

## AFFIRMATION OF COMMITMENT

**BOARD DATE:** May 5, 2016  
**LOAN RECIPIENT:** City of Los Fresnos (CWSRF Project No. 73687)  
**ACTION REQUESTED:** Affirm by resolution the commitment made in TWDB Resolution No. 14-76 with the addition of conditions listed in the Mitigative Measures section of this memorandum

**Project Name:** Collection System Rehabilitation and Extension

**Funding Elements:**  Planning  Acquisition  Design  Construction

**Benefits:** The proposed project will address issues at existing lift stations, reduce infiltration and inflow, and provide first-time sanitary sewer service to an unserved portion of the City.

**Key Issues:** None.

**Environmental Determination Type:** Finding of No Significant Impact

**Date Issued:** March 15, 2016

**Project Elements Covered:**

1. Rehabilitate existing lift stations;
2. Replace approximately 7,763 linear feet of deteriorated clay pipes throughout the City using the pipe bursting method;
3. Install approximately 12,992 linear feet of 10-inch polyvinyl chloride (PVC) Force Main and approximately 4,500 linear feet of 8-inch PVC Standard Dimension Ratio (SDR) 26 Gravity Line in an un-served area east of Farm-to-Market 1847; and
4. Install approximately 1,866 linear feet of 8-inch PVC SDR 26 Gravity Line in an un-served area west of Farm-to-Market 1847.

**Mitigative Measures:** 1. As per agreement with the Texas Parks and Wildlife Department (TPWD Project No. 35737) and in order to ensure compliance with the Migratory Bird Treaty Act, vegetation clearing and construction activities will be scheduled outside of the March 15 – September 15

**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, Board Member | Peter Lake, Board Member

Kevin Patteson, Executive Administrator

migratory bird nesting season. If vegetation clearing must be scheduled to occur during the nesting season, a bird nest survey will be performed by a qualified biologist. If active nests are observed during surveys, contractors should leave a vegetation buffer of 150-feet until young have fledged or the nest is abandoned;

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
L1000293	CWSRF – EQ	\$820,000
LF1000294	CWSRF – EQ	\$344,980

Attachment: Resolution No. (16- )  
Resolution No. (14-76)

JD:dt

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO  
TWDB RESOLUTION NO. 14-76 AND LOAN COMMITMENT  
TO THE CITY OF LOS FRESNOS

(16- )

WHEREAS, at its September 4, 2014 meeting, the Texas Water Development Board (TWDB), by Resolution No. 14-76, made a commitment to provide financial assistance in the amount of \$1,164,980 to the City of Los Fresnos (City), Texas, from the Clean Water State Revolving Fund, for the purpose of financing the wastewater system improvements identified as Project No. 73687 (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 design 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 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 March 15, 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. 14-76; and
2. the TWDB approves the release of funds for design 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. 14-76 have been met.

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

1. as per agreement with the Texas Parks and Wildlife Department (TPWD Project No. 35737) and in order to ensure compliance with the Migratory Bird Treaty Act, vegetation clearing and construction activities will be scheduled outside of the March 15 – September 15 migratory bird nesting season. If vegetation clearing must be scheduled to occur during the nesting season, a bird nest survey will be performed by a qualified biologist. If active nests are observed during surveys, contractors should leave a vegetation buffer of 150-feet until young have fledged or the nest is abandoned;

2. 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
3. all other terms and conditions in TWDB Resolution No. 14-76 shall remain in full force and effect.

APPROVED and ordered of record this 5th day of May, 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  
\$1,164,980 TO CITY OF LOS FRESNOS  
FROM THE CLEAN WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$820,000 CITY OF LOS FRESNOS, TEXAS COMBINATION TAX AND SUBORDINATE  
LIEN REVENUE CERTIFICATES OF OBLIGATION,  
PROPOSED SERIES 2014  
AND  
\$344,980 IN LOAN FORGIVENESS

(14-76)

WHEREAS, the City of Los Fresnos, located in Cameron County, Texas (City) has filed an application for financial assistance in the amount of \$1,164,980 from the Clean Water State Revolving Fund (CWSRF) to finance the planning and design of certain wastewater system improvements identified as Project No. 73687; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$820,000 City of Los Fresnos, Texas Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Series 2014 (together with all authorizing documents, (Obligations)), and the execution of a Loan Forgiveness Agreement in an amount of \$344,980, 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 a subordinate lien on net system revenues 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;
5. that the City meets the definition of "Disadvantaged Community" in 31 TAC § 375.1(21)

and is therefore eligible for low-interest loans through the CWSRF; and

6. that the Executive Administrator issued a Categorical Exclusion on November 7, 2013 for a portion of the Project, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator.

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

A commitment is made by the TWDB to the City of Los Fresnos for financial assistance in the amount of \$1,164,980 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of \$820,000 City of Los Fresnos, Texas Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Series 2014 and the execution of a Loan Forgiveness Agreement in the amount of \$344,980. This commitment will expire on March 31, 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. if the term of the loan is more than 10 years, 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;

#### Conditions Related To Tax-Exempt Status

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;

#### State Revolving Fund Conditions

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;

#### Clean Water State Revolving Fund Conditions

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

31. 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;

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

Special Conditions:

32. prior to closing, the City shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
33. 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 Executive Administrator.

APPROVED and ordered of record this 4<sup>th</sup> day of September, 2014.

TEXAS WATER DEVELOPMENT BOARD



\_\_\_\_\_  
Carlos Rubinstein, Chairman

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

9-4-14

ATTEST:



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Kevin Patteson  
Executive Administrator