

April 25, 2016

Mr. Don Ferguson  
 City Administration  
 City of Wimberley  
 P.O. Box 2027/221 Stillwater  
 Wimberley, TX, 78676

Re: City of Wimberley  
 TWDB Project No. 73653 Closing Requirements  
 Clean Water State Revolving Fund Financial Commitment  
 \$5,255,000 loan and \$243,005 loan forgiveness

Dear Mr. Ferguson:

Thank you for utilizing the Texas Water Development Board's (TWDB) financial assistance programs. On April 11, 2016, TWDB approved the City's financial assistance request. The financial assistance commitment expires on April 30, 2017. A copy of the TWDB resolution is enclosed and the news release can be located at: [http://www.twdb.texas.gov/newsmedia/press\\_releases/2016/](http://www.twdb.texas.gov/newsmedia/press_releases/2016/).

The loan will be evidenced by TWDB's purchase of your bonds. You may be required to execute a financing agreement that will be provided under separate cover. Utilizing the outline provided below, create a schedule for closing the loan and receiving funds. Required closing documents and TWDB team contact information are listed on the next page. Prior to submitting draft documents, please provide to your TWDB financial analyst the dates for your bond ordinance adoption and preferred closing date.

Documentation or Event	Deadline (business days)	Due To
1. Bond ordinance, draft	30 days prior to adoption date	TWDB Attorney
2. Interest rates for bond ordinance *	5 days prior to adoption date	Borrower
<b>Bond ordinance adoption</b>		
3. Budget for the release of funds at closing **	18 days prior to closing date	TWDB Engineering Reviewer
4. Escrow Release Authorization	13 days prior to closing date	Borrower
5. Final closing documents (see below)	8 days prior to closing date	TWDB Financial Analyst
<b>Closing</b>		

\*Interest rates expire forty-five (45) days after your adoption date.  
 \*\*If required, a template for an outlay report and instructions will be provided.

**Required final closing documents:**

- Attorney General Opinion
- Comptroller's Certificate
- Debt Service Schedule
- Escrow Agreement, executed
- Financial Advisor's Closing Instructions
- Paying Agent Agreement, executed
- Private Placement Memorandum – with all attachments
- Sufficiency of Funds Statement
- Vendor Identification Form
- Loan Forgiveness Agreement, executed
- Outlay Report, approved

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 [clay.schultz@twdb.texas.gov](mailto:clay.schultz@twdb.texas.gov) or 512/463-6277. Team members contact information:

Issa McDaniel, Project Reviewer, 512/4631706  
Hector Estrada, Financial Analyst, 512/463-7959  
William Alfaro, Environmental Reviewer, 512 463-4741  
Alexis Lorick, Attorney, 512/463-2776

Sincerely,



Clay Schultz  
Team Manager/ Central Region

CS/ du  
Enclosure

cc via email:

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$5,498,005 TO THE CITY OF WIMBERLEY  
FROM THE CLEAN WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$5,255,000 CITY OF WIMBERLEY, TEXAS SEWER SYSTEM REVENUE BONDS,  
PROPOSED SERIES 2016  
AND  
\$243,005 IN LOAN FORGIVENESS**

(16-032)

WHEREAS, the City of Wimberley (City) has filed an application for financial assistance in the amount of \$5,498,005 from the Clean Water State Revolving Fund (CWSRF) to finance the construction of certain wastewater system improvements identified as Project No. 73653; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$5,255,000 City of Wimberley, Texas, Proposed Series 2016 (together with all authorizing documents, "Obligations"), and the execution of a Loan Forgiveness Agreement in an amount of \$243,005, 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 a first lien on the net revenues of the sewer system as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue 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 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

6. that the Executive Administrator issued a Finding of No Significant Impact on August 6, 2014, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator.

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

A commitment is made by the TWDB to the City of Wimberley for financial assistance in the amount of \$5,498,005 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of \$5,255,000 City of Wimberley, Texas Sewer System Revenue Bonds, Proposed Series 2016 and the execution of a Loan Forgiveness Agreement in the amount of \$243,005. This commitment will expire on April 30, 2017.

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 Obligations can be called for early redemption only in inverse order of maturity, and 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;
5. 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;

6. the Obligations must contain a provision requiring the City to maintain and collect sufficient rates and charges to produce system revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;
7. 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 for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) eligible project costs as authorized by the Executive Administrator;
8. 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;
9. 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;
10. 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;
11. 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;
12. 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;

13. 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;
14. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

**Conditions Related To Tax-Exempt Status**

15. 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;
16. the City'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 City when rendering this opinion;
17. the Obligations must include a provision prohibiting the City from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
18. 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 § 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 § 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;

19. 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 loan 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 loan, 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 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;
20. 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;
21. 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;
22. 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;
23. the transcript must include evidence that the information reporting requirements of § 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 § 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;

24. 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;

State Revolving Fund Conditions

25. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
26. 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;
27. 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;
28. 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;
29. the Obligations and Loan 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 the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines;
30. 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;

31. 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 estimated useful life of the project, as determined by the schedule;

#### Clean Water State Revolving Fund Conditions

32. prior to or at closing, the City shall pay a 1.85% origination fee to the TWDB calculated pursuant 31 TAC Chapter 375;
33. 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;
34. 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;
35. 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.*;

#### Pledge Conditions For The Loan

36. 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;
37. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations; and
38. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net

revenues are a) determined from the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant; or b) the City certifies that the City is expected to continue to meet or exceed the net system revenue test with a minimum coverage of 1.25 times the average annual debt service requirement. An authorized representative of the City must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator.

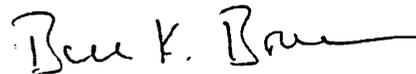
PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

39. prior to closing, the City shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
40. the Loan Forgiveness Agreement must include a provision stating that the City shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator;
41. prior to closing, the City must submit an executed service agreement between the City's Park's Department and the Utility sufficient to establish an annual transfer of funds into the Utility system's revenue stream;
42. the Obligations must include a provision stating that the City's wastewater system includes the sale of reuse water; and
43. the City must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources, as more fully specified in the final environmental finding of the Executive Administrator.

APPROVED and ordered of record this 11<sup>th</sup> day of April, 2016.

TEXAS WATER DEVELOPMENT BOARD



Bech K. Bruun, Chairman

DATE SIGNED: 4-11-16

ATTEST:

  
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Kevin Patteson  
Executive Administrator