

Texas Water Development Board

PROJECT FUNDING REQUEST

BOARD DATE: February 2, 2022

PRESENTED BY: Jeff Taylor

ACTION REQUESTED

Approve by resolution a request from El Paso Water Utilities Public Service Board acting on behalf of the City of El Paso (El Paso County) for \$14,600,000 in financial assistance consisting of \$9,490,000 in financing and \$5,110,000 in grant from the Flood Infrastructure Fund for the construction of a flood mitigation project.

STAFF RECOMMENDATION

Approve No Action

PROJECT NAME AND NUMBER

Will Ruth Pond and Conveyance Improvements, Project Number 40182

BACKGROUND

Passed by the 86th Texas Legislature and approved by voters through a constitutional amendment, the Flood Infrastructure Fund (FIF) was created to provide funding for flood mitigation projects. The purpose of the FIF, as outlined in Senate Bill 7, is to assist in financing drainage, flood mitigation, and flood control projects. FIF projects presented for consideration have been scored and ranked using prioritization criteria outlined in 31 Texas Administrative Code § 363.404 and further specified in the Flood Intended Use Plan. The prioritized list of projects was approved by the Board on September 17, 2020.

The El Paso Water Utilities Public Service Board (EPWU) is situated in the far western corner of the state and is located in El Paso County.

PROJECT NEED AND DESCRIPTION

El Paso is a desert city, bisected by the Franklin Mountains, and experiences an annual monsoon season generating flash floods that damage and disrupt communities near the mountains. Northeast El Paso, which is home to Fort Bliss U.S. Army Base (Ft. Bliss), experiences particularly intense flooding. It is not unusual for the monsoon floods to make major roads impassable and for homes and businesses to experience private property damage. The location of the proposed project is approximately seven miles north of Ft. Bliss and 10 miles east of the Franklin Mountains. The drainage area includes Hondo Pass Drive to the north, Diana Drive to the west, and Railroad Drive to the south and east, containing approximately 2,200 residents of disadvantaged communities. The modeled flood zone area is larger than that depicted in FEMA's Flood Insurance Rate Maps (FIRMs), primarily due to the additional runoff generated from the military reservation watershed area. Additionally, it is noted that drainage infrastructure within Ft. Bliss is not sized to convey the 100-year storm event and has hydraulic backwater effects within the project drainage area.

COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE AUGUST 31, 2022
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EPWU is proposing a pair of detention/retention basins with drainage infrastructure to improve the public safety and reduce flooding within a total approximate watershed area of 1,060 acres. The approximate footprint for the proposed 20-foot deep detention ponds, including street rights-of-way, is 32-acres. The approximately 290 acre-feet ponds and accompanying conveyance improvements will reduce flooding of major streets and will increase safe traffic flow through Northeast El Paso, where thousands of military and civilian employees commute to and from Ft. Bliss every day. The project will remove about 600 homes from the floodplain, preventing private property damage.

PROJECT SCHEDULE

Task	Schedule Date
Closing	June 15, 2022
Engineering Feasibility Report Completion (End of Planning Phase)	August 31, 2022
Design Phase Completion	September 30, 2022
Start of Construction	October 24, 2022
Construction Completion	March 28, 2024

KEY ISSUES

The EPWU’s project is eligible under Category 2 of the 2020 Flood Intended Use Plan. This category of funding was designed for planning, acquisition, design, and construction activities to implement flood mitigation projects. Category 2 projects are eligible to receive up to 70 percent in grant funding. Recipients of financial assistance may either use their own available funds or borrow FIF funds at zero percent for any portion of the required local share not provided through FIF grant funds.

The EPWU qualified for a \$5,110,000 grant under the FIF equal to 35 percent of the total project costs.

