Texas Water Development Board
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Phone (512) 463-7847, Fax (512) 475-2053

AFFIRMATION OF COMMITMENT

BOARD DATE: March 21, 2016

LOAN RECIPIENT: City of Early (73690)

ACTION REQUESTED: Affirm by resolution the commitment made in TWDB Resolution No. 14-75 with the addition of conditions listed in the Mitigative Measures section of this memorandum.

Project Name: Wastewater Treatment Plant Project

Funding Elements: ☒ Planning ☒ Acquisition ☒ Design ☒ Construction

Benefits: The proposed project will produce a new wastewater treatment system.

Environmental Determination Type: Finding of No Significant Impact

Date Issued: February 19, 2016

Project Elements Covered:

1. Facultative lagoon
2. Stabilization pond
3. Irrigation holding pond
4. Multiple center-pivot irrigation systems
5. New lift station
6. Upgrade existing lift station
7. 5,000 feet of 14-inch force main
8. 4,000 feet of 8-inch force main

Mitigative Measures:

1. The project must adhere to the terms and conditions of Nationwide Permit 12 for Utility Line Activities as issued by the United States Army Corps of Engineers, with expiration on date of March 18, 2017.
2. Because the project is expected to result in conversion of 6.14 acres of Important Farmland Soils as defined in the Farmland Protection Policy Act, the City must utilize approved erosion-control methods during construction and must provide a completed copy of Form AD-1006 to the Natural Resource Conservation Service once a final project design is selected.

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

Board Members
Bech Bruun, Chairman | Kathleen Jackson, Member | Peter Lake, Member

Kevin Patteson, Executive Administrator

3. The project must comply with Executive Orders 11988 regarding floodplain management and 11990 regarding protection of wetlands.
4. If enclosed structures would be built within the Zone A Flood Hazard Area of Delaware Creek, the City must obtain a Development Permit prior to construction.
5. To ensure compliance with the Migratory Bird Treaty Act (MBTA), the City must avoid vegetation clearing activities during the general bird nesting season, March through August, to the extent feasible. If clearing vegetation during the migratory bird nesting season is unavoidable, the area proposed for disturbance must be surveyed to ensure that no nests with eggs or young will be disturbed by operations. Any vegetation (trees, shrubs, and grasses) where occupied nests are located should not be disturbed until the eggs have hatched and the young have fledged.
6. To ensure protection of the Texas Horned Lizard, the City must implement the following avoidance measures:
   a) All construction personnel will be instructed to avoid killing, injuring, or making any type of harmful disturbance of the Texas Horned Lizard during construction.
   b) Pipeline trenches that remain open overnight, and/or for more than two daylight hours will be inspected for the presence of the Texas Horned Lizard prior to backfilling.
   c) Texas Horned Lizards discovered in any open trenches will be reported to the project engineers (Jacob & Martin, LLC) and TPWD. TPWD will be consulted to develop plans to safely relocate the Texas Horned Lizards.
7. Project areas where pipelines are installed will be returned to pre-construction conditions as much as possible after pipeline installation. Should funding for reseeding native milkweed and/or nectar-producing plants become available, reseeding will be investigated for implementation.
8. Standard emergency condition for the discovery of cultural resources.
9. Standard emergency condition for the discovery of threatened or 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
L1000324	Clean Water State Revolving Fund – EQ	$8,365,000

Attachment: 1. Resolution No. (16-)
2. Resolution No. (14-75)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO TWDB RESOLUTION NO. 14-75 AND LOAN COMMITMENT TO THE CITY OF EARLY

(16-)

WHEREAS, at its September 4, 2014 meeting, the Texas Water Development Board (TWDB), by Resolution No. 14-75, made a commitment to provide financial assistance in the amount of $8,365,000 to the City of Early (City), Texas, from the Clean Water State Revolving Fund, for the purpose of financing the wastewater system improvements identified as Project No. 73690 (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 through the pre-design commitment option after receiving a favorable recommendation from its Executive Administrator that there appear to be no significant environmental impacts anticipated from the Project; and

WHEREAS, pursuant to 31 TAC Chapter 375, Subchapter E, funds for the design and 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 the Project on February 19, 2016, 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. 14-75; and

2. the TWDB approves the release of funds for design, acquisition and construction from the Clean Water State Revolving Fund loan to the City for proposed improvements to the City's wastewater treatment system, after all other appropriate conditions of TWDB Resolution No. 14-75 have been met.

