

Texas Water Development Board

PROJECT FUNDING REQUEST

BOARD DATE: July 7, 2022

Team Manager: Joe Koen

ACTION REQUESTED

Approve by resolution a request from the East Texas Municipal Utility District (Smith County) for \$2,119,530 in financial assistance consisting of \$1,496,000 in financing, and \$623,530 in principal forgiveness from the Drinking Water State Revolving Fund for planning, design, and construction of a water system improvements project.

STAFF RECOMMENDATION

Approve No Action

BACKGROUND

East Texas Municipal Utility District (District) is located in Smith County approximately 10 miles northeast of Tyler, Texas. The District provides water service to approximately 1,830 residents and 800 connections.

PROJECT NEED AND DESCRIPTION

The District's water distribution system constructed in 1950 needs rehabilitation to meet current water supply demands. The aging main water line has ruptured numerous times resulting in Texas Commission on Environmental Quality compliance issues and service downtime. In addition, the outdated pipe and equipment pose a possible health risk.

The District proposes to replace deteriorated waterlines and obsolete service equipment in the District's water distribution system. The project includes development of a water master plan and installation of new water lines to improve service and increase water quality.

PROJECT SCHEDULE

| Task | Schedule Date |
|--|------------------|
| Closing | October 31, 2022 |
| Engineering Feasibility Report Completion (End of Planning Phase) | December 2, 2022 |
| Design Phase Completion | January 2, 2023 |
| Start of Construction | February 3, 2023 |
| Construction Completion | February 3, 2025 |

COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE JANUARY 31, 2023

KEY ISSUES

The District qualifies for \$623,530 in principal forgiveness as a disadvantaged community; and \$1,020,000 in zero percent financing as a small or rural disadvantaged community.

LEGALSpecial Conditions

- Notify Executive Administrator prior to changing legal status
- Conversion and conveyance
- Executed principal forgiveness agreement
- Return of surplus principal forgiveness funds

Attachments:

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

Financial Review

East Texas MUD of Smith County

Risk Score: 2B

Audit Reviewed: FY 2021

Key Indicators

| Indicator | Result | Benchmark |
|---|------------------|--------------|
| Population Growth, Average Annual 2010-2020 | District: 0.75 % | State: 1.49% |
| Top 10 Customers % of Total Revenue | 75.32% | 10-15% |
| Median Household Income as % of State | 30% | 100% |
| Days of Cash on Hand (3-year Average) | 95 days | 30-149 days |
| Net Fixed Assets/ Annual Depreciation | 65 years | 12-24 years |
| Debt Service Coverage Ratio | 0.68x | 1.0x |
| Debt-to-Operating Revenues | 0.67x | 4.00-5.99x |
| Unemployment Rate (April 2022) | County: 7.04% | State: 3.70% |
| Working Capital Ratio | 6.475 | > 1.0 |

Key Risk Score Strengths

- A high working capital ratio provides the District with ample resources to cover short-term liabilities and shows a strong liquidity position.
- Debt-to-operating revenues ratio is well below benchmark, showing the District is not over leveraged and has revenues available to support debt service.
- Cash balance ratio of 20.63 percent indicates significant growth in liquidity allowing the District to handle any surges in short term expenses.

Key Risk Score Concerns

- Based on a no-growth scenario, the District will need to implement a rate increase of \$15.40 in 2023 increasing to \$18.01 in 2034 for the repayment of the proposed obligation.
- Top 10 water customers make up 75.32 percent of total revenues. 47.15 percent of this is revenues from UT Health, with another 18.79 percent coming from Hiland Dairy. A stress test was performed removing those revenues indicating the District would need to increase rates by \$62.31 and \$35.67 respectively.

