

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, Water Supply
Infrastructure

FROM: T. Clay Schultz, Ph.d., Director, Regional Water Project Development
Lee Huntoon, Team Manager, Panhandle/West Region

DATE: July 9, 2018

SUBJECT: City of Ballinger, Project No. 62720, Extension of Time to Close
Commitment

ACTION REQUESTED

Approve by resolution a request from the City of Ballinger (Runnels County) to amend Texas Water Development Board Resolution No. 17-009, as amended by Resolution Nos. 17-061 and 18-007, by extending the commitment period to finance an alternative water supply project through the Drinking Water State Revolving Fund.

BACKGROUND

The City of Ballinger (City) received a six-month commitment on January 26, 2017, in the amount of \$3,393,435 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, acquisition, and design phases of an alternative water supply project. The City's raw water supply comes from the City-owned Lake Ballinger and from O. H. Ivie Reservoir through purchase from Millersview-Doole Water Supply Corporation (MDWSC). For several years, water levels in these reservoirs remained very low, with storage declining to less than 15 percent of capacity. In addition, the City's water treatment facility has, at times, operated in violation of the maximum contaminant level of total trihalomethanes (TTHMs) in its treated water, causing the Texas Commission on Environmental Quality to issue administrative orders for compliance with the drinking water standards. The high concentrations of TTHMs were related to the large amount of organic matter in the water withdrawn from the lakes when their levels were particularly low.

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

The City proposed to address these issues by increasing its available water supply through the construction of a new raw water supply line from Lake Fort Phantom Hill to the City's water treatment plant. The City explored alternatives for transporting the new supply by a pipeline built either solely by the City or conjointly with the City of Abilene.

The City entered into discussions with the City of Abilene to provide water as the source of the alternative water supply, and to partner on building the required infrastructure. On July 6, 2017, the Board extended the City's original commitment period by six months to give it additional time to negotiate water supply and infrastructure agreements and explore alternatives for routing with the City of Abilene. On January 11, 2018, the Board approved a second requested extension of the commitment period for six months to complete the approval of water supply and infrastructure agreements which required third-party approvals. The City has not yet closed on this commitment, which will expire on July 31, 2018.

KEY ISSUES

The City executed water supply and infrastructure agreements with the City of Abilene for the DWSRF project on January 11, 2018, to obtain an alternative water supply and the planning, acquisition and design phases of the pipeline. The City and MDWSC then entered into discussions regarding the need for the termination of the 2006 Ballinger/MDWSC Raw Water Supply Contract, which was a condition of the Ballinger/Abilene agreements. Termination of the 2006 Ballinger/MDWSC Raw Water Supply Contract was determined to not be feasible.

The City and MDWSC then conducted negotiations to have MDWSC reduce a portion of the 500 acre-feet of water which the City purchases from MDWSC. This will require an amendment to the existing 2006 Ballinger/MDWSC Raw Water Supply Contract. The contract amendment is scheduled to be considered and approved by MDWSC on July 16, 2018, and on July 23, 2018, by Ballinger.

In addition, the water supply and infrastructure agreements executed by Ballinger and Abilene in January 2018 required written approvals by the Colorado River Municipal Water District (CRMWD) and MDWSC for the following agreement conditions, which is special condition No. 40 (b) and (c) in TWDB Resolution No. 17-009, as amended by 18-007:

(b) a representative of Colorado River Municipal Water District has agreed in writing to terminate a "Raw Water Supply Agreement Between Millersview-Doole Water Supply Corporation and the City of Ballinger, Texas," dated April 1, 2006;

(c) a representative of Millersview-Doole Water Supply Corporation has agreed in writing to terminate a "Raw Water Supply Agreement Between Millersview-Doole Water Supply Corporation and City of Ballinger, Texas," dated April 1, 2006.

The City Councils for Ballinger and Abilene have met and approved certain amendments to their respective January 2018 water supply and infrastructure agreements, removing the above conditions. A condition of the amended agreements now requires the following:

(a) approval by both CRMWD and Millersview-Doole to amend the Millersview-Doole Contract to reduce the quantities of water sold under the Millersview-Doole Contract in amounts up to one-half of the Annual Quantity maximum [as defined in] the Agreement[s between Ballinger and Abilene].

