

AGENDA ITEM MEMO

BOARD MEETING DATE: January 19, 2023

TO: Board Members

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

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

SUBJECT: Extension of Commitment for Harris County Flood Control District FIF Project 40152

ACTION REQUESTED

Consider amending by resolution, the previously adopted Texas Water Development Board (TWDB) Resolution No. 22-030 to modify the Harris County Flood Control District's Flood Infrastructure Fund commitment to extend the commitment period.

BACKGROUND

In April 2022, the TWDB made a commitment of funding to the Harris County Flood Control District (District) in the amount of \$2,208,906 from the Flood Infrastructure Fund. The proposed project, located in the Aldine area of north Harris County, includes construction of a regional stormwater detention basin.

The commitment made through TWDB Resolution No. 22-030 expired on October 31, 2022. The Executive Administrator approved an extension to January 31, 2023 to allow the District to work on the overall costs and scope of the project.

KEY ISSUES

The District is set to close on its TWDB grant on January 27, 2023; however, due to timing of the Harris County Commissioners Court meeting and submission of documents and reviews, District staff has requested a two-month extension to the commitment as a

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

Board Members

Brooke T. Paup, Chairwoman | George B. Peyton V, Board Member | L'Oreal Stepney, P.E., Board Member

Jeff Walker, Executive Administrator

precaution. Additionally, due to other funding and scope issues, the District has decided to reduce the grant amount to \$1,364,846.

RECOMMENDATION

The Executive Administrator recommends approval of the extension until March 31, 2023 to allow sufficient time for the District to execute the grant and for TWDB staff to review closing and project documents from the District.

Attachments

1. Resolution (23-)
2. Executive Administrator extension memo and TWDB resolution (22-030)
3. District extension request

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 22-030
TO EXTEND THE COMMITMENT FOR FINANCIAL ASSISTANCE FROM THE
FLOOD INFRASTRUCTURE FUND
TO HARRIS COUNTY FLOOD CONTROL DISTRICT

(23 -)

WHEREAS, at its April 11, 2022 meeting, the Texas Water Development Board (TWDB), by Resolution No. 22-030, made a commitment to provide financial assistance in the form of a grant in amount of \$2,208,906 to the Harris County Flood Control District (District) from the Flood Infrastructure Fund for the purpose of financing a project identified as Project No. 40152; and

WHEREAS, consistent with the provisions of TWDB Resolution No. 22-030, the commitment was extended to January 31, 2023; and

WHEREAS, the District is currently scheduled to close the grant in the amount of \$1,364,846 on January 27, 2023;

WHEREAS, due to the schedule of the Harris County Commissioners Court and the logistics of obtaining signatures on the closing documents, the District has requested an extension; and

WHEREAS, the TWDB hereby finds that granting an extension of the commitment to March 31, 2023 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 \$2,208,906, as authorized in TWDB Resolution No. 22-030, is amended to extend the commitment to March 31, 2023; and
2. All other terms and conditions of TWDB Resolution No. 22-030 shall remain in full force and effect.

APPROVED and ordered of record this, the 19th day of January 2023.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairman

DATE SIGNED: _____

ATTEST:

Jeff Walker
Executive Administrator



P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

TO: Jeff Walker, Executive Administrator Amanda Lavin for
THROUGH: Ashley Harden, General Counsel Ashley Harden Jessica Peña, Deputy Executive Administrator, Water Supply & Infrastructure JNP
FROM: T. Clay Schultz, Ph.D., Director, Regional Water Project Development TCS Nancy Richards, Team Manager, Regional Water Project Development NBR
DATE: October 19, 2022
SUBJECT: Extension of Commitment for Harris County Flood Control District FIF Project 40152

ACTION REQUESTED

Extend commitment of TWDB Resolution No. 22-030 to January 31, 2023.

BACKGROUND

In April 2022, the TWDB made a commitment of funding to the Harris County Flood Control District (District) in the amount of \$2,208,906 from the Flood Infrastructure Fund. The proposed project, located in the Aldine area of north Harris County, includes construction of a regional stormwater detention basin.

KEY ISSUES

The commitment made through TWDB Resolution No. 22-030 expires on October 31, 2022, however, the Resolution provides the Executive Administrator with authority to approve an extension of up to three months in which the District may close its funding.

