

AGENDA ITEM MEMO

BOARD MEETING DATE: December 15, 2022

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
Dain Larsen, Manager, Regional Water Project Development

SUBJECT: Request for Extension of Closing

ACTION REQUESTED

Amend by resolution, previously adopted Texas Water Development Board (TWDB) Resolution No. 22-048 to modify the City of Dilley's Clean Water State Revolving Fund commitment to extend the commitment period.

BACKGROUND

In December 2021, the TWDB, through Resolution No. 21-120, approved a \$14,501,000 commitment to the City of Dilley (City) from the Clean Water State Revolving Fund for the planning, design, and construction of an upgrade of the City's primary 0.8 million-gallons-per-day (MGD) wastewater treatment plant to 1.6 MGD, decommissioning of a second wastewater treatment plant (Briscoe), and upgrading lines to divert wastewater flows from Briscoe to the primary wastewater treatment plant.

In April 2022, in an effort to reduce the total project cost the City presented to TWDB staff two alternatives to the original project design, one could reduce the project cost by nearly 30 percent and the second by 50 percent. In June 2022, the TWDB, through Resolution No. 22-048, approved an extension of the City's commitment period to December 2022 to allow staff sufficient time to review the City's submission, approve the modified project scope, and allow the City to close on a reduced commitment amount.

Our Mission

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
Jeff Walker, Executive Administrator

KEY ISSUES

In September 2022, staff approved the scope modification. The City has started the closing process but is unable to meet posting requirements for the sale of bonds and provide all necessary closing documentation prior to the expiration of the commitment. The City requests a one-month extension to complete the sale and provide required closing documentation.

RECOMMENDATION

The Executive Administrator recommends that TWDB Resolution No. 22-048 be amended to extend the commitment to January 2023 to allow sufficient time to close on the reduced funds.

Attachments

1. Resolution (22-)
2. Resolution (22-048)
3. Resolution (21-120)
4. Extension Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 21-120,
AS AMENDED BY TWDB RESOLUTION NO. 22-048
TO EXTEND THE COMMITMENT PERIOD FOR THE \$10,251,000
CITY OF DILLEY, TEXAS COMBINATION TAX AND REVENUE
CERTIFICATES OF OBLIGATION, TO BE ISSUED IN ONE OR MORE SERIES BY
THE CITY OF DILLEY, TEXAS
AND
\$4,250,000 IN PRINCIPAL FORGIVENESS

(22-)

WHEREAS, at its December 16, 2021, meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 21-120, made a commitment to provide financial assistance in the amount of \$14,501,000 to the City of Dilley, Texas (City), from the Clean Water State Revolving Fund to finance improvements to its wastewater system to be secured by the TWDB's purchase, in one or more series, of \$10,251,000 City of Dilley, Texas Combination Tax and Revenue Certificates of Obligation and through the execution of a Principal Forgiveness Agreement in the amount of \$4,250,000, for Project No. 73910; and

WHEREAS, by written request of the City, the TWDB amended TWDB Resolution No. 21-120 through TWDB Resolution No. 22-048 extending the City's commitment period; and

WHEREAS, pursuant to TWDB Resolution No. 21-120, as amended by TWDB Resolution No. 22-048, the commitment period will expire December 31, 2022; and

WHEREAS, the City has submitted a request to extend the TWDB's commitment for one (1) additional month to allow sufficient time for finalization of closing documents, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that granting an extension of one (1) month is in the public interest.

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

1. the commitment of the TWDB to provide financial assistance in the amount of \$14,501,000, as authorized in TWDB Resolution No. 21-120, as amended by TWDB Resolution No. 22-048, is amended to extend the commitment to January 31, 2023; and
2. all other terms and conditions of TWDB Resolution No. 21-120, as amended by TWDB Resolution No. 22-048, shall remain in full force and effect.

APPROVED and ordered of record this the 15th day of December 2022.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 21-120
TO EXTEND THE COMMITMENT PERIOD FOR THE \$10,251,000
CITY OF DILLEY, TEXAS COMBINATION TAX AND REVENUE
CERTIFICATES OF OBLIGATION, TO BE ISSUED IN ONE OR MORE SERIES BY
THE CITY OF DILLEY, TEXAS
AND
\$4,250,000 IN PRINCIPAL FORGIVENESS

(22-048)

WHEREAS, at its December 16, 2021 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 21-120, made a commitment to provide financial assistance in the amount of \$14,501,000 to the City of Dilley, Texas (City), from the Clean Water State Revolving Fund to finance improvements to its wastewater system to be secured by the TWDB's purchase, in one or more series, of \$10,251,000 City of Dilley, Texas Combination Tax and Revenue Certificates of Obligation and through the execution of a Principal Forgiveness Agreement in the amount of \$4,250,000, for Project No. 73910; and

WHEREAS, pursuant to TWDB Resolution No. 21-120, the commitment period will expire June 30, 2022; and

WHEREAS, the City has submitted a request to extend the TWDB's commitment for an additional six (6) months to allow sufficient time for evaluation of a request for a change of scope, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that granting an extension of six (6) months is in the public interest.

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

1. the commitment of the TWDB to provide financial assistance in the amount of \$14,501,000, as authorized in TWDB Resolution No. 21-120, is amended to extend the commitment to December 31, 2022; and
2. all other terms and conditions of TWDB Resolution No. 21-120 shall remain in full force and effect.