Since the last commitment extension, the City has demonstrated significant progress by amending the water supply and infrastructure agreements and entering into negotiations with MDWSC. Based on the schedule provided by the City, the City anticipates executing the amended 2006 Ballinger/MDWSC Raw Water Supply Contract and obtaining third-party approvals of all agreements by the end of August 2018, and requests a six-month extension of its commitment. The Executive Administrator (EA) recommends a three-month commitment extension which should provide sufficient time for the City to submit its amended 2006 Ballinger/MDWSC Raw Water Supply Contract, attain the required third-party approvals of its water supply and infrastructure agreements, and close on the commitment.

Due to the amendment of the water supply and infrastructure agreements with the City of Abilene, TWDB's Resolution No. 17-009, as amended by 18-007, special condition No. 40 (b) and (c) no longer apply, and the EA recommends removing those conditions from Resolution No. 17-009 and instead adding new special condition No. 41 to read:

(41) Prior to closing, the City shall submit to the Executive Administrator written approval from Colorado River Municipal Water District and the Millersview-Doole Water Supply Corporation of the amendments to the water supply contract (the "Raw Water Supply Contract Millersview-Doole Water Supply Corporation and City of Ballinger, Texas," dated April 1, 2006") between the City of Ballinger and the Millersview-Doole Water Supply Corporation, as contemplated by the water supply and infrastructure agreements executed between the City and the City of Abilene.

Additionally, the EA recommends adding a new special condition No. 42 to read:

(42) Prior to closing, the City shall submit to the Executive Administrator the amended raw water supply contract between Millersview-Doole Water Supply Corporation and the City of Ballinger, Texas.

LEGAL

Key Issues

The City has not submitted its financial audit for fiscal year end 2017. The EA recommends adding special condition No. 43 to read:

(43) Prior to closing, the City shall submit to the Executive Administrator its financial audit for fiscal year end 2017.

The audit is scheduled to be presented to City Council on July 23, 2018.

RECOMMENDATION

The EA has reviewed the City's request and recommends:

- 1) extending the TWDB commitment period for three additional months;
- 2) amending special condition No. 40; and
- 3) adding special conditions No. 41, 42, and 43.

Attachment(s):

1. Resolution (18-)
2. Resolution (17-009)
3. Resolution (17-061)
4. Resolution (18-007)
5. Extension Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 17-009,
AS AMENDED BY TWDB RESOLUTION NO. 17-061,
TO EXTEND THE COMMITMENT PERIOD FOR FINANCIAL ASSISTANCE TO
THE CITY OF BALLINGER

(18-)

WHEREAS, at its January 26, 2017 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 17-009, made a commitment to provide financial assistance to the City of Ballinger, located in Runnels County, (City) in the amount of \$3,393,435, consisting of the TWDB's purchase of \$1,035,000 City of Ballinger, Texas Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2017, from the Drinking Water State Revolving Fund program, with \$2,358,435 in financial assistance to be forgiven, for the purpose of financing the planning, acquisition, and design phases of the City's water system improvements identified as Project No. 62720; and

WHEREAS, the commitment period in TWDB Resolution No. 17-009 was set to expire on July 31, 2017; and

WHEREAS, the City was granted a first extension request at the Board's July 6, 2017 meeting, for an additional six (6) months, ordering the City's commitment period to expire on January 31, 2018 in TWDB Resolution No. 17-061; and

WHEREAS, the City was granted a second extension of the commitment granted in TWDB Resolution No. 17-009, through TWDB Resolution No. 18-007, extending the commitment period for an additional six (6) months, set to expire on July 31, 2018; and

WHEREAS, by letter dated June 15, 2018, the City requests that the TWDB amend TWDB Resolution No. 17-009, as amended by TWDB Resolution Nos. 17-061 and 18-007, to extend the commitment period for an additional six (6) months set to expire on January 31, 2019; and

WHEREAS, the extension is necessary to provide the City time to amend certain water supply and infrastructure contracts between the Cities of Abilene, Ballinger, and Millersview-Doole WSC; and

WHEREAS, the Executive Administrator has reviewed the City's request and recommends extending the TWDB commitment period for three (3) months from the date of this Resolution, all as is more specifically set forth in the recommendations of the Executive Administrator's staff, to which documents express reference is made; and

WHEREAS, in accordance with the Texas Water Code, the TWDB has carefully considered all matters required by law and hereby finds that granting an extension of three (3) months is in the public interest and will serve a public purpose; and

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 \$3,393,435, as authorized in TWDB Resolution No. 17-009, as amended by TWDB Resolution Nos. 17-061 and 18-007, is further amended to extend the commitment period three (3) months to expire on October 31, 2019.

