

AGENDA ITEM MEMO

BOARD MEETING DATE: April 8, 2021

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Jessica Zuba, Deputy Executive Administrator, Water Supply Infrastructure

FROM: T. Clay Schultz, Ph.d., Director, Regional Water Project Development
Jesse Milonovich, P.E., Team Manager, Panhandle/West

SUBJECT: City of Seagraves, Project No. 21790, Amend Special Condition

ACTION REQUESTED

Approve by resolution an amendment to Texas Water Development Board (TWDB) Resolution 20-107 for the City of Seagraves (Gaines County) to revise special condition No. 28.

BACKGROUND

The City of Seagraves (City) received a one-year commitment on December 17, 2020, in the amount of \$6,084,000 in financial assistance consisting of \$2,738,000 from the Texas Water Development Fund (DFund) and \$3,346,000 from the Environmental Protection Agency Water Infrastructure Improvements for the Nation (WIIN) Grant for the planning, design, and construction of a water system improvements project.

KEY ISSUES

This project is funded through both a DFund loan and a WIIN grant, to be administered by the TWDB. The WIIN grant component requires a 45 percent match, and the DFund loan will serve as the matching cost share.

The requirement that the TWDB, as recipient of the Federal Award, execute a subrecipient grant agreement with the City, is accurately reflected in the memorandum submitted and considered by the Board. However, the TWDB Resolution 20-107, special condition No. 28, incorrectly identified the City as the party responsible for submitting the Federal Grant from the EPA.

Our Mission

Leading the state's efforts in ensuring a secure water future for Texas and its citizens

Board Members

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

RECOMMENDATION

The Executive Administrator recommends replacing special condition No. 28 with the following condition:

Prior to closing, the Executive Administrator shall execute a grant agreement with the City for the terms and uses of the Federal Grant from the EPA in the amount of \$3,346,000.

Attachment(s): 1. Resolution (21-)
 2. Resolution (20-107)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 20-107
TO REQUIRE THE TWDB TO SUBMIT THE FEDERAL GRANT IN THE AMOUNT OF
\$3,346,000 FROM WATER INFRASTRUCTURE IMPROVEMENTS FOR THE NATION GRANT
FOR THE \$2,738,000 CITY OF SEAGRAVES, TEXAS COMBINATION TAX AND SURPLUS
REVENUE CERTIFICATES OF OBLIGATION PROPOSED SERIES 2021 TO BE ISSUED BY CITY
OF SEAGRAVES

(21 -)

WHEREAS, at its December 17, 2020 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 20-107, made a commitment to provide financial assistance to the City of Seagraves (City) for the purpose of financing improvements to the City's water system in the amount of \$6,084,000 consisting of the TWDB's purchase of \$2,738,000 City of Seagraves, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2021, from the Texas Water Development Fund II and a Federal Grant from the United States Environmental Protection Agency (EPA) in the amount of \$3,346,000 through the Water Infrastructure Improvements for the Nation Grant, all as is more specifically set forth in TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, TWDB Resolution 20-107 inadvertently identified the City as the party responsible for submitting the Federal Grant from the EPA;

WHEREAS, the requirement that TWDB, as recipient of the Federal Award, execute a subrecipient grant agreement with the City, is accurately reflected in the memorandum submitted and considered by the Board;

WHEREAS, TWDB hereby finds that amending TWDB Resolution No. 20-107 to correct this error is reasonable, in the public interest, and will serve a public purpose; and

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

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

1. the commitment made through TWDB Resolution 20-107 is amended by this Resolution by replacing the special condition with the following condition:

prior to closing, the Executive Administrator shall execute a grant agreement with the City for the terms and uses of the Federal Grant from the EPA in the amount of \$3,346,000.
2. all other terms and conditions of TWDB Resolution No. 20-107 shall remain in full force and effect.

APPROVED and ordered of record this the 8th day of April, 2021.

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
\$6,084,000 TO CITY OF SEAGRAVES
FROM THE FINANCIAL ASSISTANCE ACCOUNT OF
THE TEXAS WATER DEVELOPMENT FUND II
THROUGH THE PROPOSED PURCHASE OF
\$2,738,000 CITY OF SEAGRAVES, TEXAS COMBINATION TAX AND SURPLUS REVENUE
CERTIFICATES OF OBLIGATION
PROPOSED SERIES 2021 AND \$3,346,000 FROM WATER INFRASTRUCTURE
IMPROVEMENTS FOR THE NATION GRANT**

(20-107)

WHEREAS, the City of Seagraves, located in Gaines County, Texas, City, has filed an application for financial assistance in the amount of \$6,084,000 from the Financial Assistance Account of the Texas Water Development Fund II and Water Infrastructure Improvements for the Nation Grant to finance water system improvements, identified as Project No. 21790; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$6,084,000 through the TWDB's purchase \$2,738,000 City of Seagraves, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2021 (together with all authorizing documents (Obligations)), and a Federal Grant from the United States Environmental Protection Agency (EPA) in the amount of \$3,346,000 through the Water Infrastructure Improvements for the Nation Grant, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the City has offered a pledge of ad valorem tax and surplus water net revenue of the water and wastewater systems 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 § 363.16; and

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

1. the needs of the area to be served by the water supply project, the benefit of the water supply project to the area, the relationship of the water supply project to the overall, statewide water needs, and the relationship of the water supply project to the approved regional and state water plans; and

2. the availability of revenue to the City, from all sources, for the ultimate repayment of the cost of the water supply project, including interest.

