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AGENDA ITEM MEMO

BOARD MEETING DATE: May 8, 2025

TO: Board Members

THROUGH: Bryan McMath, 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
Bill Blaik, P.E., Manager, Regional Water Project Development

SUBJECT: Westwood Shores Municipal Utility District Project No. 73866 Request for Change of Project Scope

ACTION REQUESTED

Consider amending by resolution, the previously adopted Texas Water Development Board Resolution No. 20-036, to modify the Westwood Shores Municipal Utility District's Clean Water State Revolving Fund project scope of work.

BACKGROUND

In April 2020, the Texas Water Development Board (TWDB) approved a \$1,830,197 commitment to Westwood Shores Municipal Utility District (District) from the Clean Water State Revolving Fund (CWSRF) for planning, design, and construction of a wastewater reuse, wastewater treatment plant upgrades, and lift stations project. The District closed on the commitment in July of 2020 and the lift station portion of the project was completed in August of 2024. The District is requesting to repurpose the remaining funds for additional lift station replacement and sanitary sewer repairs as a result of recent sanitary sewer overflows and immediate needs.

KEY ISSUES

The original wastewater reuse project qualified for \$270,197 of principal forgiveness for green project components for water efficiency for the reuse of wastewater for golf course irrigation. The District submitted green project information for the amended project scope that meets the requirements of energy efficiency improvements.

Our Mission	Board Members
Leading the state's efforts in ensuring a secure water future for Texas	L'Oreal Stepney, P.E., Chairwoman Tonya R. Miller, Board Member Bryan McMath, Executive Administrator

RECOMMENDATION

To utilize available funding and make necessary repairs to Westwood Shores Municipal Utility District's wastewater collection system, the Executive Administrator recommends that the TWDB Resolution No. 20-036, be amended to include construction of additional lift stations and sanitary sewer rehabilitation.

Attachments:

1. Proposed Resolution (25-)
2. Resolution (20-036)
3. District Amendment Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 20-036
TO MODIFY THE SCOPE OF THE APPROVED PROJECT NO. 73866 FOR
WESTWOOD SHORES MUNICIPAL UTILITY DISTRICT

(25 -)

Recitals:

At its April 9, 2020 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 20-036, made a commitment to provide financial assistance to Westwood Shores Municipal Utility District (District) for the purpose of financing the planning, design, and construction of certain wastewater system improvements identified as Project No. 73866 in the amount of \$1,830,197, consisting of TWDB's purchase of \$1,560,000 Westwood Shores Municipal Utility District Unlimited Tax Bonds, Proposed Series 2020 and execution of a Principal Forgiveness Agreement in the amount of \$270,197 from the Clean Water State Revolving Fund program, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made.

On July 30, 2020, the TWDB and the District closed on the TWDB's purchase of \$1,560,000 Westwood Shores Municipal Utility District Unlimited Tax Bonds, Series 2020A and the Principal Forgiveness Agreement in the amount of \$270,197.

By letter dated January 10, 2025, the District has requested to modify the scope of the Project approved by the TWDB, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made

The TWDB hereby finds that modifying the scope of the Project is reasonable and that the request is in the public interest and will serve a public purpose

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

1. The scope of the approved Project is modified to include construction of additional lift stations and sanitary sewer rehabilitation.
2. All other terms and conditions of TWDB Resolution No. 20-036 shall remain in full force and effect.

APPROVED and ordered of record this the 8th day of May, 2025.