2. Special Condition No. 40 in TWDB Resolution No. 17-009, as amended by TWDB Resolution Nos. 17-061 and 18-007, is revised and amended to read as follows:

“(40) Prior to closing, the City shall submit written documentation acceptable to the Executive Administrator that a representative of Colorado River Municipal Water District has provided consent in writing to the City approving of the City of Abilene’s sale of water (“Ivie Water”) to the City as contemplated by the water supply and infrastructure agreement between the City and the City of Abilene; and”.

3. Special Condition Nos. 41, 42, and 43 are added to TWDB Resolution No. 17-009, as amended by TWDB Resolution Nos. 17-061 and 18-007, to read as follows:

“(41) Prior to closing, the City shall submit to the Executive Administrator written approval from Colorado River Municipal Water District and the Millersview-Doole Water Supply Corporation of the amendments to the water supply contract (the “Raw Water Supply Contract Millersview-Doole Water Supply Corporation and City of Ballinger, Texas,” dated April 1, 2006”) between the City of Ballinger and the Millersview-Doole Water Supply Corporation, as contemplated by the water supply and infrastructure agreements executed between the City and the City of Abilene; and

(42) Prior to closing, the City shall submit to the Executive Administrator the amended raw water supply contract between Millersview-Doole Water Supply Corporation and the City of Ballinger, Texas; and

(43) Prior to closing, the City shall submit to the Executive Administrator its financial audit for fiscal year end 2017.

4. That all other terms and conditions of TWDB Resolution No. 17-009, as amended by TWDB Resolution Nos. 17-061 and 18-007, shall remain in full force and effect.

APPROVED and ordered of record this the 26th day of July, 2018.

TEXAS WATER DEVELOPMENT BOARD

Peter M. Lake, Chairman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE
IN THE AMOUNT OF \$3,393,435
TO THE CITY OF BALLINGER
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$1,035,000 CITY OF BALLINGER, TEXAS,
TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2017
AND
\$2,358,435 IN PRINCIPAL FORGIVENESS

(17-009)

WHEREAS, the City of Ballinger (City), located in Runnels County, has filed an application for financial assistance in the amount of \$3,393,435 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, acquisition, and design of certain water system improvements identified as Project No. 62720; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$1,035,000 City of Ballinger, Texas, Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2017 (together with all authorizing documents (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of \$2,358,435, 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 tax and surplus revenues of the waterworks and sewer systems 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 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 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);

5. 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); and
6. that the City meets the definition of disadvantaged community in 31 TAC § 371.1(23) and is therefore eligible for principal forgiveness through the DWSRF.

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

A commitment is made by the TWDB to the City of Ballinger for financial assistance in the amount of \$3,393,435 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$1,035,000 City of Ballinger, Texas, Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2017 and the execution of a Principal Forgiveness Agreement in the amount of \$2,358,435. This commitment will expire on July 31, 2017.

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 remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds;
8. 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 and completion of a final accounting 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) deposit into a reserve fund;
9. 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;
10. 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;
11. 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;
12. 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;

13. 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;
14. 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;
15. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
16. 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

17. 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;
18. 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;
19. 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);
20. 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;
21. 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;

22. 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;
23. 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;
24. 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;
25. 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;
26. 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

27. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
28. 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;
29. 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;

30. 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;
31. the Obligations and Principal 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 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions

32. prior to or at closing, the City shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;
33. 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;
34. 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

35. 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:

- 36. 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;
- 37. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
- 38. the Principal Forgiveness Agreement must include a provision stating that the City shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator.