PLEDGE

| | |
|----------------------|--|
| Legal Pledge Name | Utility System Revenues |
| Type of Pledge | <input type="checkbox"/> Tax <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Tax & Revenue <input type="checkbox"/> Contract <input type="checkbox"/> Other |
| Revenue Pledge Level | <input checked="" type="checkbox"/> First <input type="checkbox"/> Second <input type="checkbox"/> Third <input type="checkbox"/> N/A |

RATES AND CHARGES

| Average Residential Use | Gallons/Month | Current Rates | Projected Rates for Year 2034 | Current Household Cost Factor | Projected Household Cost Factor |
|-------------------------|---------------|---------------|-------------------------------|-------------------------------|---------------------------------|
| WATER | 4,773 | \$20.86 | \$29.86 | 0.88% | 1.26% |
| WASTEWATER | 4,721 | \$20.75 | \$29.75 | | |

Cost Savings

Based on a 30-year maturity schedule and current interest rates, the District could save approximately \$832,273 over the life of the financing. The District is also saving \$623,530 in principal forgiveness.

Project Data Summary

| | |
|--|---|
| Responsible Authority | East Texas MUD of Smith County |
| Program | DWSRF |
| Commitment Number | L1001538, L1001539, LF1001540 |
| Project Number | 62917 |
| List Year | 2021 |
| Type of Pledge | Revenue Pledge |
| Pledge Level (if applicable) | First Lien |
| Legal Description | \$476,000 East Texas Municipal Utility District of Smith County Utility System Revenue Bonds, Series 2022, \$1,020,000 East Texas Municipal Utility District of Smith County Utility System Revenue Bonds, Series 2022, \$623,530 Principal Forgiveness Agreement |
| Tax-exempt or Taxable | Tax-Exempt |
| Refinance | No |
| Outlay Requirement | Yes |
| Disbursement Method | Escrow |
| Outlay Type | Outlay = Escrow Release |
| Qualifies as Disadvantaged | Yes |
| State Revolving Fund Type | Equivalency |
| Financial Managerial & Technical Complete | Yes |
| Phases Funded | Planning, Design, and Construction |
| Pre-Design | Yes |
| Project Consistent with State Water Plan | Yes |
| Water Conservation Plan | Adopted |
| Overall Risk Score | 2B |

PROJECT TEAM

| Team Manager | Financial Analyst | Engineering Reviewer | Environmental Reviewer | Attorney |
|--------------|-------------------|----------------------|------------------------|---------------|
| Joe Koen | Kyle DuQuesnay | David Dera | Gayla Duaine | Breann Hunter |

ISSUE BEING EVALUATED
FOR ILLUSTRATION PURPOSES ONLY
East Texas MUD of Smith County

\$476,000 East Texas Municipal Utility District of Smith County Utility System Revenue Bonds, Series 2022

Dated Date: 10/31/2022 Source: DWSRF-EQUIVALENCY
 Delivery Date: 10/31/2022 IUP Year: 2022
 First Interest: 4/15/2023 Case: Revenue
 First Principal: 4/15/2023 Admin.Fee: \$9,333
 Last Principal: 4/15/2052 Admin. Fee Payment Date: 10/31/2022
 Fiscal Year End: 09/30 Required Coverage: 1.0

\$1,020,000 East Texas Municipal Utility District of Smith County Utility System Revenue Bonds, Series 2022

Dated Date: 10/31/2022 Source: DWSRF-EQUIVALENCY
 Delivery Date: 10/31/2022 IUP Year: 2022
 First Interest: 4/15/2023 Case: Revenue
 First Principal: 4/15/2023 Admin.Fee: \$20,000
 Last Principal: 4/15/2052 Admin. Fee Payment Date: 10/31/2022
 Fiscal Year End: 9/30 Required Coverage: 1.0

