

AGENDA ITEM MEMO

BOARD MEETING DATE: January 6, 2022

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Annette Mass, Assistant General Counsel
Jessica Peña, Deputy Executive Administrator, Water Supply & Infrastructure

FROM: T. Clay Schultz, Ph.D., Director, Regional Water Project Development
Nancy Richards, Manager, Regional Water Project Development

SUBJECT: Extension of Commitment for Montgomery County Municipal Utility District
No. 67

ACTION REQUESTED

Amend by resolution, the previously adopted Texas Water Development Board (TWDB) Resolution No. 21-061 to extend the Flood Infrastructure Fund commitment for Montgomery County Municipal Utility District No. 67.

BACKGROUND

In May 2021, the TWDB made a commitment of funding to Montgomery County Municipal Utility District No. 67 (District) in the amount of \$11,300,000 from the Flood Infrastructure Fund. The proposed project, located in the Bear Branch watershed, includes a hydrologic and hydraulic study, reevaluation of the original design considerations based on Atlas 14 rainfall, widening of Bear Branch and Panther Branch creeks, and construction of two mitigation ponds. The project will improve the drainage capacity, flood storage and, based on the preliminary hydraulic modeling, could reduce the floodwater surface elevations by as much as two feet along the creeks.

In September 2021, the commitment was extended by the Executive Administrator to February 28, 2022, to allow the District additional time to work with local entities that may benefit from the project.

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

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Jeff Walker, Executive Administrator

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In November 2021, the District requested additional time to continue to work with local partners on this project.

KEY ISSUES

The commitment expires on February 28, 2022. The District has requested the commitment be extended to June 30, 2022 to allow it time to work with local partners to obtain interlocal agreements to cost share in the project.

RECOMMENDATION

The Executive Administrator recommends that TWDB Resolution No. 21-061 be amended to extend the commitment through June 30, 2022. The request does not change the total amount of funding already committed to the District and will provide greater flexibility with the available financing for the District's project needs.

Attachment(s):

1. Proposed Resolution (22-)
2. Resolution (21-061)
3. District's request to extend commitment

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 21-061
TO EXTEND THE COMMITMENT FOR FINANCIAL ASSISTANCE FROM THE
FLOOD INFRASTRUCTURE FUND
TO MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 67

(22 -)

WHEREAS, at its May 6, 2021 meeting, the Texas Water Development Board (TWDB), by Resolution No. 21-061, made a commitment to provide financial assistance in the amount of \$11,300,000 to the Montgomery County Municipal Utility District No. 67 (District) from the Flood Infrastructure Fund for the purpose of financing a project identified as Project No. 40070; and

WHEREAS, pursuant to TWDB Resolution No. 21-061, the Executive Administrator extended the commitment from November 30, 2021 to February 28, 2022; and

WHEREAS, the District has requested a further extension of time in which to close the funding in order to continue working with potential cost-sharing partners; and

WHEREAS, the TWDB hereby finds that granting an extension of the commitment to June 30, 2022 is in the public interest; and

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

1. The commitment of the TWDB to provide financial assistance in the amount of \$11,300,000, as authorized in TWDB Resolution No. 21-061, is amended to extend the commitment to June 30, 2022; and
2. All other terms and conditions of TWDB Resolution No. 21-061 shall remain in full force and effect.

APPROVED and ordered of record this, the 6th day of January, 2022.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

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
\$11,300,000 TO THE MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 67
FROM THE FLOOD INFRASTRUCTURE FUND
THROUGH THE PROPOSED PURCHASE OF
\$6,550,000 MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 67
WATERWORKS AND SEWER SYSTEM UNLIMITED TAX BONDS,
PROPOSED SERIES 2021; \$3,620,000 MONTGOMERY COUNTY MUNICIPAL UTILITY
DISTRICT NO. 67 WATERWORKS AND SEWER SYSTEM REVENUE BONDS, PROPOSED
SERIES 2021;
AND
THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$1,130,000**

(21-061)

WHEREAS, the Montgomery County Municipal Utility District No. 67 (District), located in Montgomery County, Texas, has filed an application for financial assistance from the Flood Infrastructure Fund (FIF) in accordance with Texas Water Code Chapter 15, Subchapter I, to finance the planning, acquisition, design, and construction of a flood project, identified as Project No. 40070; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$11,300,000 through the TWDB's proposed purchase of \$6,550,000 Montgomery County Municipal Utility District No. 67 Waterworks and Sewer System Unlimited Tax Bonds, Proposed Series 2021 and \$3,620,000 Montgomery County Municipal Utility District No. 67 Waterworks and Sewer System Revenue Bonds, Proposed Series 2021 and a grant in the amount of \$1,130,000 (collectively, "Obligations"), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the District has offered a pledge of unlimited tax as sufficient security for the repayment of the \$6,550,000 Montgomery County Municipal Utility District No. 67 Waterworks and Sewer System Unlimited Tax Bonds; and

