

Texas Water Development Board

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

July 29, 2020

Mr. Esteban Ramos
 Water Resources Manager
 City of Corpus Christi
 P.O. Box 9277
 Corpus Christi, Texas 78469

Re: Seawater Desalination
 TWDB Project No. 51052 Closing Requirements
 State Water Implementation Revenue Fund for Texas Financial Commitment
 LM201158 - \$11,425,000 Financing
 LM211158 - \$211,050,000 Financing

Dear Mr. Ramos:

Thank you for utilizing the Texas Water Development Board (TWDB) financial assistance programs. On July 23, 2020, TWDB approved the City's financial assistance request. A copy of the TWDB resolution is enclosed. The news release is located at:

<https://texaswaternewsroom.org/pressreleases/index.html>. The financial assistance commitment expires as follows:

Multi-Year Commitment:	Expiration Date
LM201158 - \$11,425,000 Proposed Series 2020	December 31, 2020
LM211158 - \$211,050,000 Proposed Series 2021	December 31, 2021

The loan will become effective with the TWDB's purchase of your bonds. You may be required to execute a financing agreement that will be provided under separate cover. Using the outline provided below, please create a schedule for closing the loan and receiving the funds. Deadlines are listed in business days.

Documentation or Event	Deadline (business days)	Due To
1. Bond ordinance, draft	20 business days prior to adoption date	TWDB Attorney
2. Interest rates for bond ordinance *	5 business days prior to adoption date	Borrower
Bond ordinance adoption		
3. Budget for the release of funds at closing **	18 business days prior to closing date	TWDB Engineering Reviewer
4. Escrow Release Authorization	13 business days prior to closing date	Borrower
5. Final closing documents (see below)	8 business days prior to closing date	TWDB Financial Analyst and TWDB Attorney
Closing		

*Interest rates expire forty-five (45) days after your adoption date.

**If required, a template for an outlay report and instructions will be provided.

Our Mission : Board Members
 Leading the state's efforts in ensuring : Peter M. Lake, Chairman | Kathleen Jackson, Board Member | Brooke T. Paup, Board Member
 a secure water future for Texas :
 : Jeff Walker, Executive Administrator

Mr. Esteban Ramos, Water Resource Manager
City of Corpus Christi
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Prior to submitting draft documents, please provide to your TWDB financial analyst the dates for your bond ordinance adoption and preferred closing date. If you would like to schedule a closing conference call to go over the process, you may contact the TWDB financial analyst or Team Manager. Required closing documents and TWDB team contact information are shown below.

Required final closing documents:

- Bond Ordinance or Resolution adopting the issuance
- Attorney General Opinion (5 business days prior)
- Comptroller's Certificate (5 business days prior)
- Debt Service Schedule
- Executed Escrow Agreement
- Financial Advisor's Closing Instructions
- Executed Paying Agent Agreement
- Private Placement Memorandum – with all attachments
- Sufficiency of Funds Statement
- Vendor Identification Form
- Blanket Issuer Letter of Representations (BLOR)
- Bond Counsel Opinion
- No Litigation Certificate
- No Arbitrage/Federal Tax Certificate

Our team looks forward to working with you to make this a successful project. Please include the project number listed above when sending correspondence related to this project. If you have any questions or seek additional information, you may contact any of the team members or me at mireya.loewe@twdb.texas.gov or 512475-0590. Team members contact information:

Francia Harutunian, Senior Engineer, 512/463-8271
Arnoldo Rubio, Financial Analyst, 512/475-0581
Lauren Dill, Environmental Reviewer, 512/475-1501
Joe Reynolds, Attorney, 512/936-2414

Sincerely,

Mireya Loewe Digitally signed by Mireya Loewe
Date: 2020.07.29 15:53:46 -05'00'

Mireya Loewe
Team Manager/ South Region

ML/ARR/ep

Enclosure

cc via email: Paul W Jack, Estrada Hinojosa & Company, LLC
Stephanie Leibe, Norton Rose Fulbright – San Antonio
Jason Cocklin, Freese & Nichols, Inc. - Corpus Christi

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE
TO CITY OF CORPUS CHRISTI
IN THE FORM OF A MULTI-YEAR COMMITMENT
FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS
THROUGH THE PROPOSED PURCHASE OF \$222,475,000 CITY OF CORPUS CHRISTI,
TEXAS UTILITY SYSTEM JUNIOR LIEN REVENUE IMPROVEMENT BONDS,
PROPOSED SERIES 2020 AND PROPOSED SERIES 2021**

(20-068)

WHEREAS, the City of Corpus Christi (City) has filed an application for financial assistance in the amount of \$222,475,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT) to finance the planning, acquisition, design, and construction of certain water supply project(s) identified as Project No. 51052 (Project); and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the form of a multi-year commitment through the TWDB's proposed purchase of \$222,475,000 City of Corpus Christi , Texas Utility System Junior Lien Revenue Improvement Bonds, Proposed Series 2020 and 2021, (together with all authorizing documents (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 a junior lien on the net revenues of the City's utility system 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 § 363.1307;

