

Texas Water Development Board

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TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Todd Chenoweth, General Counsel
Jessica Zuba, Deputy Executive Administrator
Clay Schultz, Director, Regional Water Project Development

FROM: Nancy Richards, Manager, Regional Water Project Development
Annette Mass, Assistant General Counsel

DATE: June 11, 2018

SUBJECT: Fort Bend County Fresh Water Supply District No. 1 Amendment of Project Scope

ACTION REQUESTED

Approve by resolution a request from the Fort Bend County Fresh Water Supply District No. 1 (District) to amend Texas Water Development Board (TWDB) Resolution No. 15-067 to expand the project.

BACKGROUND

The TWDB has approved three requests from Fort Bend County Fresh Water Supply District No. 1, to finance water system improvements identified as Project 21524. On May 19, 2004, the TWDB, through Resolution No. 04-36, approved a \$5,035,000 commitment through the Texas Water Development Fund (DFUND). On June 23, 2008, the TWDB, through Resolution No. 08-73, approved an additional \$8,500,000 commitment through the DFUND program. On July 23, 2015, the TWDB, through Resolution No. 15-067, (Attachment B) approved an additional \$8,000,000 through the DFUND program. The original projects consisted of a new Water Treatment Plant No. 1 and water lines to several subdivisions throughout the District.

KEY ISSUES

The District has completed the work associated with the three commitments and has approximately \$2,371,822 in remaining funds. In December 2017, the District requested to use the funds to complete a second water treatment plant to provide redundancy to the system. The original scope of work only included Water Treatment Plant No. 1, which was constructed and completed in July 2015.

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

Peter Lake, Chairman | Kathleen Jackson, Board Member | Brooke T. Paup, Board Member
Jeff Walker, Executive Administrator

The District has requested to use funds for planning, design, and construction of an additional water treatment plant to provide redundancy to its system. The proposed project was not originally included in the project scope, and the District has requested that the TWDB modify the original TWDB Resolution No. 15-067 to include the new plant. The District anticipates submitting a new application for an additional \$1,500,000 in September 2018 for the remaining construction funds for the new water treatment plant, which has a total estimated project cost of \$3,800,000.

RECOMMENDATION

The Executive Administrator recommends amending TWDB Resolution 15-067 to allow the remaining funds to be used for the planning, design, and construction of an additional water treatment plant. This recommendation has been reviewed by legal counsel and is in compliance with applicable statutes and Board rules.

Attachments:

Attachment A; proposed TWDB Resolution (18-)

Attachment B; TWDB Resolution (15-067)

Attachment C; Letter from District

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 15-067
TO EXPAND THE SCOPE OF THE LOAN COMMITMENT FOR THE \$8,000,000
FORT BEND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 UNLIMITED TAX BONDS,
SERIES 2015 ISSUED BY THE
FORT BEND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1

(18 -)

WHEREAS, at its May 19, 2004 meeting, the Texas Water Development Board (TWDB), through Resolution No. 04-36, made a commitment to provide financial assistance in the amount of \$5,035,000 through the Texas Water Development Fund (DFUND) to the Fort Bend County Fresh Water Supply District No. 1 (District). On June 23, 2008, the TWDB, through Resolution No. 08-73, made an additional commitment to provide financial assistance in the amount of \$8,500,000 through the DFUND program. On July 23, 2015, the TWDB, through Resolution No. 15-067, made an additional commitment of \$8,000,000 through the DFUND program, all for Project No. 21524; and

WHEREAS, Project No. 21524 was for the construction and then expansion of a water treatment plant;

WHEREAS, the District completed the construction and expansion of the water treatment plant in 2015 and has \$2,371,822 in remaining funds;

WHEREAS, the District has submitted a request to expand the scope of the Project to include construction of an additional water treatment plant, 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 expanding the scope of the project to include the construction of a new water treatment plant, 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 for the construction and expansion of a water treatment plant is amended to include the construction of an additional water treatment plant; and
2. all other terms and conditions of TWDB Resolution No. 15-067 shall remain in full force and effect.

