

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Amanda Lavin, Assistant Executive Administrator
Les Trobman, General Counsel
Jessica Zuba, Deputy Executive Administrator

FROM: T. Clay Schultz, Director, Regional Water Planning & Development
Caaren Skrobarczyk, Team Manager, Brazos Region
Joe Reynolds, Staff Attorney

DATE: September 22, 2016

SUBJECT: City of Strawn Project No. 62677 Water System Improvements Request
for Reinstatement and Extension of Commitment

ACTION REQUESTED

Consider approving by resolution, a request from the City of Strawn (Eastland, Erath and Palo Pinto Counties) to reinstate and amend TWDB Resolution 16-004, by extending the commitment period to finance water system improvements through the Drinking Water State Revolving Fund.

BACKGROUND

The project as approved by the Texas Water Development Board (TWDB) involves drilling new water wells in the Trinity Aquifer in Eastland County and installing transmission lines as a part of a regional supply solution. The project was approved for loan and loan forgiveness funding with the Drinking Water State Revolving Fund program for urgent needs and very small systems by TWDB on January 19, 2016. Because the funding includes loan forgiveness it had a six-month commitment period. The loan forgiveness was closed on May 6, 2016.

KEY ISSUES

The City of Strawn (City) is working with United States Department of Agriculture - Rural Development (USDA) to potentially secure grant funding to replace some of the loan funds made available by TWDB for the project. If additional grant funding is approved for the project, the City will reduce or cancel this extended loan. The project has received environmental clearance from USDA, but the City anticipates another four to six months before it will potentially be offered grant funding.

The City has kept in close communication with the Executive Administrator throughout the process.

RECOMMENDATION

The Executive Administrator recommends reinstating and amending TWDB Resolution 16-004 to extend the commitment to January 31, 2017, to allow the City sufficient time to close.

Attachment(s):

1. Resolution (16-)
2. Resolution (16-004)
3. Extension Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 16-004
TO EXTEND THE LOAN COMMITMENT PERIOD FOR THE \$1,645,000
CITY OF STRAWN, TEXAS TAX AND WATERWORKS AND SEWER SYSTEM
SURPLUS REVENUE CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2016 TO BE ISSUED BY
CITY OF STRAWN

(16-)

WHEREAS, at its January 19, 2016 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 16-004, made a commitment to provide financial assistance in the amount of \$2,345,000 to the City of Strawn (City) from the Drinking Water State Revolving Fund, to finance improvements to its water system, to be secured by the TWDB's purchase of \$1,645,000 Texas Tax and Waterworks and Sewer System Surplus Revenue Certificates of Obligation, Proposed Series 2016, with \$700,000 to be forgiven, for Project No. 62677; and

WHEREAS, the City closed on the \$700,000 in loan forgiveness on May 15, 2016; and

WHEREAS, pursuant to TWDB Resolution No. 16-004 and because the funding included loan forgiveness, the commitment period expired July 31, 2016; and

WHEREAS, the City has submitted a request to reinstate the TWDB's commitment and extend the commitment for an additional 6 months to secure additional grant funding through U.S. Department of Agriculture—Rural Development so that the project is more affordable for the City's customers, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that reinstating the TWDB's commitment in TWDB Resolution No. 16-004 and granting an extension of 6 months is in the public interest.

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

1. the commitment of the TWDB to provide financial assistance in the amount of \$1,645,000, as authorized in TWDB Resolution No. 16-004, is reinstated and amended to extend the commitment to January 31, 2017; and
2. all other terms and conditions of TWDB Resolution No. 16-004 shall remain in full force and effect.

APPROVED and ordered of record this the 22nd day of September, 2016.

TEXAS WATER DEVELOPMENT BOARD

Bech K. Bruun, Chairman

DATESIGNED: _____

ATTEST:

Jeff Walker
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$2,345,000 TO CITY OF STRAWN
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$1,645,000 CITY OF STRAWN, TEXAS TAX AND WATERWORKS AND SEWER
SYSTEM SURPLUS REVENUE CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2016
AND
\$700,000 IN LOAN FORGIVENESS

(16-004)