WHEREAS, the District has offered a pledge of a first lien on system revenue as sufficient security for the repayment of the \$3,620,000 Montgomery County Municipal Utility District No. 67 Waterworks and Sewer System Revenue Bonds;

WHEREAS, the TWDB hereby finds:

1. that the application and financial assistance requested meet the requirements of Texas Water Code, Chapter 15, Subchapter I; 31 TAC Chapter 363, Subchapters A and D; and the State Fiscal Year 2020 Flood Intended Use Plan (FIUP);

2. the District has demonstrated a sufficient level of cooperation among eligible political subdivisions and has included all of the eligible political subdivisions substantially affected by the flood project in accordance with Texas Water Code § 15.536(2);
3. that the District has submitted a written memorandum of understanding relating to the management of the project watershed executed by all governing bodies of eligible political subdivisions located in the project watershed;
4. that in its opinion the taxes and revenues pledged by the District will be sufficient to meet all Obligations assumed by the District in accordance with Texas Water Code § 15.536(3);
5. that the District is eligible to receive grant funding in accordance with Texas Water Code § 15.534 and the FIUP;
6. that the District has demonstrated that the benefit-cost ratio of the Project meets the requirements of the FIUP; and
7. that the request for financial assistance does not include redundant funding for activities already performed and/or funded through another source, in accordance with the FIUP;
8. that the District has demonstrated that the application meets the requirements of the FIUP related to the National Flood Insurance Program in the area to be served by the Project;
9. that the Project was developed using the best and most recent available data, in accordance with the FIUP; and
10. that the District has documented that it has planned for operations and maintenance costs associated with the Project, in accordance with the FIUP; and
11. that the District has considered possible floodwater capture techniques that could be associated with the Project for water supply purposes, in accordance with the FIUP; and
12. that the current water audit has been completed by the District and filed with the TWDB in accordance with Texas Water Code § 16.0121.

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

13. A commitment is made by TWDB to the Montgomery County Municipal Utility District No. 67 for financial assistance in the amount of \$1,130,000 from the Flood Infrastructure Fund, to be evidenced by the TWDB's proposed purchase of \$6,550,000 Montgomery County Municipal Utility District No. 67 Waterworks and

Sewer System Unlimited Tax Bonds, Proposed Series 2021 and \$3,620,000 Montgomery County Municipal Utility District No. 67 Waterworks and Sewer System Revenue Bonds, Proposed Series 2021 and the execution of a Grant Agreement in the amount of \$1,130,000. This commitment will expire on November 30, 2021; however, the Executive Administrator may, at his discretion, grant up to one extension for a maximum of three months.

Such commitment is conditioned as follows:

Standard Conditions:

1. this commitment is contingent on availability of TWDB 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 District 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 District;
3. this commitment is contingent upon the District'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), including but not limited to 31 TAC Chapter 363;
4. the District shall use a paying agent/registrar in accordance with 31 TAC § 363.42(c)(2);

The Following Conditions Must Be Included in the Obligations:

5. the Obligations must provide that the District will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
6. the Obligations must provide that the District must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;
7. the Obligations must provide that the District will not begin construction for a portion of the Project until the environmental finding has been issued for that portion of the Project;
8. the Obligations must contain a provision requiring the District to maintain insurance coverage sufficient to protect the TWDB's interest in the project;

9. the Obligations must include a provision wherein the District, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the District's Obligations or obligated persons, will, at a minimum, 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 District's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the District is an obligated person with respect to such bonds under SEC Rule 15c2-12;
10. the Obligations must contain a provision requiring the District to levy a tax and/or maintain and collect sufficient rates and charges to produce 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;
11. the Obligations must include a provision requiring a final accounting to be made of the total sources and authorized use of Project funds within 60 days of the completion of the Project;
12. the Obligations must include a provision requiring the District to deposit any bond proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the Project and completion of a final accounting, including any interest earned on the bond proceeds, into the Interest and Sinking Fund;
13. the Grant Agreement must include a provision stating that the District shall either return or deposit into the Interest and Sinking Fund any grant funds that are determined to be surplus funds remaining after completion of the Project and completion of a final accounting, including any interest earned on the grant funds;
14. 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;
15. 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;
16. financial assistance proceeds shall not be used by the District when sampling, testing, removing or disposing of contaminated soils and/or media at the Project