LEGAL

Special Conditions

- Executed grant agreement
- Return of surplus grant funds

Attachments:

1. Financial Review
2. Project Budget
3. Resolution (22-)
4. Location Map

Responsible Authority	El Paso
Program	FLOOD
Commitment Number	G1001474, L1001473
Project Number	40182
List Year	2020
Type of Pledge	Revenue Pledge
Pledge Level (if applicable)	First Lien
Legal Description	\$5,110,000 Grant agreement between the City of El Paso and the TWDB, \$9,490,000 City of El Paso, Texas Municipal Drainage Utility System Revenue Bonds, Series 2022
Tax-exempt or Taxable	Tax-Exempt
Refinance	No
Outlay Requirement	Yes
Disbursement Method	Escrow
Outlay Type	Outlay = Escrow Release
Qualifies as Disadvantaged	No
Financial Managerial & Technical Complete	N/A
Phases Funded	Construction
Pre-Design	Yes
Project Consistent with State Water Plan	N/A
Water Conservation Plan	N/A
Overall Risk Score	2B

PROJECT TEAM

Team Manager	Financial Analyst	Engineering Reviewer	Environmental Reviewer	Attorney
Jeff Taylor	Rand Zeolla	Marcus Snell	Gayla Duaine	Breann Hunter

ISSUE BEING EVALUATED
FOR ILLUSTRATION PURPOSES ONLY
El Paso Water Utilities Public Services Board

City of El Paso, Texas Municipal Drainage Utility System Revenue Bonds, Proposed Series 2022

Dated Date: 6/15/2022	Source: FIF
Delivery Date: 6/15/2022	Rate: 0.00%
First Interest: 9/1/2022	IUP Year: 2020
First Principal: 3/1/2023	Case: Revenue
Last Principal: 3/1/2052	Admin.Fee: \$0
Fiscal Year End: 02/28	Admin. Fee Payment Date: N/A
Required Coverage: 1.0	

FISCAL YEAR	PROJECTED NET SYSTEM REVENUES	CURRENT DEBT SERVICE	PROPOSED SERIES 2022*	\$9,490,000 ISSUE			TOTAL DEBT SERVICE	TOTAL DEBT COVERAGE
				PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT		
2023	\$17,455,608	\$10,258,966	\$0	\$0	-	\$0	\$10,258,966	1.70
2024	17,455,608	10,209,846	977,800	320,000	-	-	11,507,646	1.52
2025	17,455,608	10,197,756	980,050	320,000	-	-	11,497,806	1.52
2026	17,455,608	10,188,381	977,200	320,000	-	-	11,485,581	1.52
2027	17,455,608	10,475,531	978,825	320,000	-	-	11,774,356	1.48
2028	17,455,608	10,541,351	979,750	320,000	-	-	11,841,101	1.47
2029	17,455,608	10,596,596	979,975	320,000	-	-	11,896,571	1.47
2030	17,455,608	10,686,926	979,500	320,000	-	-	11,986,426	1.46
2031	17,455,608	6,576,201	978,325	320,000	-	-	7,874,526	2.22
2032	17,455,608	6,574,161	981,450	315,000	-	-	7,870,611	2.22
2033	17,455,608	6,455,706	978,700	315,000	-	-	7,749,406	2.25
2034	17,455,608	5,455,931	980,250	315,000	-	-	6,751,181	2.59
2035	17,455,608	5,442,956	980,925	315,000	-	-	6,738,881	2.59
2036	17,455,608	5,453,381	980,725	315,000	-	-	6,749,106	2.59
2037	17,455,608	3,740,431	979,650	315,000	-	-	5,035,081	3.47
2038	17,455,608	2,133,481	977,700	315,000	-	-	3,426,181	5.09
2039	17,455,608	2,133,006	979,875	315,000	-	-	3,427,881	5.09
2040	17,455,608	2,139,631	981,000	315,000	-	-	3,435,631	5.08
2041	17,455,608	913,081	981,075	315,000	-	-	2,209,156	7.90
2042	17,455,608	914,616	980,100	315,000	-	-	2,209,716	7.90
2043	17,455,608	-	978,075	315,000	-	-	1,293,075	13.50
2044	17,455,608	-	-	315,000	-	-	315,000	55.41
2045	17,455,608	-	-	315,000	-	-	315,000	55.41
2046	17,455,608	-	-	315,000	-	-	315,000	55.41
2047	17,455,608	-	-	315,000	-	-	315,000	55.41
2048	17,455,608	-	-	315,000	-	-	315,000	55.41
2049	17,455,608	-	-	315,000	-	-	315,000	55.41
2050	17,455,608	-	-	315,000	-	-	315,000	55.41
2051	17,455,608	-	-	315,000	-	-	315,000	55.41
2052	17,455,608	-	-	315,000	-	-	315,000	55.41
2053	17,455,608	-	-	315,000	-	-	315,000	55.41
		\$131,087,939	\$19,590,950	\$9,490,000		\$0	\$9,490,000	\$160,168,889