APPROVED and ordered of record this 26th day of January, 2017.

TEXAS WATER DEVELOPMENT BOARD



Bech K. Bruun

Bech K. Bruun, Chairman

DATE SIGNED: 1-26-17

ATTEST:

Jeff Walker

Jeff Walker
Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 17-009
TO EXTEND THE COMMITMENT PERIOD FOR FINANCIAL ASSISTANCE TO
THE CITY OF BALLINGER**

(17-061)

WHEREAS, at its January 26, 2017 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 17-009, made a commitment to provide financial assistance to the City of Ballinger (City) in the amount of \$3,393,435, consisting of the TWDB's purchase of \$1,035,000 City of Ballinger, Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2017, from the Drinking Water State Revolving Fund program, with \$2,358,435 in financial assistance to be forgiven, for the purpose of financing the planning, acquisition, and design phases of the City's water system improvements identified as Project No. 62720; and

WHEREAS, pursuant to TWDB Resolution No. 17-009, the commitment period will expire July 31, 2017; and

WHEREAS, by letter dated March 23, 2017, the City requested that the TWDB amend TWDB Resolution No. 17-009 to extend the TWDB commitment of financial assistance for nine (9) months; and

WHEREAS, the conditions the City warrant require a nine (9) month extension of its financial assistance from the TWDB include time to complete negotiations with the City of Clyde regarding the project and to obtain funding for the purchase of senior water rights to Lake Fort Phantom Hill for the project; and

WHEREAS, the Executive Administrator has reviewed the City's request and recommends extending the TWDB commitment period for six (6) months to allow the City sufficient time to close its financial assistance, all as is more specifically set forth in the recommendations of the Executive Administrator's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that granting an extension of six (6) months is in the public interest and will serve a public purpose; and

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 \$3,393,435, as authorized in TWDB Resolution No. 17-009, is further amended to extend the commitment period of six (6) months to expire on January 31, 2018.
2. That all other terms and conditions of TWDB Resolution No. 17-009 shall remain in

full force and effect.

APPROVED and ordered of record this the 6th day of July, 2017.

TEXAS WATER DEVELOPMENT BOARD



Bech K. Bruun

Bech K. Bruun, Chairman

DATE SIGNED: 7-6-17

ATTEST:

Jeff Walker

Jeff Walker
Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 17-009,
AS AMENDED BY TWDB RESOLUTION NO. 17-061,
TO EXTEND THE COMMITMENT PERIOD FOR FINANCIAL ASSISTANCE TO
THE CITY OF BALLINGER**

(18-007)

WHEREAS, at its January 26, 2017 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 17-009, made a commitment to provide financial assistance to the City of Ballinger, located in Runnels County, (City) in the amount of \$3,393,435, consisting of the TWDB's purchase of \$1,035,000 City of Ballinger, Texas Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2017, from the Drinking Water State Revolving Fund program, with \$2,358,435 in financial assistance to be forgiven, for the purpose of financing the planning, acquisition, and design phases of the City's water system improvements identified as Project No. 62720; and

WHEREAS, the commitment period in TWDB Resolution No. 17-009 was set to expire on July 31, 2017; and

WHEREAS, at its July 6, 2017 meeting, the TWDB agreed to extend the City of Ballinger's commitment period for an additional six (6) months, ordering the City's commitment period to expire on January 31, 2018 in TWDB Resolution No. 17-061; and

WHEREAS, by letter dated October 31, 2017, the City requested that the TWDB amend TWDB Resolution No. 17-009, as amended by TWDB Resolution No. 17-061, to extend the commitment period for an additional nine (9) months set to expire on October 31, 2018; and

WHEREAS, the extension is necessary to receive third-party approvals of the water supply agreement between the City and the City of Abilene by the Colorado River Municipal Water District and the Millersview-Doole Water Supply Corporation, necessary for the completion of Project No. 62720; and

WHEREAS, the Executive Administrator has reviewed the City's request and recommends extending the TWDB commitment period for an additional six (6) months, set to expire on July 31, 2018, all as is more specifically set forth in the recommendations of the Executive Administrator's staff, to which documents express reference is made; and

WHEREAS, in accordance with the Texas Water Code, the TWDB has carefully considered all matters required by law and hereby finds that granting an extension of six (6) months is in the public interest and will serve a public purpose.

