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: Ashley Nwonuma, Assistant General Counsel
Luis Farias, Manager, Regional Water Project Development

DATE: July 9, 2019

SUBJECT: Request from the City of Garland to Modify the Pledge and Level of Security for its Financing Commitment (Project 62842)

ACTION REQUESTED

Approve amending by resolution the previously adopted Texas Water Development Board Resolution No. 19-027 to modify the City of Garland (Dallas County) pledge and level of security for repayment of its financial assistance.

BACKGROUND

On February 25, 2019, the Texas Water Development Board (TWDB), through Resolution No. 19-027 (Attachment 2), approved a commitment for $7,645,037 in financial assistance consisting of $6,670,000 in financing and $975,037 in principal forgiveness from the Drinking Water State Revolving Fund for a water meter retrofit project. The proposed project will allow the City to run its water system more efficiently and use information from new meters to assess the condition of other water system assets.

KEY ISSUES

In its financial assistance application, the City offered a pledge of the net revenues of the combined water and sewer system subject to the prior lien on and pledge of those net revenues to its outstanding prior lien bonds. However, the pledge presented to the Board and included in the Texas Water Development Board's Resolution No. 19-027 incorrectly stated that the City was offering a first lien pledge on the net revenues of the system. The City was preparing to close on these funds when the error was caught, and the City requested to amend TWDB Resolution No. 19-027 to reflect the pledge offered in the application.

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 M. Lake, Chairman | Kathleen Jackson, Board Member | Brooke T. Paup, Board Member

Jeff Walker, Executive Administrator

The prior lien bonds are bonds issued by the City in and prior to 2013 that contained the first lien pledge of the net revenues of the water and sewer system. To enable the City to eliminate the reserve fund for future water and sewer revenue bonds and to modify covenants, the City closed the ability to issue first lien bonds that would be on parity with the prior lien bonds. The language closing the first lien bonds is contained in the ordinances for water and sewer revenue bonds issued by the City since 2014. The language reads in part as: "The City will not hereafter issue additional obligations with a lien on and pledge of net revenues on parity with the lien and pledge of net revenues associated with the prior lien bonds or create or issue evidences of indebtedness for any purpose possessing a lien on the net revenues of the system superior to that possessed by bonds similarly secured." This requirement is by contract with holders of the bonds similarly secured and will continue until those bonds are no longer outstanding. The bonds similarly secured are bonds that are on parity with the bonds which have been issued by the City since 2014.

Because the City has contracted with the bond holders of these prior lien bonds not to issue any additional first lien bonds or other obligations, the City cannot grant a first lien position for the TWDB's bonds. The City is requesting an amendment to reflect a modification of the pledge and level of security from first lien on net revenues of the water and wastewater system to a pledge of the net revenues of the combined water and sewer system subject to the prior lien on and pledge of those net revenues to its outstanding prior lien bonds. When the prior lien bonds are no longer outstanding in year 2033, the lien and pledge position of the TWDB bonds will move up to the first position. The additional bonds test, which must be satisfied to issue bonds, requires that the coverage requirement (1.25 times the average annual debt service and 1.10 times the maximum annual debt service) include the outstanding prior lien bonds, outstanding bonds similarly secured, and the proposed TWDB bonds. Also, only the TWDB bonds will have a reserve fund.

Staff has reviewed the City's financial position and has determined that the City's financial sustainability factors are strong. The net revenues produced from its utility system produce sufficient coverage of 1.44 times the current and proposed debt service in the first year of principal repayment and increases throughout the life of the Board's obligation. Additionally, the City's utility system self-supporting debt compared to operating revenues, including the proposed loan, is low at 1.91. A debt to operating revenues ratio of 4 to 6 is considered typical. The City also reviews the utility system rates annually and has increased rates each of the last three years. These strong factors, as well as the City's additional bond test requirements for all outstanding system debt, a reserve fund and a credit rating of AA support our assigned risk score of 2A for the City's utility system.

RECOMMENDATION

The Executive Administrator recommends amending TWDB Resolution 19-027 to change the pledge offered from first lien of the net revenues of the City's water and sewer system to a pledge of net revenues of the City's water and sewer system.

Attachments:

1. Proposed TWDB Resolution (19-)
2. TWDB Resolution (19-027)
3. Request from the City of Garland

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD AMENDING TWDB RESOLUTION NO. 19-027 TO MODIFY THE PLEDGE AND LEVEL OF SECURITY FOR REPAYMENT FOR FINANCIAL ASSISTANCE TO THE CITY OF GARLAND

(19 -)

WHEREAS, at its February 25, 2019 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 19-027 (Resolution), made a commitment to provide financial assistance in the amount of $7,645,037 to the City of Garland (City) from the Drinking Water State Revolving Fund, to finance improvements to its water system, to be secured by the TWDB's purchase of $6,670,000 City of Garland, Texas Water and Sewer System Revenue Bonds, Proposed Series 2019, and the execution of a Principal Forgiveness Agreement in an amount of $975,037, for Project No. 62842, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, in the Resolution and accompanying documentation, it was presented that the City had offered a first lien and pledge of the net revenues of the City's water and sewer system as sufficient security for the repayment of the Obligations; and

WHEREAS, the City has submitted a request that the Resolution and accompanying documentation be modified to reflect that the City is offering a pledge of the net revenues of the City's water and sewer system, as the City intended in their initial application; and

WHEREAS, the TWDB hereby finds that the pledge of the net revenues of the City's water and sewer system is sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds that amending the commitment is reasonable and that the request is in the public interest and will serve a public purpose; and

WHEREAS, in accordance with the Texas Water Code, the TWDB has carefully considered all matters required by law.