| FISCAL YEAR | PROJECTED NET SYSTEM REVENUES | CURRENT DEBT SERVICE | \$476,000 ISSUE | | | | \$1,020,000 ISSUE | | | | TOTAL DEBT SERVICE | ACTUAL COVERAGE |
|-------------|-------------------------------|----------------------|-------------------|---------------|------------------|---------------|-------------------|---------------|------------------|---------------|--------------------|-----------------|
| | | | PRINCIPAL PAYMENT | INTEREST RATE | INTEREST PAYMENT | TOTAL PAYMENT | PRINCIPAL PAYMENT | INTEREST RATE | INTEREST PAYMENT | TOTAL PAYMENT | | |
| 2023 | \$460,886 | \$416,774 | \$12,000 | 1.30% | \$5,112 | \$17,112 | \$27,000 | - | - | \$27,000 | \$460,886 | 1.00 |
| 2024 | 462,457 | 417,460 | 10,000 | 1.45% | 10,997 | 20,997 | 24,000 | - | - | 24,000 | 462,457 | 1.00 |
| 2025 | 462,457 | 412,602 | 10,000 | 1.52% | 10,852 | 20,852 | 24,000 | - | - | 24,000 | 457,454 | 1.01 |
| 2026 | 462,457 | 412,365 | 10,000 | 1.59% | 10,700 | 20,700 | 24,000 | - | - | 24,000 | 457,065 | 1.01 |
| 2027 | 467,169 | 421,628 | 11,000 | 1.65% | 10,541 | 21,541 | 24,000 | - | - | 24,000 | 467,169 | 1.00 |
| 2028 | 474,825 | 419,465 | 11,000 | 1.72% | 10,360 | 21,360 | 34,000 | - | - | 34,000 | 474,825 | 1.00 |
| 2029 | 478,934 | 421,763 | 11,000 | 1.81% | 10,171 | 21,171 | 36,000 | - | - | 36,000 | 478,934 | 1.00 |
| 2030 | 478,934 | 418,322 | 12,000 | 1.86% | 9,971 | 21,971 | 36,000 | - | - | 36,000 | 476,293 | 1.01 |
| 2031 | 478,934 | 419,346 | 12,000 | 1.90% | 9,748 | 21,748 | 36,000 | - | - | 36,000 | 477,094 | 1.00 |
| 2032 | 478,934 | 419,674 | 12,000 | 1.94% | 9,520 | 21,520 | 36,000 | - | - | 36,000 | 477,194 | 1.00 |
| 2033 | 478,934 | 419,214 | 13,000 | 2.06% | 9,287 | 22,287 | 36,000 | - | - | 36,000 | 477,501 | 1.00 |
| 2034 | 486,011 | 427,992 | 13,000 | 2.16% | 9,020 | 22,020 | 36,000 | - | - | 36,000 | 486,011 | 1.00 |
| 2035 | 486,011 | 420,560 | 14,000 | 2.24% | 8,739 | 22,739 | 36,000 | - | - | 36,000 | 479,299 | 1.01 |
| 2036 | 486,011 | 422,569 | 14,000 | 2.30% | 8,425 | 22,425 | 36,000 | - | - | 36,000 | 480,994 | 1.01 |
| 2037 | 313,093 | 138,551 | 15,000 | 2.35% | 8,103 | 23,103 | 36,000 | - | - | 36,000 | 197,654 | 1.58 |
| 2038 | 313,093 | 37,800 | 15,000 | 2.40% | 7,751 | 22,751 | 36,000 | - | - | 36,000 | 96,551 | 3.24 |
| 2039 | 313,093 | 36,400 | 16,000 | 2.44% | 7,391 | 23,391 | 36,000 | - | - | 36,000 | 95,791 | 3.27 |
| 2040 | 313,093 | - | 16,000 | 2.48% | 7,000 | 23,000 | 36,000 | - | - | 36,000 | 59,000 | 5.31 |
| 2041 | 313,093 | - | 17,000 | 2.52% | 6,604 | 23,604 | 36,000 | - | - | 36,000 | 59,604 | 5.25 |
| 2042 | 313,093 | - | 17,000 | 2.55% | 6,175 | 23,175 | 36,000 | - | - | 36,000 | 59,175 | 5.29 |
| 2043 | 313,093 | - | 18,000 | 2.58% | 5,742 | 23,742 | 36,000 | - | - | 36,000 | 59,742 | 5.24 |
| 2044 | 313,093 | - | 19,000 | 2.61% | 5,277 | 24,277 | 36,000 | - | - | 36,000 | 60,277 | 5.19 |
| 2045 | 313,093 | - | 20,000 | 2.63% | 4,781 | 24,781 | 36,000 | - | - | 36,000 | 60,781 | 5.15 |
| 2046 | 313,093 | - | 20,000 | 2.65% | 4,255 | 24,255 | 36,000 | - | - | 36,000 | 60,255 | 5.20 |
| 2047 | 313,093 | - | 21,000 | 2.67% | 3,725 | 24,725 | 36,000 | - | - | 36,000 | 60,725 | 5.16 |
| 2048 | 313,093 | - | 22,000 | 2.68% | 3,165 | 25,165 | 36,000 | - | - | 36,000 | 61,165 | 5.12 |
| 2049 | 313,093 | - | 23,000 | 2.69% | 2,575 | 25,575 | 36,000 | - | - | 36,000 | 61,575 | 5.08 |
| 2050 | 313,093 | - | 23,000 | 2.70% | 1,956 | 24,956 | 36,000 | - | - | 36,000 | 60,956 | 5.14 |
| 2051 | 313,093 | - | 24,000 | 2.72% | 1,335 | 25,335 | 35,000 | - | - | 35,000 | 60,335 | 5.19 |
| 2052 | 313,093 | - | 25,000 | 2.73% | 683 | 25,683 | 36,000 | - | - | 36,000 | 61,683 | 5.08 |
| | | \$ 6,082,484 | \$476,000 | | \$209,962 | \$685,962 | \$1,020,000 | | \$0 | \$1,020,000 | \$7,788,445 | |