The District is working its Executive Director regarding the overall costs of the project. They are trying to justify the large local share versus the TWDB grant amount.

RECOMMENDATION

Staff recommends approval of the extension until January 31, 2023, in accordance with the authority provided in TWDB Resolution No. 22-030 to allow sufficient time for the District to execute the grant and for TWDB staff to review closing and project documents from the District.

Jeff Walker
October 19, 2022
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Attachment: TWDB Resolution No. 22-030

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$2,208,906 TO THE HARRIS COUNTY FLOOD CONTROL DISTRICT
FROM THE FLOOD INFRASTRUCTURE FUND

THROUGH
THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$2,208,906

(22-030)

WHEREAS, the Harris County Flood Control District (District), located in Harris 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 construction of a flood project, identified as Project No. 40152; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$2,208,906 through execution of a Grant Agreement, all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the District will provide a local share of \$19,880,156;

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 no debt obligations are to be assumed by the District for the financial assistance and no taxes or revenues are required to be pledged 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 applicable 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; and
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; and
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

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

A commitment is made by the TWDB to Harris County Flood Control District for financial assistance in the amount of \$2,208,906 from the Flood Infrastructure Fund, to be evidenced by the execution of a Grant Agreement. This commitment will expire on October 31, 2022; 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 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;

The Following Conditions Must Be Included in the Grant Agreement:

3. the Grant Agreement must provide that the District will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
4. the Grant Agreement 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;

5. the Grant Agreement 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;
6. the Grant Agreement must contain a provision requiring the District to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
7. the Grant Agreement 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;
8. the Grant Agreement must include a provision stating that the District shall return 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;
9. the Grant Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Grant Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
10. financial assistance proceeds are public funds and, as such, the Grant Agreement must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256 and the Public Funds Collateral Act, Government Code, Chapter 2257;
11. 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 Grant Agreement 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;
12. the Grant Agreement 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;

13. the Grant Agreement 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;
14. 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 legal services, 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 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;
16. prior to release of funds for construction, the District must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the District has the legal authority necessary to complete the acquisitions;

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

Special Conditions:

17. prior to closing, the District shall execute a Grant Agreement in a form and substance acceptable to the Executive Administrator;
18. prior to closing, the District must demonstrate its required local share of \$19,880,156, which may be provided through in-kind services with prior approval by the Executive Administrator;
19. 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;
20. 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;

21. the Grant Agreement 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;
22. prior to release of funds for each Project phase or portion of a Project phase, the District must deposit into the District's construction account the District's share of funds, based on the Board-approved grant percentage, necessary to complete the upcoming phase(s) or portion of the phase of the Project, as approved by the Executive Administrator.

APPROVED and ordered of record this, the 11th day of April, 2022.

TEXAS WATER DEVELOPMENT BOARD


Brooke T. Paup
Brooke T. Paup, Chairwoman

DATE SIGNED: April 11, 2022

ATTEST:



Jeff Walker, Executive Administrator



December 20, 2022

Ms. Nancy Richards
Team Manager, East Texas Region
Water Supply & Infrastructure
1700 N. Congress Ave
Austin, Texas 78711

Re: Texas Water Development Board (TWDB) Flood Infrastructure Fund
Lauder Stormwater Detention Basin / TWDB Project No. 40152
HCFCD Project P500-06-00 (Bond ID C-34)
Request for Extension to Close Grant

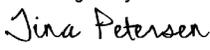
Dear Ms. Richards:

The current deadline to close on all grant documents related to this project is January 31, 2022. The Harris County Flood Control District (District) is currently routing the Escrow Agreement, Authorized Representative Agreement Execution Resolution, and Grant Agreement for approval at the Harris County Commissioners Court meeting scheduled for January 10, 2023. Following Court approval, the District anticipates it will take at least 5 business days to process, sign, and transmit all documents to TWDB.

In an abundance of caution, the District respectfully requests an extension of the closing deadline to March 31, 2023 as a contingency in case there are any challenges during the process to approve and execute the documents.

We look forward to our continued partnership in bringing much-needed flood damage reduction projects to Greens Bayou Watershed.

Sincerely,

DocuSigned by:

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Tina Petersen, Ph.D., P.E.
Executive Director

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