APPROVED and ordered of record this the 11th day of June, 2018.

TEXAS WATER DEVELOPMENT BOARD

Peter Lake, Chairman

DATE SIGNED: _____

ATTEST:

Jeff Walker
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE TO
FORT BEND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1
FROM THE FINANCIAL ASSISTANCE ACCOUNT OF
THE TEXAS WATER DEVELOPMENT FUND II
THROUGH THE PROPOSED PURCHASE OF
\$8,000,000 FORT BEND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1
UNLIMITED TAX BONDS, PROPOSED SERIES 2015

(15-067)

WHEREAS, the Fort Bend County Fresh Water Supply District No. 1, located in Fort Bend County, Texas, (the "District"), has filed an application for financial assistance in the amount of \$8,000,000 from the Financial Assistance Account of the Texas Water Development Fund II, established by Texas Water Code § 17.959 to finance water system improvements, identified as Project No. 21524; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$8,000,000 through the TWDB's purchase of \$8,000,000 Fort Bend County Fresh Water Supply District No. 1 Unlimited Tax Bonds, Proposed Series 2015 (together with all authorizing documents "Obligations"), all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the District has offered a pledge of unlimited ad valorem tax as sufficient security for the repayment of the Obligations; and

WHEREAS, in accordance with Texas Water Code § 17.124, the TWDB has considered all matters required by law and in particular the following:

1. the needs of the area to be served by the water supply project, the benefit of the water supply project to the area, the relationship of the water supply project to the overall, statewide water needs, and the relationship of the water supply project to the approved regional and state water plans; and
2. the availability of revenue to the District, from all sources, for the ultimate repayment of the cost of the water supply project, including interest.

WHEREAS, the TWDB hereby finds:

1. that the public interest requires state assistance in the water supply project, in accordance with Texas Water Code § 17.125(a)(1);
2. that the tax and/or revenue pledged by the District will be sufficient to meet all the Obligations assumed by the District during the succeeding period of not more than 50 years, in accordance with Texas Water Code § 17.125(a)(2);

3. that the District 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 application and financial assistance requested meet the requirements of Chapter 17, Subchapters D, E, and L, Water Code, and the TWDB's rules set forth in 31 TAC Chapter 363, Subchapter A;
5. that the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and the needs to be addressed by the project will be addressed in a manner that is consistent with the approved regional and state water plans, as required by Texas Water Code § 16.053(j); and
6. that the current water audit required by Texas Water Code § 16.0121 has been completed by the District and filed with the TWDB if the District is a retail public utility providing potable water, in accordance with Texas Water Code § 16.053(j).

NOW THEREFORE, based on these considerations and findings, the Texas Water Development Board resolves as follows:

A commitment is made by the TWDB to Fort Bend County Fresh Water District No. 1 for financial assistance in the amount of \$8,000,000 from the Financial Assistance Account, to be evidenced by the Board's purchase of \$8,000,000 Fort Bend County Fresh Water Supply District No. 1 Unlimited Tax Bonds, Proposed Series 2015. 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 District;
3. this commitment is contingent upon the District's compliance with all applicable requirements contained in 31 TAC Chapter 363;
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 District, 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 District's Obligations or obligated persons, will, at a minimum, 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 District's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the District is an obligated person with respect to such bonds under SEC Rule 15c2-12;
6. the Obligations must contain a provision requiring the District 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 District 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 District 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 District 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 District, 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 District 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 required under the TWDB's financial assistance program and not previously provided with the application, the District shall submit an executed engineering contract as appropriate for the project scope of work, and an executed financial advisor contract and executed bond counsel contract as appropriate for the work to be performed in obtaining the TWDB's financial assistance for the project, in a form and substance that are satisfactory to the Executive Administrator. Fees to be reimbursed under any consulting contract must be reasonable in relation to the services performed, must be reflected in the contract, and must be acceptable to the Executive Administrator;
13. prior to closing, when any portion of loan proceeds are to be held in escrow or in trust, the District 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;
14. the Executive Administrator may require that the District 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 District'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 District when rendering this opinion;
17. the District'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 District when rendering this opinion;
18. the Obligations must include a provision prohibiting the District 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 District 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 District 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 District may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the District, provided that the District 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 District 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 District 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 District 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 District’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 District 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 District by the TWDB;