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 $7,645,037, as authorized in TWDB Resolution No. 19-027, is amended to modify the pledge and level of security for repayment and to reflect that the pledge offered is the pledge of the net revenues of the City's water and sewer system.

2. All other terms and conditions of TWDB Resolution No. 19-027 shall remain in full force and effect.

APPROVED and ordered of record this the 22nd day of July, 2019.

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 $7,645,037 TO THE CITY OF GARLAND FROM THE DRINKING WATER STATE REVOLVING FUND THROUGH THE PROPOSED PURCHASE OF $6,670,000 CITY OF GARLAND, TEXAS WATER AND SEWER SYSTEM REVENUE BONDS, PROPOSED SERIES 2019 AND $975,037 IN PRINCIPAL FORGIVENESS

(19 - 027)

WHEREAS, the City of Garland, Texas (City), located in Dallas County, has filed an application for financial assistance in the amount of $7,645,037 from the Drinking Water State Revolving Fund (DWSRF) to finance the construction of certain water system improvements identified as Project No. 62842; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of $6,670,000 City of Garland, Texas Water and Sewer System Revenue Bonds, Proposed Series 2019 (together with all authorizing documents (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of $975,037, 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 first lien and pledge of the net revenues of the City's water and sewer system as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code § 15.607;

2. that the application and assistance applied for meet the requirements of the 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 TWDB has determined that the entire Project, or a portion of the Project, satisfies the applicable Intended Use Plan's criteria for Green Projects and is eligible for Principal Forgiveness in the amount of $975,037.

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

A commitment is made by the TWDB to the City of Garland for financial assistance in the amount of $7,645,037 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of $6,670,000 City of Garland, Texas Water and Sewer System Revenue Bonds, Proposed Series 2019 and the execution of a Principal Forgiveness Agreement in the amount of $975,037. This commitment will expire on August 31, 2019.

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 City agrees to comply with all of the conditions set forth in the TWDB Resolution, which conditions are incorporated herein;

5. 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;

6. 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;

7. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges, as applicable, to produce system funds 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;

8. 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;

9. 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;

10. 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;

11. 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;

12. 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;

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

14. 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;

15. 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;

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

17. 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;

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

18. 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;

19. 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;

20. 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);

21. 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;

22. 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;

23. 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;

24. 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;

25. 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;

26. the Obligations must contain a provision that the City will refrain from using the proceeds provided by this TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Obligations in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);

27. 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;

28. 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

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

30. 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;

31. 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;

32. 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;

33. 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

34. the City shall pay at closing an origination fee approved by the Executive Administrator or the TWDB pursuant to 31 TAC Chapter 371;

35. 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;

36. prior to the 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

37. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;

38. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;

39. the Obligations must contain a provision providing that additional revenue obligations (Additional Bonds) may only be incurred if the following conditions are met:

    a. a certificate is executed by the Mayor and Finance Director (or other officer of the City having primary responsibility for the financial affairs of the City) to the effect that no default exists in connection with any of the covenants or requirements of the ordinances authorizing the issuance of all then Outstanding Bonds Similarly Secured;

    b. a certificate is executed by the Mayor and Finance Director (or other officer of the City having primary responsibility for the financial affairs of the City) to the effect that the Bond Fund contains the amount then required to be on deposit therein;

    c. a certificate is executed by a certified public accountant to the effect that, in his or her opinion, the Net Revenues of the System either for the last complete Fiscal Year of the City, or for any 12 consecutive calendar month period ending not more than 90 days prior to the passage of the ordinance authorizing the issuance of such Additional Bonds were, for the calculation period, at least 1.25 times the then current average annual principal and interest requirements for all then Outstanding Prior Lien Bonds and Outstanding Bonds Similarly Secured and for the installment or series of Additional Bonds then proposed to be issued and 1.00 times the maximum annual principal and interest requirements for all Outstanding Prior Lien Bonds and Outstanding Bonds Similarly Secured after giving effect to the issuance of the Additional Bonds then being issued. However, (i) should the