WHEREAS, subject to the City's use of an approved debt service structure, interest rate subsidies are available to the City for State Fiscal Year 2020 at up to the following levels: 35% for financial assistance for a term of 20 years, 25% for financial assistance for a term of 21 to 25 years, and 20% for financial assistance for a term of 26 to 30 years. The interest rate subsidy applicable to each proposed series will be set through each financing agreement executed between the TWDB and the City; and

WHEREAS, the TWDB hereby finds:

1. that the application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M;

2. that the Project is a recommended water management strategy project in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a);
3. that a water conservation plan has been submitted and implemented in accordance with Texas Water Code § 16.4021 and 31 TAC § 363.1309(b)(1); and
4. that the City has acknowledged its legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises and any applicable state law relating to contracting with historically underutilized businesses, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

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

A commitment is made by the TWDB to City of Corpus Christi for financial assistance in the amount of \$222,475,000 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of City of Corpus Christi, Texas Utility System Junior Lien Revenue Improvement Bonds in one or more series as follows:

- a) \$11,425,000 Proposed Series 2020, to expire on December 31, 2020; and
- b) \$211,050,000 Proposed Series 2021, to expire on December 31, 2021;

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 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;
4. this commitment is contingent upon the City executing a separate financing agreement, approved as to form and substance by the Executive Administrator,

and submitting that executed agreement to the TWDB consistent with the terms and conditions described in the financing agreement;

5. this commitment is contingent upon the City providing a current proforma of the City's proposed revenue to the Executive Administrator each year prior to closing;
6. interest rate subsidies for non-level debt service structure are subject to adjustment by the Executive Administrator;
7. the City shall use a paying agent/registrars in accordance with 31 TAC § 363.42(c)(2), and shall require the paying agent/registrars to provide a copy of all receipts documenting debt service payments to the TWDB and to the TWDB's designated Trustee;

The Following Conditions Must Be Included in the Obligations:

8. 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 that 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;
9. The Obligations must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
10. The Obligations must provide that the City will comply with the conditions included in the TWDB environmental finding, when issued;
11. The Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
12. 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;

13. the Obligations must include a provision requiring the City to use any proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the Project and completion of a final accounting in a manner approved by the Executive Administrator;
14. 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;
15. 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;
16. 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;
17. the Obligations must include a provision stating that the City shall report to the TWDB the amounts of Project funds, if any, that were used to compensate historically underutilized businesses that worked on the Project, in accordance with 31 TAC § 363.1312;
18. the Obligations must contain a provision that the TWDB will purchase the Obligations, acting through the TWDB's designated Trustee, and the Obligations shall be registered in the name of Cede & Co. and closed in book-entry form in accordance with 31 TAC § 363.42(c)(1);
19. 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 and Texas Water Code § 17.183;
20. the Obligations must include a provision prohibiting the City from using the proceeds of this financial assistance in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal

Revenue Code as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);

21. the Obligations must provide that no portion of the proceeds of the financial assistance will be used, directly or indirectly, in a manner that would cause the Obligations to be “arbitrage bonds” within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds that were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) that produce a yield materially higher than the yield on the TWDB’s bonds that are issued to provide financing for the financial assistance (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 § 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;
22. the Obligations must include a provision requiring the City 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 § 148 of the Code. The Obligations must provide that the City 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 City may, however, to the extent permitted by law, commingle Gross Proceeds of its financial assistance with other money of the City, provided that the City 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 financial assistance, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The City

shall maintain a copy of such calculations for at least six years after the final Computation Date;

- c. as additional consideration for providing financial assistance, and in order to induce providing financial assistance 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;
- 23. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 - 24. 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;
 - 25. 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");
 - 26. the Obligations must provide that neither the City 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 City by the TWDB;
 - 27. The Obligations shall be on parity with any existing obligations that are secured with the same pledge of security as the proposed Obligations; and
 - 28. the Obligations shall be governed by the additional debt test and reserve requirement as provided in the outstanding \$2,750,000 City of Corpus Christi, Texas Utility System Junior Lien Revenue Improvement Bonds, Series 2017 held by the TWDB.

Conditions to Close or for Release of Funds:

- 29. 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;

30. prior to closing, 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;
31. 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;
32. prior to closing, the City'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 City when rendering this opinion;
33. prior to closing, the City's bond counsel must prepare a written opinion that states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;
34. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
35. the transcript must include evidence that the information reporting requirements of § 149(e) of the Internal Revenue 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 § 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;

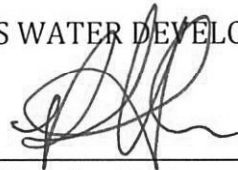
PROVIDED, however, the commitment is subject to the following special conditions:

36. prior to the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, economic investigation, studies, surveys, or designs for that portion of the Project that proposes surface water or groundwater development, the Executive Administrator must have either issued a written finding that the City has the right to use the water that the Project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction;

37. prior to the release of construction funds for that portion of a Project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that the City has the right to use the water that the Project financed by the TWDB will provide;

APPROVED and ordered of record this, the 23rd day of July, 2020.

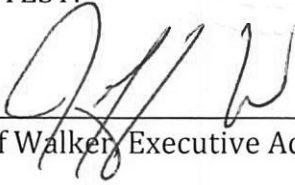
TEXAS WATER DEVELOPMENT BOARD



Peter M. Lake, Chairman

DATE SIGNED: 7/23/20

ATTEST:



Jeff Walker, Executive Administrator