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 \$3,393,435, as authorized in TWDB Resolution No. 17-009, as amended by TWDB Resolution No. 17-061,

is further amended to extend the commitment period six (6) months to expire on July 31, 2018.

2. TWDB Resolution No. 17-009, as amended by TWDB Resolution 17-061, is further amended to include the following additional, special conditions:

(39) Prior to closing, the City shall submit a fully-executed version of a "Water Supply Agreement Between the City of Abilene, Texas and the City of Ballinger, Texas," (Agreement) to the Executive Administrator; and

(40) Prior to closing, the City shall submit written documentation acceptable to the Executive Administrator that:

(a) a representative of Colorado River Municipal Water District has provided consent in writing to the City approving of the City of Abilene's sale of water ("Ivie Water") as contemplated by the Agreement to the City; and

(b) a representative of Colorado River Municipal Water District has agreed in writing to terminate a "Raw Water Supply Contract Between Millersview-Doole Water Supply Corporation and the City of Ballinger, Texas," dated April 1, 2006, as amended, as contemplated by the Agreement; and

(c) a representative of Millersview-Doole Water Supply Corporation has agreed in writing to terminate a "Raw Water Supply Contract Between Millersview-Doole Water Supply Corporation and the City of Ballinger, Texas," dated April 1, 2006, as amended, as contemplated by the Agreement.

3. That all other terms and conditions of TWDB Resolution No. 17-009, as amended by 17-061, shall remain in full force and effect.

APPROVED and ordered of record this the 22nd day of January 2018.

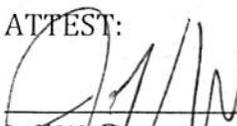
TEXAS WATER DEVELOPMENT BOARD



Peter Lake
Authorized Representative of the
Texas Water Development Board

DATE SIGNED: 1/22/18

ATTEST:

Jeff Walker
Executive Administrator

The City of Ballinger

June 15, 2018

Lee A. Huntoon
Regional Manager -Team 1 Panhandle/West
Texas Water Development Board
1700 N. Congress Ave., P.O. Box 13231
Austin, TX 78711-3231

Subject: City of Ballinger Project # 62720 Closing Deadline Extension Request

Dear Ms. Huntoon:

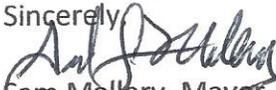
Please accept this letter as our official request to extend the closing deadline until January 31, 2019. We understand the current deadline for closing is July 31, 2018; therefore, we are requesting another 6-month extension. Due to unforeseen changes, all parties are having to amend contracts. Both Abilene and Ballinger have approved and signed their water supply agreements and infrastructure agreement; however, Millersview-Doole WSC and CRMWD are not willing to terminate the 500 acre feet water agreement between Ballinger and MDWSC but they are willing to take back some of the 500 acre feet of water starting with 140 acre feet and possibly more in the future based on their needs. Therefore, Ballinger and Millersview-Doole WSC are amending their water contract and Abilene and Ballinger are amending their water supply agreement and infrastructure agreement to reflect the changes that have taken place. The Abilene and Ballinger agreements will still need to be approved by a CRMWD representative but items (b) and (c) below are no longer representative of the contracts.

(40) Prior to closing, the City shall submit written documentation acceptable to the Executive Administrator that:

- (b) a representative of Colorado River Municipal Water District has agreed in writing to terminate a "Raw Water Supply Contract Between Millersview-Doole Water Supply Corporation and the City of Ballinger, Texas," dated April 1, 2006, as amended, as contemplated by Agreement; and
- (c) a representative of Millersview-Doole Water Supply Corporation has agreed in writing to terminate a "Raw Water Supply Contract Between Millersview-Doole Water Supply Corporation and City of Ballinger, Texas," dated April 1, 2006, as amended, as contemplated by the Agreement.

We hope to have all parties sign off on the water supply and facilities agreements by August and start the closing process by September.

If you have any questions or if you need additional information, please let me know.

Sincerely,

Sam Mallory, Mayor