| \$476,000 ISSUANCE | |
|----------------------------|-------------|
| AVERAGE (MATURITY) LIFE | 17.38 YEARS |
| NET INTEREST RATE | 2.537% |
| COST SAVINGS | \$123,125 |
| AVERAGE ANNUAL REQUIREMENT | \$22,865 |

| \$1,020,000 ISSUANCE | |
|----------------------------|-------------|
| AVERAGE (MATURITY) LIFE | 15.66 YEARS |
| NET INTEREST RATE | 0.000% |
| COST SAVINGS | \$ 709,148 |
| AVERAGE ANNUAL REQUIREMENT | \$34,000 |

| TOTAL AVERAGE ANNUAL REQUIREMENTS |
|-----------------------------------|
| \$259,615 |

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



Current Budget Summary

Attachment 2

East Texas MUD of Smith County

62917 - East Texas MUD Water System Improvements

| Budget Items | TWDB Funds | Local Funds | Total |
|--|-----------------------|---------------|-----------------------|
| Construction | | | |
| Construction | \$1,268,960.00 | \$0.00 | \$1,268,960.00 |
| Subtotal for Construction | \$1,268,960.00 | \$0.00 | \$1,268,960.00 |
| Basic Engineering Services | | | |
| Construction Engineering | \$104,780.00 | \$0.00 | \$104,780.00 |
| Design | \$130,975.00 | \$0.00 | \$130,975.00 |
| Planning | \$300,000.00 | \$0.00 | \$300,000.00 |
| Subtotal for Basic Engineering Services | \$535,755.00 | \$0.00 | \$535,755.00 |
| Special Services | | | |
| Environmental | \$25,000.00 | \$0.00 | \$25,000.00 |
| Geotechnical | \$27,080.00 | \$0.00 | \$27,080.00 |
| Subtotal for Special Services | \$52,080.00 | \$0.00 | \$52,080.00 |
| Fiscal Services | | | |
| Bond Counsel | \$53,000.00 | \$0.00 | \$53,000.00 |
| Financial Advisor | \$71,750.00 | \$0.00 | \$71,750.00 |
| Issuance Costs | \$6,120.00 | \$0.00 | \$6,120.00 |
| Loan Origination Fee | \$29,333.00 | \$0.00 | \$29,333.00 |
| Subtotal for Fiscal Services | \$160,203.00 | \$0.00 | \$160,203.00 |
| Contingency | | | |
| Contingency | \$102,532.00 | \$0.00 | \$102,532.00 |
| Subtotal for Contingency | \$102,532.00 | \$0.00 | \$102,532.00 |
| Total | \$2,119,530.00 | \$0.00 | \$2,119,530.00 |