certificate of the accountant certify that the Net Revenues of the System for the period covered thereby were less than required above, and (ii) a change in the rates and charges for water and sewer services afforded by the System became effective at least 60 days prior to the last day of the period covered by the accountant's certificate, and (iii) a Consultant (an independent firm, person, or corporation recognized as having expertise and with a favorable reputation) will certify that, had such change in rates and charges been effective for the entire period covered by the-accountant's certificate, the Net Revenues of the System covered by the accountant's certificate would have been, in his or her opinion, equal to at least 1.25 times the then current average annual and 1.00 times the maximum annual principal and interest requirements (calculated on a Fiscal Year basis) of the Prior Lien Bonds and the Bonds Similarly Secured after giving effect to the issuance of the proposed Additional Bonds, then, in such event, the coverage specified in the first sentence of this subparagraph (c) shall not be required for the period specified, and such accountant's certificate will be sufficient if accompanied by a Consultant's certificate to the above effect. For purposes of the calculation in this subparagraph (c), Net Revenues as used in this subparagraph (c), shall mean the Net Revenues of the System, but excluding and not deducting any charges or disbursements which under standard accounting practice should be charged to depreciation, betterment or capital expenditures;

d. the Additional Bonds are scheduled to mature on March 1 or September 1, or both, and the interest thereon is scheduled to be paid on March 1 and September 1, provided, however, if the City issues Variable Rate Obligations, such Variable Rate Obligations may mature and pay interest on such date or dates provided in the ordinance authorizing the issuance of such Variable Rate Obligations; and

e. all calculations of maximum annual debt service requirements made pursuant to this Section shall be made based upon the actual rate of interest to be borne by the Additional Bonds then proposed to be issued.

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

<u>Special Conditions:</u>

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

52. 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 25th day of February, 2019.

TEXAS WATER DEVELOPMENT BOARD

Peter M. Lake, Chairman

DATE SIGNED: 2/25/19

ATTEST:

Jeff Walker, Executive Administrator

GARLAND

TEXAS MADE HERE

June 20, 2019

Texas Water Development Board
Austin, Texas

Re: City of Garland, Texas Water and Sewer Revenue Bonds, New Series 2019 (the "Bonds")

Ladies and Gentlemen:

It has come to our attention that Resolution 19-027 wherein the Texas Water Development Board ("TWDB") made a commitment to the City of Garland, Texas (the "City") to provide financial assistance in the amount of $7,645,037 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of the Bonds in the principal amount of $6,670,000 and the execution of a Principal Forgiveness Agreement in the amount of $975,037 was predicated on a mistaken fact that the City could issue first lien water and sewer revenue bonds.

The City's application for financial assistance and the ordinance authorizing the issuance of the Bonds, to which the TWDB staff had no comments, both contained language reflecting the pledge of the net revenues made to the payment of the Bonds was subject to the prior lien on and pledge of the net revenues of the water and sewer system to the payment and security of the Prior Lien Bonds. Prior Lien Bonds are bonds issued by the City in and prior to 2013 that contained the first lien pledge of the net revenues of the water and sewer system. To enable the City to eliminate the reserve fund for future water and sewer revenue bonds and to modify covenants, the City closed the ability to issue first lien bonds that would be on a parity with the Prior Lien Bonds. The language closing that first lien is contained in the ordinances for water and sewer revenue bonds issued by the City since 2014. The language reads in part as follows: "The City will not hereafter issue any additional obligations with a lien on and pledge of the Net Revenues on a parity with the lien on and pledge of the Net Revenues associated with Prior Lien Bonds or create or issue evidences of indebtedness for any purpose possessing a lien on the Net Revenues of the System superior to that to be possessed by Bonds Similarly Secured." This requirement is by contract with the holders of the Bonds Similarly Secured and will continue until such time as those bonds are no longer outstanding. The Bonds Similarly Secured are bonds that are on a parity with the Bonds which have been issued by the City since 2014.

Because the City has contracted with the holders of the Bonds Similarly Secured not to issue any additional first lien bonds or other obligations, the City is precluded from granting a first lien position for the Bonds. When the Prior Lien Bonds are no longer outstanding, whether by payment or defeasance, the lien and pledge position of the Bonds and the other Bonds Similarly Secured will "spring up" to the first lien position. The additional bond tests, which must be satisfied

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to issue the Bonds, requires that the coverage requirement (1.25 times the average annual debt service and 1.10 times the maximum annual debt service) include the outstanding Prior Lien Bonds, the outstanding Bonds Similarly Secured and the proposed Bonds.

In light of the fact that the City is precluded from issuing first lien water and sewer revenue bonds and the fact that the ordinance authorizing the issuance of the Bonds, which contains all the conditions specified in Resolution 19-027 and has been accepted with no comment by the staff of the TWDB, the City respectfully requests that Resolution 19-027 be modified to reflect the correct pledge of the net revenues of the City's water and sewer system as contained in the application for financial assistance and the authorizing ordinance as discussed above and that the TWDB proceed with funding the transaction as soon as possible.

As the closing of the Bonds was initially scheduled for June 19, 2019, the prompt consideration of the request is greatly appreciated.

Sincerely,

City of Garland, Texas

By: _____
Finance Director