APPROVED and ordered of record this the 9th day of June 2022.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup
Brooke T. Paup, Chairwoman

DATE SIGNED: June 9, 2022

ATTEST:

Jeff Walker
Jeff Walker, Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$14,501,000 TO THE CITY OF DILLEY
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE, IN ONE OR MORE SERIES, OF
\$10,251,000 CITY OF DILLEY, TEXAS
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION (TAXABLE),
AND
\$4,250,000 IN PRINCIPAL FORGIVENESS**

(21-120)

WHEREAS, the City of Dilley (City), located in Frio County, Texas, has filed an application for financial assistance in the amount of \$14,501,000 from the Clean Water State Revolving Fund (CWSRF) to finance the planning, design, and construction of certain wastewater system improvements identified as Project No. 73910; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase, in one or more series, of \$10,251,000 City of Dilley, Texas Combination Tax and Revenue Certificates of Obligation (Taxable), (together with all authorizing documents, (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of \$4,250,000, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the City has offered a pledge of ad valorem taxes and surplus net revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the City will be sufficient to meet all the Obligations assumed by the City, 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 City has adopted and implemented a water conservation program 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 City has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007;

5. that the City meets the definition of a "Disadvantaged Community" in 31 TAC § 375.1(23) and is therefore eligible for principal forgiveness in the amount of \$4,250,000.

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

A commitment is made by the TWDB to the City of Dilley for financial assistance in the amount of \$14,501,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase, in one or more series, of \$10,251,000 City of Dilley, Texas Combination Tax and Revenue Certificates of Obligation (Taxable), and the execution of a Principal Forgiveness Agreement in the amount of \$4,250,000. This commitment will expire on June 30, 2022.

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 City;
3. this commitment is contingent upon the City's compliance with all applicable requirements contained in 31 TAC Chapter 375;
4. the Obligations must provide that the City 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 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;
7. the Obligations must contain a provision requiring the City 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 City 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 City to submit a final accounting and disposition of any unused funds;
 9. the Obligations must include a provision requiring the City 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 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, 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;

13. prior to closing, the City 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 City 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 City 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 City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
17. the Obligations must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
18. 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;
19. the Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;

State Revolving Fund Conditions:

20. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
21. 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 City, 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;

22. the Obligations must include a provision stating that the City 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 City 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;
23. 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 City will adhere to the approved project schedule;
24. the Obligations and Principal Forgiveness Agreement must contain a covenant that the City 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;
25. 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;
26. the City 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:

27. the City shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant 31 TAC Chapter 375;
28. 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;
29. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City must provide documentation that it has met all applicable state procurement

requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program;

30. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102 (2)(A)-(C), the City must provide documentation that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 *et seq* and 33 U.S.C. § 1382(b)(14); and

Pledge Conditions for the Loan:

31. the Obligations must contain a provision that provides as follows:
 - a. if system revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied and collected may be reduced to the extent and by the amount of revenues then on deposit in the Interest and Sinking Fund; or
 - b. if surplus revenues are based upon budgeted amounts:
 - i. the Obligations must include a requirement that the City transfer and deposit in the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Obligations until the amount on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Obligations; further, that the ordinance authorizing the issuance of the Obligations must include a requirement that the City shall not transfer any funds from the City's pledged system revenues to any fund other than the Interest and Sinking Fund until such time as an amount equal to the annual debt service on the Obligations for the then-current fiscal year has been deposited in the Interest and Sinking Fund;
 - ii. the Obligations must include a requirement that for each year the Obligations are outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient surplus pledged revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Obligations; and
 - iii. the Obligations must include a requirement that the City shall at all times maintain and collect sufficient rates and charges in conjunction

with any other legally available funds so that after payment of the costs of operating and maintaining the system, it produces revenues in an amount not less than 1.10 times debt service requirements of all outstanding Obligations of the City and other obligations of the City which are secured in whole or in part by the pledged revenues, for which the City is budgeting the repayment of such Obligations, or the City shall provide documentation which evidences the levy and collection of an ad valorem tax rate dedicated to the Interest and Sinking Fund, in conjunction with any other legally available funds, sufficient for the repayment of debt service requirements.

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

Special Conditions:

32. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
33. the Principal Forgiveness Agreement must include a provision stating that the City 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 16th day of December 2021.

TEXAS WATER DEVELOPMENT BOARD


Brooke J. Paup
Brooke T. Paup, Chairwoman

DATE SIGNED: 12/16/21

ATTEST:

A Lavin
Amanda Lavin, Assistant Executive Administrator



City of Dilley

November 10, 2022

Dain Larsen

Central Region Team Manager

Regional Water Project Development

Texas Water Development Board

1700 N. Congress Ave.

Austin, TX 78701

RE: CWSRF Project #73910 - City of Dilley

Dear Mr. Larsen:

First of all, I wanted to extend my gratitude to you and the Texas Water Development Board Team on behalf of the City of Dilley for working with us in resolving this matter. We understand that our unique situation has pushed the normal process timeline and we greatly appreciate your team efforts. We are currently on the final stages of getting all of our closing documents finalized as well as in the final stages of the required publications. At this time, we respectfully request an additional and final extension for closing and delivery of the Certificates of Obligation. Based on our conversations with our legal consultants, a final date of January 31, 2023 should be sufficient.

Thank you once again for all your support and let us know if you have any questions or wish to discuss this matter further.

Sincerely,

Henry Arredondo

City Administrator