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 Project must adhere to the terms and conditions of Nationwide Permit 12 for Utility Line Activities as issued by the United States Army Corps of Engineers, with an expiration date of March 18, 2017; and

3. because the Project is expected to result in conversion of 6.14 acres of Important Farmland Soils as defined in the Farmland Protection Policy Act, the City must utilize approved erosion-control methods during construction and must provide a completed copy of Form AD-1006 to the Natural Resource Conservation Service once a final project design is selected; and

4. the Project must comply with Executive Orders 11988 regarding floodplain management and 11990 regarding protection of wetlands; and

5. if enclosed structures would be built within the Zone A Flood Hazard Area of Delaware Creek, the City must obtain a Development Permit prior to construction; and

6. to ensure compliance with the Migratory Bird Treaty Act (MBTA), the City must avoid vegetation clearing activities during the general bird nesting season, March through August, to the extent feasible. If clearing vegetation during the migratory bird nesting season is unavoidable, the area proposed for disturbance must be surveyed to ensure that no nests with eggs or young will be disturbed by operations. Any vegetation (trees, shrubs, and grasses) where occupied nests are located should not be disturbed until the eggs have hatched and the young have fledged; and

7. to ensure protection of the Texas Horned Lizard, the City must implement the following avoidance measures:

   (a) All construction personnel will be instructed to avoid killing, injuring, or making any type of harmful disturbance of the Texas Horned Lizard during construction.

   (b) Pipeline trenches that remain open overnight, and/or for more than two daylight hours will be inspected for the presence of the Texas Horned Lizard prior to backfilling.

   (c) Texas Horned Lizards discovered in any open trenches will be reported to the project engineers (Jacob & Martin, LLC) and TPWD. TPWD will be consulted to develop plans to safely relocate the Texas Horned Lizards; and

8. Project areas where pipelines are installed will be returned to pre-construction conditions as much as possible after pipeline installation. Should funding for reseeding native milkweed and/or nectar-producing plants become available, reseeding will be investigated for implementation; and

9. all other terms and conditions in TWDB Resolution No. 14-75 shall remain in full force and effect.

APPROVED and ordered of record this 21st day of March, 2016.

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 $8,365,000 TO THE CITY OF EARLY FROM THE CLEAN WATER STATE REVOLVING FUND THROUGH THE PROPOSED PURCHASE OF $8,365,000 CITY OF EARLY, TEXAS COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION, PROPOSED SERIES 2014

(14-75)

WHEREAS, the City of Early, located in Brown County, Texas (City) has filed an application for financial assistance in the amount of $8,365,000 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. 73690; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of $8,365,000 Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2014 (together with all authorizing documents, (Obligations)), all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the City has offered a pledge of ad valorem taxes and surplus net revenues of the City's combined waterworks and sewer system as sufficient security for the repayment of the Obligations; 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;

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

1. A commitment is made by the TWDB to the City of Early for financial assistance in the amount of $8,365,000 from the Clean Water State Revolving Fund through the TWDB's

proposed purchase of $8,365,000 Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2014. This commitment will expire on September 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 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 Obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;

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

6. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce system revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;

7. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or

principal on the Obligations owned by the TWDB; or (3) eligible project costs as authorized by the Executive Administrator;

8. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;

9. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;

10. loan proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

11. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;

12. prior to closing, and if 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;

13. 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;

14. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

<u>Conditions Related To Tax-Exempt Status</u>

15. 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;

16. 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;

17. the Obligations must include a provision prohibiting the City from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);

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 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;

20. 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;

21. 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;

22. 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;

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 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;

<u>State Revolving Fund Conditions</u>

25. the City 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. 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;

27. 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;

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 the City will adhere to the approved project schedule;

29. The Obligations must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products 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, the City 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;

32. 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;

Pledge Conditions For The Loan

33. the Obligations must contain a provision that provides as follows:

a. if system revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied and collected may be reduced to the extent and by the amount of revenues then on deposit in the Interest and Sinking Fund; or

b. if surplus revenues are based upon budgeted amounts:

i. the Obligations must include a requirement that the City transfer and deposit in the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Obligations until the amount on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Obligations; further, that the ordinance authorizing the issuance of the Obligations must include a requirement that the City shall not transfer any funds from the City's pledged system revenues to any fund other than the Interest and Sinking Fund until such time as an amount equal to the annual debt service on the Obligations for the then-current fiscal year has been deposited in the Interest and Sinking Fund;

ii. the Obligations must include a requirement that for each year the Obligations are outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient surplus pledged revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Obligations; and

iii. the Obligations must include a requirement that the City shall at all times maintain and collect sufficient rates and charges in conjunction with any other legally available funds so that after payment of the costs of operating and maintaining the system, it produces revenues in an amount not less than **1.10** times debt service requirements of all outstanding Obligations of the City and other obligations of the City which are secured in whole or in part by the pledged revenues, for which the City is budgeting the repayment of such Obligations, or the City shall provide documentation which evidences the levy and collection of an ad valorem tax rate dedicated to the Interest and Sinking Fund, in conjunction with any other legally available funds, sufficient for the repayment of debt service requirements.

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

Special Conditions:

34. the loan is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC Chapter 375; and

35. prior to the release of funds, the City shall provide 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 estimated useful life of the project, as determined by the schedule.

APPROVED and ordered of record this 4th day of September, 2014.

TEXAS WATER DEVELOPMENT BOARD

Carlos Rubinstein, Chairman

DATE SIGNED: 9/4/14

ATTEST:

Kevin Patteson
Executive Administrator