Pledge Conditions For The Loan

26. the Obligations must contain a provision that for each year the Bonds are outstanding, the District will levy a debt service tax rate, and collect taxes sufficient for the repayment of annual principal and interest requirements on the Obligations;

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

Special Conditions:

27. 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 363;

28. the District must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by conversion to a conservation and reclamation district or a sale-transfer-merger with another retail public utility;
29. the Obligations must include a provision requiring that, prior to any action by the District to convey its Obligations held by the TWDB to another entity, the conveyance and the assumption of the Obligations must be approved by the TWDB; and
30. the Obligations must contain a covenant that the District will abide by all applicable construction contract requirements related to the use of iron and steel products and manufactured goods produced in the United States, as required by Texas Water Code § 17.183.

APPROVED and ordered of record this, the 23rd day of July, 2015.

TEXAS WATER DEVELOPMENT BOARD

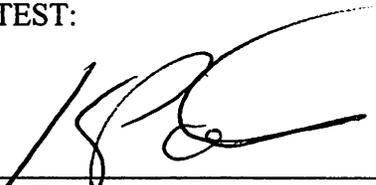


Bech K. Bruun

Bech K. Bruun, Chairman

DATE SIGNED: 7-23-15

ATTEST:



Kevin Patteson
Executive Administrator

Fort Bend County Fresh Water Supply District No. 1

Proposed Water Plant No. 2

Request to Use Remaining TWDB DFUND Loan Funds (Project #21524, WDF L1000450)

Current District Projects Utilizing TWDB DFUND Loan – The District is in the process of completing its last two water projects that were previously approved by the TWDB to be constructed utilizing the District's TWDB DFUND Loan funds. It is anticipated that these projects will be completed within the first quarter of 2018. These projects are: a) Phase 2 Water Service Lines and b) Marbill Estates Subdivision / Portion of Ridgewood Estates Subdivision / North and South Teague Road Water and Wastewater Service Lines. At the completion of these two projects, it is anticipated that the District will have approximately \$2,750,000 remaining in its TWDB DFUND Loan.

Proposed Project to Utilize Remaining TWDB DFUND Loan – The District intends on utilizing its remaining TWDB Loan funds to pay a portion of the costs related to the District's second water plant. The remaining costs to complete the project would be paid through a future TWDB DFUND Loan.

Water Plant No. 2 would consist of:

- 1,500 gpm Water Well
- 1 – 500,000 gallon Ground Water Storage Tank
- 4 – 1,500 gpm Booster Pumps
- 2 – 15,000 gallon Hydropneumatic Tanks
- Approximately 1,000 linear feet of 12-inch Waterline

It is anticipated at completion that Water Plant No. 2 would be capable of serving approximately 2,250 ESFC's.

Purpose and Need for Proposed Project – The proposed Water Plant No. 2 is necessary in order to:

- Serve additional connections beyond the capacity of the District's current Water Plant No. 1. Water Plant No. 1 has a current capacity capable of serving approximately 2,100 ESFC's. Currently, the District is providing water to approximately 1,700 ESFC's, 300 of which are within the City of Arcola. It is anticipated that by the end of 2020 that the full capacity of the District's Water Plant No. 1 will be utilized, therefore the need for an additional water plant.
- Provide redundancy to the water system in case of a failure at the District's existing water plant.
- Improve water quality and pressure.