* Projected issuance of bonds to refund revolving notes. Includes principal and interest

AVERAGE (MATURITY) LIFE	15.16 YEARS
NET INTEREST RATE	0.000%
COST SAVINGS	\$4,148,916
AVERAGE ANNUAL REQUIREMENT	\$5,166,738

Disclaimer: This is a working document and is provided as a courtesy. All information contained herein, including the proposed interest rate, is subject to change upon further review of the TWDB in accordance with 31 Texas Administrative Code Chapters 363, 371, 375, or 384, as applicable. The TWDB does not function as a financial advisor to anyone in connection with this financing. The information contained in this document is used by TWDB staff to analyze the application for financing is illustrative only and does not constitute any guaranty of future rates. The TWDB makes no claim regarding the applicability of the information at closing, at which time actual rates will be set.



Project Budget Summary
El Paso Water Utilities PSB
40182 - Will Ruth Pond and Conveyance
Improvements

Budget Items	TWDB Funds	Local Funds	Total
Construction			
Construction	\$14,600,000.00	\$10,945,000.00	\$25,545,000.00
Subtotal for Construction	\$14,600,000.00	\$10,945,000.00	\$25,545,000.00
Basic Engineering Services			
Basic Engineering Other (Structural)	\$0.00	\$22,000.00	\$22,000.00
Construction Engineering	\$0.00	\$500,000.00	\$500,000.00
Design	\$0.00	\$468,000.00	\$468,000.00
Planning	\$0.00	\$69,000.00	\$69,000.00
Subtotal for Basic Engineering Services	\$0.00	\$1,059,000.00	\$1,059,000.00
Special Services			
Environmental	\$0.00	\$4,000,000.00	\$4,000,000.00
Geotechnical	\$0.00	\$16,000.00	\$16,000.00
Permits	\$0.00	\$5,000.00	\$5,000.00
Special Service Other (Landscape)	\$0.00	\$10,000.00	\$10,000.00
Surveying	\$0.00	\$23,000.00	\$23,000.00
Testing	\$0.00	\$85,000.00	\$85,000.00
Subtotal for Special Services	\$0.00	\$4,139,000.00	\$4,139,000.00
Fiscal Services			
Bond Counsel	\$0.00	\$40,000.00	\$40,000.00
Financial Advisor	\$0.00	\$30,000.00	\$30,000.00
Subtotal for Fiscal Services	\$0.00	\$70,000.00	\$70,000.00
Other			
Land/Easements Acquisition	\$0.00	\$10,860,000.00	\$10,860,000.00
Subtotal for Other	\$0.00	\$10,860,000.00	\$10,860,000.00
Contingency			
Contingency	\$0.00	\$2,554,000.00	\$2,554,000.00
Subtotal for Contingency	\$0.00	\$2,554,000.00	\$2,554,000.00
Total	\$14,600,000.00	\$29,627,000.00	\$44,227,000.00

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF \$14,600,000 TO THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD FROM THE FLOOD INFRASTRUCTURE FUND THROUGH THE PROPOSED PURCHASE OF \$9,490,000 CITY OF EL PASO, TEXAS MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE BONDS, PROPOSED SERIES 2022 AND THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$5,110,000

(22 -)

WHEREAS, the El Paso Water Utilities Public Service Board on the behalf of the City of El Paso (City), located in El Paso 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. 40182; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$14,600,000 through the TWDB's proposed purchase of \$9,490,000 City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Proposed Series 2022 (together with all authorizing documents) and \$5,110,000 through execution of a Grant Agreement (Obligations), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City has offered a pledge of drainage system revenue as sufficient security for the repayment of the Obligations; and