- site. The Obligations shall include an environmental indemnification provision wherein the District agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, recycling, and disposition of any contaminated sewage sludge, contaminated sediments, and/or contaminated media that may be generated by the District, its contractors, consultants, agents, officials, and employees as a result of activities relating to the Project to the extent permitted by law;
17. the Obligations must contain a provision stating that the District 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 G;
 18. the Obligations must provide that the District will not cause or permit the Obligations to be treated as “federally guaranteed” obligations within the meaning of § 149(b) of the Code;
 19. the Obligations must contain a covenant that the District 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”);
 20. the Obligations must contain a provision requiring the District to submit quarterly status reports on the progress of the project that details information requested by the Executive Administrator. The Executive Administrator may withhold authorization to release funds from escrow or adjust the amount of funds to be released from escrow based on the receipt of the quarterly status reports and the projected quarterly needs for the project.
 21. the Obligations shall include a special covenant prohibiting the District from encumbering, pledging, or otherwise impairing the revenues of the System in any manner with respect to the payment of any Obligations or with respect to any liability, except for the payment of the following: (1) maintenance and operating expenses payable within the current fiscal year with current revenues; and (2) additional debt, and that the District shall in no way encumber, pledge, or otherwise impair its title to the land used by or for the System or any interests therein, including improvements and facilities of the System, without prior TWDB approval;
 22. the System Revenue 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;

23. if the District has existing revenue obligations with the same pledge of security as the proposed System Revenue Obligations that will remain outstanding after the term of any financial assistance made by the TWDB pursuant to this commitment, the System Revenue Obligations must contain a provision providing that the lien or liens securing the System Revenue Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;
24. the System Revenue Obligations must contain a provision providing that additional revenue obligations may only be incurred if net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net revenues are a) determined from the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant; or b) the District certifies that the District is expected to continue to meet or exceed the net system revenue test with a minimum coverage of 1.25 times the average annual debt service requirement. An authorized representative of the District must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator;
25. the Unlimited Tax Obligations must contain a provision that for each year the Obligations are outstanding, the District will levy a debt service tax rate, and collect taxes sufficient for the repayment of annual principal requirements on the Unlimited Tax Obligations;

Conditions to Close or for Release of Funds:

26. prior to closing, the District shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges and, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
27. prior to release of funds for the relevant services, and if required under the TWDB's financial assistance program and if not previously provided with the application, the District shall submit executed contracts for engineering and, if applicable, financial advisor and bond counsel, 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;
28. prior to closing when any portion of financial assistance is to be held in escrow or in trust, the District shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;

29. prior to closing the District's bond counsel must prepare a written, unqualified approving opinion acceptable to the executive administrator. Bond counsel may rely on covenants and representations of the District when rendering this opinion;

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

Special Conditions:

30. prior to closing, the District shall execute a Grant Agreement in a form and substance acceptable to the Executive Administrator;
31. prior to release of funds for construction, the District shall submit an affidavit attesting that the technical requirements for the proposed flood project have been completed and compared against any other potential flood projects in the same area;
32. the District must notify the Executive Administrator in writing thirty (30) days prior to taking any actions to alter its legal status in any manner; and
33. the Obligations must include a provision requiring that prior to any action by the District to convey its Obligations held by the TWDB to another entity, the conveyance and the assumption of the Obligations must be approved by the TWDB.

APPROVED and ordered of record this, the 6th day of May, 2021.

TEXAS WATER DEVELOPMENT BOARD


Brooke T. Paup

Brooke T. Paup, Chairwoman

DATE SIGNED: May 6, 2021

ATTEST:



Jeff Walker, Executive Administrator



December 6, 2021

Nancy Richards
Team Manager, East Texas Region
Texas Water Development Board
1700 N. Congress Ave.
Austin, Texas 78711

Re: Extension Request
TWDB Project No. 40070 (Bear Branch Improvements)
Montgomery County MUD No. 67
LJA Job No. 1588-1601 (11.0)

Dear Ms. Richards,

Montgomery County Municipal Utility District No. 67 (MCMUD 67) respectfully requests a second extension on the financial closing date for the above referenced project. The request is an extension from February 28, 2022 to June 30, 2022.

The Woodlands Township recently held a special election (November 2, 2021) to determine if this community would change its governance structure from a special purpose district (The Woodlands Township) to a fully incorporated city governance structure. The final vote was to remain "as is", but the election topic fed some uncertainty in this community as to the future role of our MUDs.

This "uncertainty" caused delays and postponements to completing the interlocal agreements with five MUDs that plan to provide financial support to MUD 67 on this drainage improvement project. With the election behind us and the future of our MUDs more certain to remain as the primary political entity to manage drainage in The Woodlands, we hope you can grant this additional time extension.

Please call me at 832.813.6900 if you have any questions regarding our request. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Stinson", is written over the word "Sincerely," and extends down into the typed name below.

James M. Stinson, PE
General Manager
Montgomery County MUD No. 67