WHEREAS, the TWDB hereby finds:

1. that the public interest requires state assistance in the water supply project, in accordance with Texas Water Code § 17.125(a)(1);
2. that in its opinion the tax and/or revenue pledged by the City will be sufficient to meet all the Obligations assumed by the City during the succeeding period of not more than 50 years, in accordance with Texas Water Code § 17.125(a)(2);
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 application and financial assistance requested meet the requirements of Chapter 17, Subchapters D, E, and L, Water Code, and the TWDB's rules set forth in 31 TAC Chapter 363, Subchapter A; and
5. that the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and the needs to be addressed by the project will be addressed in a manner that is consistent with the approved regional and state water plans, as required by Texas Water Code § 16.053(j);

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

A commitment is made by the TWDB to the City of Seagraves for financial assistance in the amount of \$6,084,000 from the Financial Assistance Account of the Texas Water Development Fund II, to be evidenced by the TWDB's purchase of \$2,738,000 City of Seagraves, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2021, and the Federal Grant from the Water Infrastructure Improvements for the Nation Grant in the amount of \$3,346,000. This commitment will expire on December 31, 2021.

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 the City has complied with all of the requirements of the laws under which said Obligations were issued;

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 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), including but not limited to 31 TAC Chapter 363;
4. the Obligations must provide that the Obligations can be called for early redemption (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 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, 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 surplus loan proceeds from the Obligations remaining after completion of a final accounting in a manner as approved by the Executive Administrator; and
8. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
9. financial assistance proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256 and the Public Funds Collateral Act, Government Code, Chapter 2257;

10. financial assistance proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
11. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
12. prior to closing, and if required under the TWDB's financial assistance program and not previously provided with the application, the City shall submit an executed engineering contract as appropriate for the project scope of work, and an executed financial advisor contract and executed bond counsel contract as appropriate for the work to be performed in obtaining the TWDB's financial assistance for the project, in a form and substance that are satisfactory to the Executive Administrator. Fees to be reimbursed under any consulting contract must be reasonable in relation to the services performed, must be reflected in the contract, and must be acceptable to the Executive Administrator;
13. prior to closing, when any portion of financial assistance proceeds are 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;
14. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
15. the City shall abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by Texas Government Code, Chapter 2252, Subchapter F and Texas Water Code § 17.183;

Conditions Related To Tax-Exempt Status

16. 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;

17. prior to closing, the City's bond counsel must prepare a written opinion that states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;
18. the Obligations must include a provision prohibiting the City from using the proceeds of this financial assistance in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
19. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) that produce a yield materially higher than the yield on the TWDB's bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:
 - a. proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
 - b. amounts invested in a bona fide debt service fund, within the meaning of § 1.148-1(b) of the Regulations; and
 - c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;
20. the Obligations must include a provision requiring the City take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the City will:
 - a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds

of its loan with other money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;

- b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its loan, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least six years after the final Computation Date;
 - c. as additional consideration for the making of the loan, and in order to induce the making of the loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;
 - d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;
- 21. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 - 22. the Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
 - 23. the Obligations must contain a covenant that the City will refrain from using the proceeds of the Obligations to pay debt service on another issue of obligations of the borrower in contravention of section 149(d) of the Code (related to "advance refundings");
 - 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;

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

27. 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;

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

- ii. 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 condition:

Special Condition:

28. prior to closing, the City shall submit the Federal Grant from the EPA in the amount of \$3,346,000 through the Water Infrastructure Improvements for the Nation Grant in a form and substance acceptable to the Executive Administrator.

APPROVED and ordered of record this, the 17th day of December, 2020.

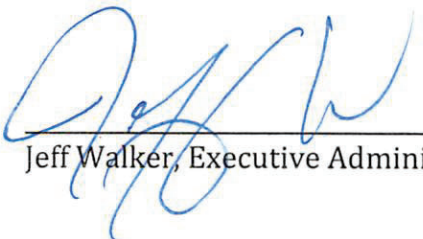
TEXAS WATER DEVELOPMENT BOARD



Peter M. Lake, Chairman

DATE SIGNED: 12/17/20

ATTEST:



Jeff Walker, Executive Administrator