prior to closing, the City's bond counsel must prepare a written opinion that also states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;
31. 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;
32. 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;

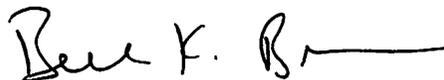
PROVIDED, however, the commitment is subject to the following special conditions:

**Special Conditions:**

- 33. prior to the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must either issue a written finding that the City has the right to use the water that the project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction; and
- 34. prior to the release of construction funds for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that the City has the right to use the water that the project financed by the TWDB will provide.

APPROVED and ordered of record this, the 23<sup>rd</sup> day of July, 2015.

TEXAS WATER DEVELOPMENT BOARD



Bech K. Bruun, Chairman

DATE SIGNED: 7-23-15

ATTEST:



Kevin Patteson  
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AMENDING TWDB RESOLUTION NO. 15-076  
TO PROVIDE FINANCIAL ASSISTANCE TO THE CITY OF HOUSTON  
IN THE AMOUNT OF \$296,125,000

(15-XXX)

WHEREAS, at its July 23, 2015, meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 15-076, made a multi-year commitment to the City of Houston for financial assistance in the amount of \$296,125,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT), through the purchase of \$296,125,000 City of Houston, Texas Combined Utility System Revenue Bonds, all as is more specifically set forth in the TWDB's Resolution No. 15-076 and accompanying documentation, to which documents express reference is made; and

WHEREAS, TWDB Resolution No. 15-076 was based on a pledge of a first lien on the net revenues of the combined utility system;

WHEREAS, the City intended to pledge a subordinate lien on the net revenues of the combined utility system for the \$25,915,000 Series 2015E Bonds;

WHEREAS, TWDB Resolution No. 15-076, condition numbers twenty-one (related to the City's coverage requirements) and twenty-four (related to the City's additional bonds test), inadvertently refer to "Subordinate Lien Bonds" instead of "Second Lien Bonds";

WHEREAS, an amendment to TWDB Resolution No. 15-076 is therefore necessary to correspond with the City's Series 2015E Bond Ordinance;

WHEREAS, the TWDB hereby finds that the amendment to modify the City's pledge from a first lien to a subordinate lien for the Series 2015E Bonds and the amendment to change the reference from "Subordinate Lien Bonds" to "Second Lien Bonds" in condition numbers twenty-one and twenty-four from the TWDB's commitment to the City are reasonable, are in the public interest, and will serve a public purpose; and

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

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

1. The commitment made through TWDB Resolution No. 15-076 to the City of Houston for financial assistance from the State Water Implementation Revenue

Fund for Texas is based on a subordinate lien for the \$25,915,000 Series 2015E Bonds.

2. The commitment made through TWDB Resolution No. 15-076 to the City of Houston for financial assistance in the amount of \$296,125,000 from the State Water Implementation Revenue Fund for Texas will reference "Second Lien Bonds" in place of "Subordinate Lien Bonds" in condition numbers twenty-one and twenty-four.
3. All other terms and conditions of TWDB Resolution No. 15-076 shall remain in full force and effect.

APPROVED and ordered of record this, the 28th day of October, 2015.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Bech Bruun, Chairman

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

ATTEST:

\_\_\_\_\_  
Kevin Patteson  
Executive Administrator