Project Map, Schedule, and Budget – See Attachments

Land, Easements, and Permit Issues Related to Proposed Project – Water Plant No. 2 would be constructed on land currently owned by Fort Bend County. The District is currently in the process of working with Fort Bend County to secure this land for the District. A 150' Sanitary Control Easement will need to be secured for the new water well. The land owners impacted by this control easement are Fort Bend County and the First Baptist Church of Fresno. The proposed waterlines exiting the water plant site will be constructed within Fort Bend County right-of-way, except for a small segment along Renfro-Burford Road that will be installed within a waterline easement. This waterline easement will need to be obtained from Fort Bend County. The governmental agencies involved with this project that will need to review and approve the construction plans are TWDB, TCEQ, City of Pearland, and Fort Bend County. The District has completed an environmental assessment for this project, which is currently at the TWDB for approval.

FORT BEND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1			
PROPOSED WATER PLANT NO. 2			
REQUEST TO USE REMAINING TWDB DFUND LOAN FUNDS (PROJECT #21524, WDF L1000450)			
	TWDB Funds		Total Funds
	Existing Loan*	Future Loan	
Construction Cost			
Water Plant No. 2	\$2,235,000.00	\$965,000.00	\$3,200,000.00
Subtotal Construction Cost	\$2,235,000.00	\$965,000.00	\$3,200,000.00
Basic Engineering Fees			
Design Phase Engineering	\$272,000.00	\$0.00	\$272,000.00
Construction Phase Engineering	\$48,000.00	\$0.00	\$48,000.00
Subtotal Basic Engineering Fees	\$320,000.00	\$0.00	\$320,000.00
Special Engineering Fees			
Environmental Assessment	\$36,000.00	\$0.00	\$36,000.00
Inspection/Const. Mgmt	\$74,500.00	\$0.00	\$74,500.00
Subsurface Utility Investigation	\$6,000.00	\$0.00	\$6,000.00
Surveying	\$32,000.00	\$0.00	\$32,000.00
Material Testing	\$15,000.00	\$0.00	\$15,000.00
Geotechnical Investigation	\$15,000.00	\$0.00	\$15,000.00
Well Siting Study	\$9,000.00	\$0.00	\$9,000.00
Potential Pollution Hazard Study	\$7,500.00	\$0.00	\$7,500.00
Subtotal Special Engineering Fees	\$195,000.00	\$0.00	\$195,000.00
Financial Advisor	\$0.00	\$30,000.00	\$30,000.00
Bond Counsel	\$0.00	\$30,000.00	\$30,000.00
Contingency	\$0.00	\$475,000.00	\$475,000.00
Total Project Cost**	\$2,750,000.00	\$1,500,000.00	\$4,250,000.00

* It is estimated that \$2,750,000 will remain at completion of District's two current water projects

** Round up to the nearest \$5,000

**Fort Bend County Fresh Water Supply District No. 1
Proposed Water Plant No. 2
Request to Use Remaining TWDB DFUND Loan Funds (Project #21524, WDF L1000450)**

ID	Task Name	Start	Finish	2018				2019				2020			
				1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	
1	Complete Geotechnical Investigation and Topographic Survey	Mon 1/1/18	Wed 2/28/18												
2	Recordation of Sanitary Control and Waterline Easements	Thu 3/1/18	Mon 4/30/18												
3	Complete Construction Bid Package	Thu 3/1/18	Fri 8/31/18												
4	Agency Approvals	Mon 9/3/18	Thu 1/31/19												
5	Secure 4th TWDB DFUND Loan	Mon 9/3/18	Thu 2/28/19												
6	Advertising, Bidding, and Execution of Construction Contracts	Fri 2/1/19	Tue 4/30/19												
7	Construction	Wed 5/1/19	Tue 6/30/20												

Task		Inactive Task		Inactive Summary		Manual Summary Rollup		Finish-only	
Milestone		Inactive Milestone		Manual Task		Manual Summary			
Summary				Duration-only		Start-only			