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 City 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 in its opinion the taxes or revenues pledged by the City will be sufficient to meet all Obligations assumed by the City in accordance with Texas Water Code §15.536(3);
4. that the City is eligible to receive grant funding in accordance with Texas Water Code § 15.534 and the FIUP;
5. that the City has demonstrated that the benefit-cost ratio of the Project meets the requirements of the FIUP;

6. 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;
7. that the Project was developed using the best and most recent available data, in accordance with the FIUP;
8. that the City has documented that it has planned for operations and maintenance costs associated with the Project, in accordance with the FIUP; and
9. that the City has considered possible floodwater capture techniques that could be associated with the Project for water supply purposes, in accordance with the FIUP.

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

A commitment is made by the TWDB to El Paso Water Utilities Public Service Board for financial assistance in the amount of \$14,600,000 from the Flood Infrastructure Fund, to be evidenced by the TWDB's proposed purchase of \$9,490,000 City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Proposed Series 2022, and execution of a Grant Agreement in the amount of \$5,110,000. This commitment will expire on August 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 issuance of a written approving opinion of the Attorney General of the State of Texas stating that the City has complied with all of the requirements of the laws under which said Obligations were issued, that said Obligations were issued in conformity with the Constitution and laws of the State of Texas, and that said Obligations are valid and binding obligations of the City;
3. this commitment is contingent upon the City's 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 City 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 City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
6. the Obligations must provide that the City 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 City 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 City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
9. the Obligations must include a provision wherein the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City's Obligations or obligated persons, will, at a minimum, 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 City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;
10. 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;
11. the Obligations must include a provision requiring the City 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;
12. the Grant Agreement must include a provision stating that the City 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;

13. 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;
14. 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;
15. financial assistance proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the Project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment, recycling, and disposition of any contaminated sewage sludge, contaminated sediments, and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials, and employees as a result of activities relating to the Project to the extent permitted by law;
16. the Obligations must contain a provision stating that the City shall abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by Texas Government Code, Chapter 2252, Subchapter G;
17. the Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
18. the Obligations must contain a covenant that the City will refrain from using the proceeds of the Obligations to pay debt service on another issue of obligations of the borrower in contravention of section 149(d) of the Code (related to "advance refundings");
19. the Obligations must contain a provision requiring the City 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.
20. the Obligations shall include a special covenant prohibiting the City 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 City 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;

Pledge Conditions for the Loan

21. 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;
22. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after the term of any financial assistance made by the TWDB pursuant to this commitment, the Obligations must contain a provision providing that 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;
23. the Obligations must contain a provision providing that additional revenue obligations secured by a first lien on a pledge of the net revenues of the system may only be incurred if the City secures a certificate or opinion of a certificate public accountant to the effect that, according to the books and records of the City, the net revenues of the system for the last completed fiscal year, or for 12 consecutive months out of the 15 months, immediately preceding the date of issuance of the additional revenue obligations are at least equal to 1.25 times the average annual debt service for all outstanding bonds secured by a first lien on and pledge of the net revenues of the system after giving effect to the issuance of the bonds then being issues;

Conditions to Close or for Release of Funds:

24. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
25. 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 City 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;

26. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the City shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB; and
27. prior to closing, the City'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 City when rendering this opinion.

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

Special Conditions:

28. prior to closing, the City shall execute a Grant Agreement in a form and substance acceptable to the Executive Administrator; and
29. prior to release of funds for each Project phase or portion of a Project phase, the City must deposit into the City's construction account the City'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 2nd Day of February, 2022.

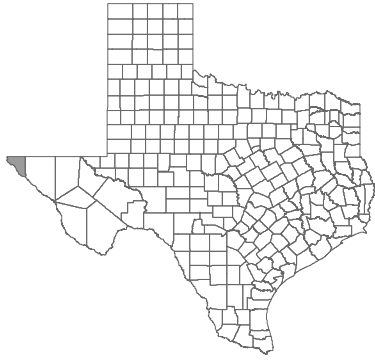
TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker
Executive Administrator



City of El Paso El Paso County