WHEREAS, the City of Strawn (City) has filed an application for financial assistance in the amount of \$2,345,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, acquisition, design and construction of certain water system improvements identified as Project No. 62677; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$1,645,000 City of Strawn, Texas Tax and Waterworks and Sewer System Surplus Revenue Certificates of Obligation, Proposed Series 2016 (together with all authorizing documents (Obligations)), and the execution of a Loan Forgiveness Agreement in an amount of \$700,000, 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 revenues of the City's water and sewer system as sufficient security for the repayment of the Obligations; and

WHEREAS, 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 371; and

WHEREAS, the City is requesting a waiver of the requirement that the project be addressed in a manner that is consistent with the state water plan because surface water sources are unreliable, and the project has received the support of Regional Water Planning Region G, finding that the project will not be a material deviation from the Regional Water Plan; 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 Safe Drinking Water Act, 42 U.S.C. §§ 300f *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 a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.053(j);
5. that the City meets the definition of a small water system in accordance with 31 TAC § 371.1(60) and the current Intended Use Plan, and is therefore eligible for subsidy through the DWSRF;
6. that the conditions, as described above, warrant a waiver of the requirements that the TWDB determine that the needs to be addressed by the project will be addressed in a manner that is consistent with the State Water Plan, and with the approved Regional Water Plan that includes the area that will benefit from the proposed project; and
7. that the project is an Emergency Relief Project under 31 TAC § 371.40(7) and § 371.51.

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

1. for the reasons stated above, the TWDB hereby waives the requirements of Texas Water Code § 16.053(j), pursuant to Texas Water Code § 16.053(k); and
2. a commitment is made by the TWDB to the City of Strawn for financial assistance in the amount of \$2,345,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$1,645,000 City of Strawn, Texas Tax and Waterworks and Sewer System Surplus Revenue Certificates of Obligation, Proposed Series 2016 and the execution of a Loan Forgiveness Agreement in the amount of \$700,000. This commitment will expire on July 31, 2016.

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 371;

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;
15. the TWDB retains the option to purchase the Obligations in separate lots and/or on an installment basis, with delivery of the purchase price for each installment to be paid against delivery of the relevant installment of Obligations as approved by the Executive Administrator;

Conditions Related To Tax-Exempt Status

16. 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;
17. 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;
18. 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);
19. 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;

20. 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;
21. 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;
22. 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;
23. 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;
24. 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;
25. 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

26. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
27. 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;
28. 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;

29. 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;
30. The Obligations and Loan Forgiveness Agreement 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;

Drinking Water State Revolving Fund Conditions

31. prior to or at closing, the City shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;
32. prior to closing, the Texas Commission on Environmental Quality, must make a determination, the form and substance of which is satisfactory to the Executive Administrator, that the City has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of these Obligations;
33. 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

34. 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:

- 35. 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;
- 36. 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;

37. prior to closing, the City shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
38. 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; and
39. prior to the release of acquisition, design, and construction funds, the City shall complete the consultations required by the Endangered Species Act and the National Historic Preservation Act.

APPROVED and ordered of record this 19th day of January, 2016.

TEXAS WATER DEVELOPMENT BOARD



Bech K. Bruun

Bech K. Bruun, Chairman

DATE SIGNED: 1-19-15

ATTEST:

Kevin Patteson

Kevin Patteson
Executive Administrator



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July 19, 2016

Caaren Skrobarczyk
Texas Water Development Board
Team Manager – Brazos Region
1700 North Congress
Austin, Texas 78711

Re: City of Strawn –TWDB Project No. 62677
L1000499 - \$1,645,000 Drinking Water SRF Loan

Dear Ms. Skrobarczyk:

The City of Strawn's Water Development Board funding commitment was approved on January 19, 2016. The loan commitment portion of that funding is due to expire on July 31, 2016. The City is requesting an extension to the expiration date of six months.

The City has been working on other potential grant funding through USDA Rural Development that would make the project more affordable for their customers. This potential grant funding would potentially offset some of the loan portion of the TWDB funding. As you know, funding applications can often take several months to complete. Rural Development requires environmental clearance before issuing funding offers and that environmental clearance has only recently been completed. While much progress has been made, there is still some work left to be completed. The process will most likely take four to six more months before it is known what the overall funding options will be. Therefore, we respectfully ask that the TWDB allow us time to investigate this additional funding option before closing on the loan.

We very much appreciate all of the cooperation and assistance TWDB staff has given us in making this project a success. Please don't hesitate to call me if you have any questions regarding this request.

Sincerely,

JACOB & MARTIN, LTD.

Derek Turner, P.E.