Texas Water Development Board

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Phone (512) 463-7847, Fax (512) 475-2053

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Todd Chenoweth, General Counsel
Jessica Zuba, Deputy Executive Administrator
Ashley Nwonuma, Assistant General Counsel

FROM: T. Clay Schultz, Ph.D., Director Regional Water Project Development
Luis Farias, Manager, Regional Water Project Development

DATE: July 9, 2019

SUBJECT: Amendment to the City of Keller's Closing Schedule.

ACTION REQUESTED

Amend by resolution the previously adopted Texas Water Development Board Resolution No. 16-073 to modify the City of Keller's (Tarrant County) State Water Implementation Revenue Fund for Texas annual loan closing schedule and to extend the commitment.

BACKGROUND

On July 21, 2016, the Texas Water Development Board (TWDB), through Resolution No. 16-073 approved a $12,180,000 multi-year commitment to the City of Keller (City) from the State Water Implementation Revenue Fund for Texas (SWIRFT) for a water main and service connection replacement project with anticipated closings through 2022.

KEY ISSUES

The City is requesting to modify its multi-year commitment to move closing on additional financing from 2019 to 2020, thereby extending the 2019 commitment to 2020. The City indicated that the project ran into utility conflict delays that have affected the project schedule and need for additional funding in 2019.

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 requested changes to the Annual Loan Closing Schedule are shown below.

Year	Amount per Resolution No. 16-073	Proposed Revised Amount
2016	$4,060,000	Closed
2019	$4,060,000	$0
2020		$4,060,000
2022	$4,060,000	$4,060,000
Total	**$12,180,000**	**$8,120,000**

RECOMMENDATION

The Executive Administrator recommends that TWDB Resolution No. 16-073 be amended to extend the 2019 commitment to 2020 to reflect the Annual Loan Closing Schedules described above and as attached. The requested amendment does not change the total amount of funding and will better align the available financing with the City's needs.

Attachments:

1. Proposed TWDB Resolution (19-)
2. TWDB Resolution (16-073)
3. City's 2019 response to Annual Loan Closing Schedule

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD AMENDING TEXAS WATER DEVELOPMENT BOARD RESOLUTION NO. 16-073 TO PROVIDE FINANCIAL ASSISTANCE TO THE CITY OF KELLER IN THE AMOUNT OF $12,180,000

(19 -)

WHEREAS, at its July 21, 2016 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 16-073, made a multi-year commitment to the City of Keller (City) for financial assistance in the amount of $12,180,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT), through the purchase of $12,180,000 City of Keller, Texas Combination Tax and Surplus Revenue Certificates of Obligation, all as is more specifically set forth in the TWDB's Resolution No. 16-073 (Resolution) and accompanying documentation, to which documents express reference is made; and

WHEREAS, the City closed on the 2016 portion of the commitment in the amount of $4,060,000; and

WHEREAS, by correspondence dated February 8, 2019, the City requested that the TWDB amend the Resolution to modify the City's Annual Loan Closing Schedule to extend the 2019 commitment to 2020; and

WHEREAS, the TWDB hereby finds that the proposed amendments to TWDB Resolution No. 16-073 as requested by the City, are reasonable and within 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 made through the Resolution to the City of Keller for financial assistance from the State Water Implementation Revenue Fund for Texas is amended, and shall be evidenced by the TWDB's proposed purchase of the City of Keller, Texas Combination Tax and Surplus Revenue Certificates of Obligation in accordance with the annual loan closing schedule proposed below:

    a. $4,060,000 Proposed Series 2020, to expire on December 31, 2020; and
    b. $4,060,000 Proposed Series 2022, to expire on December 31, 2022.

2. All other terms and conditions of TWDB Resolution No. 16-073 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 TO THE CITY OF KELLER IN THE FORM OF A MULTI-YEAR COMMITMENT FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS THROUGH THE PROPOSED PURCHASE OF $12,180,000 CITY OF KELLER, TEXAS COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION, PROPOSED SERIES 2016, PROPOSED SERIES 2019, AND PROPOSED SERIES 2022

(16-073)

WHEREAS, the City of Keller (City) has filed an application for financial assistance in the amount of $12,180,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT) to finance the design and construction of certain water supply project(s) identified as Project No. 51029; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the form of a multi-year commitment through the TWDB's proposed purchase of $12,180,000 City of Keller, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2016, Proposed Series 2019, and Proposed Series 2022 (together with all authorizing documents, "Obligations"), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City has offered a pledge of ad valorem taxes and surplus net revenue as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 363.1307; and