TEXAS WATER DEVELOPMENT BOARD

L'Oreal Stepney, P.E., Chairwoman

DATE SIGNED: _____

ATTEST:

Bryan McMath, Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$1,830,197 TO THE WESTWOOD SHORES MUNICIPAL UTILITY DISTRICT
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$1,560,000 WESTWOOD SHORES MUNICIPAL UTILITY DISTRICT UNLIMITED TAX BONDS,
PROPOSED SERIES 2020
AND
\$270,197 IN PRINCIPAL FORGIVENESS**

(20-036)

WHEREAS, the Westwood Shores Municipal Utility District (District), located in Trinity County has filed an application for financial assistance in the amount of \$1,830,197 from the Clean Water State Revolving Fund (CWSRF) to finance the planning, design and construction of certain wastewater system improvements identified as Project No. 73866; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$1,560,000 Westwood Shores Municipal Utility District Unlimited Tax Bonds, Proposed Series 2020 (together with all authorizing documents, "Obligations"), and the execution of a Principal Forgiveness Agreement in an amount of \$270,197, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the District has offered a pledge of unlimited tax 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 § 375.14; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the District will be sufficient to meet all the Obligations assumed by the District, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;
3. that the District 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;
4. that the District has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007; and

5. that the TWDB has made a timely and concerted effort to solicit projects that address green infrastructure, water, or energy efficiency improvements and other environmentally innovative activities and has determined that the entire Project, or a portion of the Project, satisfies the EPA's criteria for Green Projects, and is eligible for principal forgiveness in the amount of \$270,197.

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

A commitment is made by the TWDB to the Westwood Shores Municipal Utility District for financial assistance in the amount of \$1,830,197 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of \$1,560,000 Westwood Shores Municipal Utility District Unlimited Tax Bonds, Proposed Series 2020, and the execution of a Principal Forgiveness Agreement in the amount of \$270,197. This commitment will expire on October 31, 2020.

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 District;
3. this commitment is contingent upon the District's compliance with all applicable requirements contained in 31 TAC Chapter 375;
4. the Obligations must provide that the District agrees to comply with all of the conditions set forth in the TWDB Resolution, which conditions are incorporated herein;
5. the Obligations must provide that the Obligations can be called for early redemption 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;
6. 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;

7. the Obligations must contain a provision requiring the District to levy a tax and/or maintain and collect sufficient rates and charges, as applicable, to produce system funds 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;
8. the Obligations must include a provision requiring the District to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the District to submit a final accounting and disposition of any unused funds;
9. the Obligations must include a provision requiring the District to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting in a manner as approved 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 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 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;

13. prior to closing, the District shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges and/or the levy of an interest and sinking tax rate (if applicable) sufficient for the repayment of all system debt service requirements;
14. prior to closing, and if not previously provided with the application, the District 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;
15. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the District shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
16. the Executive Administrator may require that the District execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

Conditions Related to Tax-Exempt Status

17. the District'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 District when rendering this opinion;
18. the District's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the District when rendering this opinion;
19. the Obligations must include a provision prohibiting the District from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of section 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
20. 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 section 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 section 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;
21. the Obligations must include a provision requiring the District 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 section 148 of the Code. The Obligations must provide that the District 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 District may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the District, provided that the District 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 section 148(f) of the Code, section 1.148-3 of the Regulations, and the rulings thereunder. The District 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;

22. the Obligations must include a provision prohibiting the District from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
23. 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 section 149(b) of the Code;
24. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the District's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
25. the Obligations must contain a provision that the District will refrain from using from using the proceeds provided by this TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Obligations in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);
26. the transcript must include evidence that the information reporting requirements of section 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 section 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;
27. the Obligations must provide that neither the District 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 District by the TWDB;

State Revolving Fund Conditions

28. the District shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
29. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The District, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part

with financial assistance made available as provided herein shall insert in full in any contract in excess of \$2,000 the contracts clauses as provided by the TWDB;

30. the Obligations must include a provision stating that the District shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The District shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;
31. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the District will adhere to the approved project schedule;
32. the Obligations and Principal Forgiveness Agreement must contain a covenant that the District will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines;
33. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;
34. the District shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

35. the District shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant 31 TAC Chapter 375;
36. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;

Pledge Conditions for the Loan

37. the Obligations must contain a provision that for each year the Bonds are outstanding, the District will levy a debt service tax rate, and collect taxes sufficient for the repayment of annual principal and interest requirements on the Obligations;

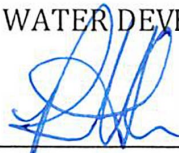
PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

38. 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;
39. prior to closing, the District shall adopt and implement the water conservation program approved by the TWDB;
40. the Obligations must include a provision requiring that the District notify the Executive Administrator in writing prior to any action by it 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;
41. prior to closing, the District shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
42. the Principal Forgiveness Agreement must include a provision stating that the District shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator.

