

AGENDA ITEM MEMO

BOARD MEETING DATE: December 7, 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
Mireya Loewe, Assistant Director, Regional Water Project Development

SUBJECT: Amendment to the Military Highway Water Supply Corporation Commitment Expiration Date

ACTION REQUESTED

Consider amending by resolution previously adopted Texas Water Development Board Resolution No. 23-040 to extend Military Highway Water Supply Corporation's Economically Distressed Areas Program funding commitment to February 29, 2024.

BACKGROUND

In June 2023, the Texas Water Development Board (TWDB) approved a \$2,200,000 commitment to Military Highway Water Supply Corporation (Corporation) from the Economically Distressed Areas Program for planning, design, and construction of a wastewater system project. The commitment included \$1,100,000 in financing and \$1,100,000 in grant. The commitment is set to expire on December 31, 2023.

KEY ISSUES

The Corporation is requesting an extension to the expiration date of its commitment to February 29, 2024. The Corporation has outstanding debt with the United States Department of Agriculture – Rural Development (USDA -RD). Because the Corporation is pledging a lien on the same level as its outstanding debt, condition No. 27 of TWDB Resolution 23-040, requires that prior to closing, the Corporation must execute a parity agreement with each entity that holds debt. The Corporation has been working to complete the parity agreement; however, additional time is needed to complete the processing of the parity agreement by USDA-RD and the TWDB. Should the parity

agreement be executed prior to December 7th, the Corporation will be able to close on the funding prior to the December 31, 2023, commitment expiration date. However, if the agreement is not fully executed by December 7th, the Corporation would not be able to close prior to the current expiration date.

Given the tight schedule to complete the transaction prior to December 31, the Corporation requests a 60-day extension to its commitment expiration date in order to complete the closing process.

RECOMMENDATION

The requested amendment does not change the total amount of financing to the Corporation. In order to have sufficient time to close on the commitment, the Executive Administrator recommends that TWDB Resolution 23-040 be amended to extend the commitment expiration to February 29, 2024.

Attachments:

1. Proposed Resolution (23-)
2. Resolution (23-040)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 23-040
PROVIDING FINANCIAL ASSISTANCE TO
MILITARY HIGHWAY WATER SUPPLY CORPORATION

(23-)

At its meeting on June 6, 2023, the Texas Water Development Board (TWDB), by TWDB Resolution No. 23-040, made a commitment to provide financial assistance in the amount of \$2,200,000 to Military Highway Water Supply Corporation (Corporation) from the Economically Distressed Areas Program Account of the Texas Water Development Fund II to finance certain water system improvements through the TWDB's proposed purchase of a Promissory Note in the amount of \$1,100,000 and execution of a Loan Agreement and a grant of \$1,100,000 for Project No. 10462; and

Under TWDB Resolution No. 23-040, the commitment period is set to expire December 31, 2023.

The Corporation has submitted a request to extend the TWDB's commitment period for an additional 60 days to close on the commitment, due to difficulties providing necessary documentation for the closing.

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

The TWDB finds that the proposed amendment to TWDB Resolution No. 23-040, granting an extension of 60 days is reasonable, within the public interest, and will serve a public purpose; and

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

1. The commitment made through TWDB Resolution No. 23-040 is amended to extend the commitment 60 days. The commitment will expire on February 29, 2024.
2. All other terms and conditions of TWDB Resolution No. 23-040 shall remain in full force and effect.

APPROVED and ordered of record this, the 7th day of December 2023.

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
\$2,200,000 TO
MILITARY HIGHWAY WATER SUPPLY CORPORATION
FROM THE ECONOMICALLY DISTRESSED AREAS PROGRAM ACCOUNT OF
THE TEXAS WATER DEVELOPMENT FUND II
THROUGH THE PROPOSED PURCHASE OF
A PROMISSORY NOTE IN THE AMOUNT OF \$1,100,000 AND EXECUTION OF A LOAN
AGREEMENT
AND
THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$1,100,000

(23-040)

WHEREAS, Military Highway Water Supply Corporation (Corporation), located in Cameron County, has filed an application seeking financial assistance in the amount of \$2,200,000 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II, to finance certain water system improvements, identified as Project No. 10462; and

WHEREAS, the Corporation seeks financial assistance from the Texas Water Development Board (the TWDB) through the TWDB's proposed purchase of a Promissory Note in the amount of \$1,100,000 and execution of a Loan Agreement (together with all authorizing documents (Obligations)) and a grant of \$1,100,000 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II, all as is more specifically set forth in the application and in recommendations of TWDB's staff; and

WHEREAS, the Corporation has offered a pledge of system revenues and a mortgaged deed of trust on the Corporation's system as sufficient security for the repayment of the Obligations;

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 § 363.43; and

WHEREAS, the TWDB has carefully considered all matters required by law and in particular the following:

1. the feasibility of creating a conservation and reclamation district to provide and finance the water supply or sewer services, in accordance with Texas Water Code § 16.346;
2. the need of the economically distressed area to be served by the water supply and sewer services in relation to the need of other political subdivisions requiring economically distressed areas financing, and the relative costs and benefits of all applications, in accordance with Texas Water Code § 17.929(a)(1);

3. the availability to the political subdivision of revenue from alternative sources for the payment of the cost of the proposed project, in accordance with Texas Water Code § 17.929 (a)(2);
4. financing of the proposed water supply or sewer project, in accordance with Texas Water Code § 17.929(a)(3);
5. the feasibility of achieving cost savings by providing a regional facility for water supply and wastewater service and the feasibility of financing the facilities by using funds from the economically distressed areas account or any other financial assistance, in accordance with Texas Water Code § 17.929(a)(5);
6. the rates, fees and charges that the average customer to be served by the project will be able to pay, sources of funding available to the Corporation, and any local funds of the Corporation, in accordance with Texas Water Code § 17.933(d)(1);
7. sources of funding available to the Corporation from federal and private funds and from other state funds, in accordance with Texas Water Code § 17.933(d)(2);
8. any local funds of the Corporation to be served by the project if the economically distressed area to be served is within the boundary of the Corporation, in accordance with Texas Water Code § 17.933(d)(3);
9. the just, fair, and reasonable charges for water and wastewater service as provided in the Texas Water Code, in accordance with Texas Water Code § 17.933(d)(4);

WHEREAS, the TWDB hereby finds:

1. that the Corporation has submitted a proposed program of water conservation 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;
2. that the area to be served by the proposed project has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available, in accordance with Texas Water Code § 17.929(b);
3. that the County and City have adopted model subdivision rules as promulgated by the TWDB pursuant to Texas Water Code § 16.343 and the manner of enforcement, in accordance with Texas Water Code § 17.929(a)(4);
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 that 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, in accordance with 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 Corporation and filed with the TWDB in accordance with Texas Water Code § 16.053(j);

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

A commitment is made by the TWDB to the Military Highway Water Supply Corporation for financial assistance in the amount of \$2,200,000 from the Economically Distressed Areas Account of the Texas Water Development Funds through the TWDB's proposed purchase of a Promissory Note in the amount of \$1,100,000 and execution of a Loan Agreement and a grant of \$1,100,000. This commitment will expire on December 31, 2023.

This 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 Corporation's compliance with all applicable requirements contained in 31 TAC Chapter 363;
3. the Obligations and 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 Obligations and Grant Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
4. loan proceeds and grant funds are public funds and, as such, the Grant Agreement and 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;
5. loan proceeds and grant funds shall not be used by the Corporation when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations and Grant Agreement shall include an environmental indemnification provision wherein the Corporation 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 Corporation, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

6. prior to closing, and if not previously provided with the application, the Corporation 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, under the contract, and acceptable to the Executive Administrator;
7. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the Corporation 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;
8. the Executive Administrator may require that the Corporation execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
9. prior to closing, the Corporation must submit to the Executive Administrator an attorney's opinion confirming the legal authority for the Corporation to incur the Obligation that is acceptable to the Executive Administrator;
10. the Obligations must provide that the Corporation may prepay all or part of the amounts of principal and interest then due on the loan on any regularly scheduled payment date as specified in the Repayment Schedule, as revised, beginning no earlier than the first interest payment date that is 10 years from the date of the first delivery of funds from the TWDB to the Corporation pursuant to this Agreement;
11. the Corporation, 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 Corporation'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 Corporation's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Corporation is an obligated person with respect to such bonds under SEC Rule 15c2-12;
12. the Obligations must contain a provision requiring the Corporation to levy a tax 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;
13. the Obligations must include a provision requiring the Corporation to use any loan proceeds from the Obligations that are determined to be surplus proceeds

remaining after completion of the project and after completion of a final accounting in a manner approved by the Executive Administrator;

14. prior to closing, the Corporation 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;
15. the Obligations must provide that the Corporation will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
16. the Obligations must provide that the Corporation 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;
17. the Obligations must contain a provision requiring the Corporation to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
18. the Obligations must provide that the Corporation will submit annually, an audit prepared by a certified public accountant in accordance with generally accepted auditing standards;
19. the Obligations must contain a covenant that the Corporation will abide by all applicable construction contract requirements related to the use of iron and steel products and manufactured goods produced in the United States, as required by Texas Water Code § 17.183;

Water Supply Corporation Conditions:

20. the Corporation's indebtedness to the TWDB shall be evidenced by loans specifically secured by:
 - a. a first or parity lien on the gross revenues of the Corporation's water system (System); and
 - b. a first or parity lien mortgage on the System;
21. upon closing or within 20 days after closing, the Corporation must file a Deed of Trust with the County Clerk of the county in which the property is located, as required by Business and Commerce Code, Chapter 9, or a Utility Security Instrument with the Secretary of State's Office and corresponding notice with the County Clerk, as required by Business and Commerce Code, Chapter 261, as evidence of the TWDB's security interest in the Corporation's System. Within thirty (30) days of the date of each filing, the Corporation shall submit a copy of the recorded instrument to the TWDB;

22. upon closing or within 20 days after closing, the Corporation must file a security instrument with the Secretary of State's Office, as required by Business and Commerce Code, Chapter 9 or Chapter 261 to evidence the TWDB's security interest in any personal property directly related to water supply and/or sewer service, owned or to be acquired by the Corporation. A copy of the recorded security instrument shall be submitted by the Corporation to the TWDB within thirty (30) days of its filing with the Secretary of State's Office;
23. prior to closing, the Corporation must obtain a commitment from a title insurance company in accordance with the standards established by the Texas Department of Insurance, resulting in the issuance of a mortgagee title insurance policy on the property owned in fee simple, upon which the TWDB will be given a first or parity lien mortgage. A copy of the mortgagee title insurance policy shall be submitted to the TWDB within thirty (30) days of its execution;
24. prior to closing, the Corporation must cure any defects or liens upon the property listed in Schedule C of the title insurance company commitment that the Executive Administrator deems necessary;
25. prior to release of funds for construction, the Corporation must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the Corporation has the legal authority necessary to complete the acquisitions;
26. prior to closing, the Corporation must submit to the Executive Administrator evidence that the Corporation's bylaws have been amended to include the following requirements:
 - a. as long as the Corporation is indebted for a loan or loans made by or through the TWDB, the bylaws shall not be altered, amended or repealed without the prior written consent of the Executive Administrator; and
 - b. the Corporation is a nonprofit entity; no part of the income of the Corporation will be distributed to the Corporation's members, directors, or officers;
27. prior to closing, if the Corporation is pledging a lien on real property that is to be on parity with a lien or liens on real property securing debt that will remain outstanding after closing the TWDB's loan, then the Corporation must execute a Parity Agreement with each entity that holds such debt that is acceptable in form and substance to the Executive Administrator; and
28. the Obligations shall include a special covenant prohibiting the Corporation 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 Corporation 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;

EDAP Conditions:

29. The Grant Agreement and Loan Agreement must include a provision that requires compliance with Texas Water Code § 16.356 that no revenues received from rates or fees collected from the water supply or wastewater system constructed in whole or in part from this commitment shall be used for any purposes other than utility purposes and that the annual financial statement prepared by the Corporation under Business Organizations Code § 22.352 shall include a specific report on compliance with this condition;

Pledge Conditions for the Loan:

30. 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;
31. if the Corporation 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;
32. the 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 Corporation certifies that the Corporation 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 Corporation must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator.

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

Special Conditions:

33. prior to closing, the Corporation shall adopt and implement the water conservation program approved by the TWDB;
34. prior to closing, the Corporation shall submit a 2022 audit, the form and substance of which is satisfactory to the Executive Administrator;
35. the Corporation must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by conversion to a conservation and reclamation district or a sale-transfer-merger with another retail public utility;
36. the Obligations must include a provision requiring that, prior to any action by the Corporation 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.
37. Prior to closing, the Corporation and the Executive Administrator shall execute an Agreement that sets forth the terms and uses of the loan and grant funds;
38. The Grant Agreement must include a provision stating that the Corporation shall return any grant funds that are determined to be Surplus Funds in a manner determined by the Executive Administrator;
39. prior to the release of funds for design, the Corporation shall complete an assessment by the TWDB of its financial, managerial, and technical capabilities;
 - a. If the assessment identifies any deficiencies, the Corporation, prior to the release of funds, must receive approval by the TWDB of a plan of action to address those deficiencies;
 - b. Prior to the release of funds for construction, the Corporation must demonstrate implementation of the plan of action in a manner satisfactory to the Executive Administrator;
40. at least thirty (30) days prior to closing, the Corporation shall submit documentation acceptable to the Executive Administrator (EA) of the TWDB that it has reserved thirty (30) days of cash, based on the daily average of operation and maintenance expenses reflected in the Corporation's most recent audit. While the TWDB is the holder of the Obligations, this cash reserve requirement shall be maintained based on the Corporation's most recent audit. The restricted cash shall be kept in a bank account separate and apart from the Corporation's other cash. Upon the disbursement of any restricted cash, the Corporation shall notify the EA. The restricted cash account shall be replenished within ninety (90) days.

APPROVED and ordered of record this 6th day of June 2023.

TEXAS WATER DEVELOPMENT BOARD


Brooke T. Paup
Brooke T. Paup, Chairwoman

DATE SIGNED: 6/6/23

ATTEST:

Jeff Walker
Jeff Walker, Executive Administrator