WHEREAS, interest rate subsidies are available to the City at the following levels: 35% for a loan of a term of 20 years, 25% for a loan of a term of 21 to 25 years, and 20% for a loan of a term of 26 to 30 years. The interest rate subsidy applicable to each proposed series will be set through each financing agreement executed between the TWDB and the City, pursuant to this Resolution; and

WHEREAS, the TWDB hereby finds:

1. that the application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M;

2. that the project is a recommended water management strategy in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a);

3. that a water conservation plan, has been submitted and implemented in accordance with Texas Water Code § 11.1271 and 31 TAC § 363.1309(b)(1);

4. that the City satisfactorily completed any request by the Executive Administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Texas Water Code § 16.053(q), in accordance with 31 TAC § 363.1309(b)(2);

5. that the current water audit, if required by Texas Water Code § 16.0121, has been completed by the City and filed with the TWDB in accordance with 31 TAC § 358.6; and

6. that the City has acknowledged its legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises, and any applicable state law relating to contracting with historically underutilized businesses, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

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

A commitment is made by the TWDB to the City of Keller for financial assistance in the amount of $12,180,000 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of City of Keller, Texas Combination Tax and Surplus Revenue Certificates of Obligation as follows:

a) $4,060,000 Proposed Series 2016 to expire on December 31, 2016;
b) $4,060,000 Proposed Series 2019 to expire on December 31, 2019; and
c) $4,060,000 Proposed Series 2022 to expire on December 31, 2022.

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 continued compliance with all applicable laws, rules, policies and guidance as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement;

4. this commitment is contingent upon the City executing a separate financing agreement, approved as to form and substance by the Executive Administrator, and submitting that executed agreement to the TWDB consistent with the terms and conditions described in the financing agreement;

5. the City shall use a paying agent/registrar in accordance with 31 TAC § 363.42(c)(2), and shall require the paying agent/registrar to provide a copy, to the TWDB and to the TWDB's designated Trustee, of all receipts documenting debt service payments;

The Following Conditions Must Be Included in the Obligations:

6. 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;

7. the Obligations must include a provision wherein 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;

8. 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;

9. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) 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 (2) eligible costs for the project as authorized by the Executive Administrator;

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, recycling 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. the Obligations must include a provision stating that the City shall report to the TWDB the amounts of project funds, if any, that were used to compensate historically underutilized businesses that worked on the project, in accordance with 31 TAC § 363.1312;

14. the Obligations must contain a provision that the TWDB will purchase the Obligations, acting through the TWDB's designated Trustee, and the Obligations shall be registered in the name of Cede & Co. and closed in book-entry form in accordance with 31 TAC § 363.42(c)(1);

15. 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 as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);

16. 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;

17. 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;

18. 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;

19. 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;

20. 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;

21. 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;

Conditions to Close or for Release of Funds:

22. 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;

23. 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;

24. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the City 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;

25. prior to closing, 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;

26. prior to closing, the City's bond counsel must prepare a written opinion that also states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;

27. 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; and

28. 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.

APPROVED and ordered of record this, the 21st day of July, 2016.

TEXAS WATER DEVELOPMENT BOARD

Bech K. Bruun

Bech K. Bruun, Chairman

DATE SIGNED: 7-21-16

ATTEST:

Jeff Walker

Jeff Walker
Executive Administrator

Multi-Year Commitment
Annual Loan Closing Schedule

City of Keller
Project# 51029
Keller Enhanced Water Loss Control and Conservation Program

Annual Loan Closing Schedule

Year	Amount per Resolution No. 16-073	Proposed Revised Amount (If Applicable)
Prior Years Total	$4,060,000	
2019	$4,060,000	**$-**
2020	$-	**$4,060,000**
2021	$-	No Change
2022	$4,060,000	$4,060,000
2023	$-	No Change
2024	$-	No Change
2025	$-	No Change
2026	$-	No Change
2027	$-	No Change
2028	$-	No Change
2029	$-	No Change
2030	$-	No Change
TOTAL	**$12,180,000**	**$12,180,000**

NOTE: The overall structure and approach are intended to allow applicants to achieve savings while maintaining the integrity of the SWIFT program and includes subsidies based on level-debt service schedules for all low-interest obligations. Interest rate subsidies for non-level debt service are subject to modification.

Contact Information

Please provide the best point of contact for TWDB staff to discuss your anticipated closing schedule.

Aaron Rector — Director of Administrative Services
Contact Name and Title

817-743-4026 — arector@cityofkeller.com
Phone Number — Email Address