APPROVED and ordered of record this 9th day of April 2020.

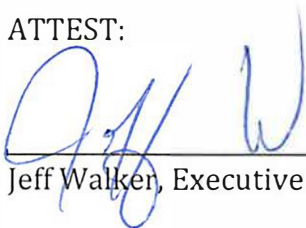
TEXAS WATER DEVELOPMENT BOARD



Peter M. Lake, Chairman

DATE SIGNED: 4/10/20

ATTEST:



Jeff Walker, Executive Administrator



January 10, 2025

Texas Water Development Board ("TWDB")
Attn: Board Members of the TWDB
c/o Mr. Bill Blaik, P.E. (Team 7 Manager, Houston Field Office)
via email: bill.blaik@twdb.texas.gov

RE: Westwood Shores Municipal Utility District
Request to Repurpose Funds (CWSRF L1001094 & LF1001129)

To Board Members of the TWDB:

On behalf of Westwood Shores Municipal Utility District (the "District"), we respectfully request a change in use of existing bond proceeds. In 2020, the District borrowed \$1,560,000 (Loan/Grant # L1001094) which included \$270,197 classified as loan forgiveness (Loan/Grant # LF1001129). The District qualified for loan forgiveness because it included a green project which in this case is a proposed Reuse Project. The current Loan Fund (L1001094) has approximately \$1,200,000 in unspent funds and the Loan Forgiveness Fund (LF1001129) has approximately \$129,000 in unspent funds. \$1,329,000 total unspent funds.

The recent direct hit of hurricane Beryl caused flooding, wind and electrical damage to District facilities. This is in addition to damage caused by nearly 37 inches of rain during the April/May storm events that caused Lake Livingston to exceed its banks twice and flood the District and its sanitary sewer lift stations.

In light of the damage, the District's sensitive financial position, and the need to urgently respond to remedy the damage, the District would like to repurpose funds originally allocated for the Reuse Project and instead direct the funds towards a different green project scope of work. The proposed scope would supplement the total need for damage mitigation improvements from future high wind and flooding events and reduce the overall energy consumption of the facilities.

The following is a general scope and estimated budget for the proposed repurposed funds.

Lift Station Improvements: \$700,000 (Engineering and Construction):
Including, but not limited to, increasing pumping capacity to handle increased inflows observed during storm events and to reduce energy consumption, raising elevations of access doors and control panels for flood protection; and repairing failed control panels and/or above ground piping and valves. and/or other related improvements as the District determines to be most advantageous to the District.

Sanitary Manhole and Sewer repair and rehabilitation: \$629,000 (Engineering and Construction)
Including, but not limited to, raising elevations of manhole rims or otherwise flood proofing manholes, repairing failed sewers to decrease inflows of stormwater, which in turn would reduce energy consumption at the lift stations and wastewater treatment plant, and/or other related improvements as the District determines to be most advantageous to the District.

The decision to borrow the money for a Reuse Project was made by a different set of directors. Current directors have been proactively working to increase the District's financial stability and prioritization of projects.

Thank you for your time and consideration. Please feel free to contact me at (713) 542-8345 should you have any questions.

Regards,

A handwritten signature in black ink, appearing to read "Joan M. Gallagher". The signature is fluid and cursive, with the first name "Joan" being the most prominent.

Joan Gallagher
President, Westwood Shores MUD

Cc: Ricardo Rodriguez, P.E. – Civil Grade Engineers / Engineer for the District
Josh Zientek – Mitchell, Zientek & Scruggs, LLP / Attorney for the District