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$2,119,530 TO THE EAST TEXAS MUNICIPAL UTILITY DISTRICT OF SMITH COUNTY
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$476,000 EAST TEXAS MUNICIPAL UTILITY DISTRICT OF SMITH COUNTY UTILITY
SYSTEM REVENUE BONDS, PROPOSED SERIES 2022A
AND
\$1,020,000 EAST TEXAS MUNICIPAL UTILITY DISTRICT OF SMITH COUNTY UTILITY
SYSTEM REVENUE BONDS, PROPOSED SERIES 2022B
AND
\$623,530 IN PRINCIPAL FORGIVENESS

(22 -)

WHEREAS, the East Texas Municipal Utility District of Smith County (District), has filed an application for financial assistance in the amount of \$2,119,530 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, design, and construction of certain water system improvements identified as Project No. 62917; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$476,000 East Texas Municipal Utility District of Smith County Utility System Revenue Bonds, Proposed Series 2022A, the TWDB's proposed purchase of \$1,020,000 East Texas Municipal Utility District of Smith County Utility System Revenue Bonds, Proposed Series 2022B (together with all authorizing documents (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of \$623,530, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the District has offered a pledge of utility system revenues 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 § 371.13; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the District will be sufficient to meet all the Obligations assumed by the District, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* as well as state law, in accordance with Texas Water Code § 15.607;

3. that the District 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 TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and the needs to be addressed by the project will be addressed in a manner that is consistent with the approved regional and state water plans, as required by Texas Water Code § 16.053(j);
5. that the District meets the definition of "Disadvantaged Community" in 31 TAC § 371.1(23) and is therefore eligible for principal forgiveness in the amount of \$623,530. The District meets the definition of a "small" or "rural" disadvantaged community in the applicable IUP and is therefore eligible for 0% loan financing in the amount of \$1,020,000.

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

A commitment is made by the TWDB to the East Texas Municipal Utility District of Smith County for financial assistance in the amount of \$2,119,530 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$476,000 East Texas Municipal Utility District of Smith County Utility System Revenue Bonds, Proposed Series 2022A, East Texas Municipal Utility District of Smith County Utility System Revenue Bonds, Proposed Series 2022B with 0% loan financing in the amount of \$1,020,000, and the execution of a Principal Forgiveness Agreement in the amount of \$623,530. This commitment will expire on January 31, 2023.

Such commitment is conditioned as follows:

Standard Conditions:

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;
2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the District;
3. this commitment is contingent upon the District's compliance with all applicable requirements contained in 31 TAC Chapter 371;
4. the Obligations must provide that the District agrees to comply with all of the conditions set forth in the TWDB Resolution, which conditions are incorporated herein;

5. the Obligations must provide that the Obligations can be called for early redemption on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;
6. the District, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the District's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the District's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the District is an obligated person with respect to such bonds under SEC Rule 15c2-12;
7. the Obligations must contain a provision requiring the District to levy a tax and/or maintain and collect sufficient rates and charges, as applicable, to produce system funds in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;
8. the Obligations must include a provision requiring the District to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the District to submit a final accounting and disposition of any unused funds;
9. the Obligations must include a provision requiring the District to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting in a manner as approved by the Executive Administrator;
10. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
11. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;

12. loan proceeds shall not be used by the District when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the District agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the District, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
13. prior to closing, the District shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges and/or the levy of an interest and sinking tax rate (if applicable) sufficient for the repayment of all system debt service requirements;
14. prior to closing, and if not previously provided with the application, the District shall submit executed contracts for engineering and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;
15. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the District shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
16. the Executive Administrator may require that the District execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
17. the TWDB retains the option to purchase the Obligations in separate lots and/or on an installment basis, with delivery of the purchase price for each installment to be paid against delivery of the relevant installment of Obligations as approved by the Executive Administrator;
18. the Obligations must provide that the District will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
19. the Obligations must provide that the District 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;

20. the Obligations must contain a provision requiring the District to maintain insurance coverage sufficient to protect the TWDB's interest in the project;

Conditions Related to Tax-Exempt Status:

21. the District's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the District when rendering this opinion;
22. the District's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the District when rendering this opinion;
23. the Obligations must include a provision prohibiting the District from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of section 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
24. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of section 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB's bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:
 - a. proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
 - b. amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Regulations; and
 - c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;
25. the Obligations must include a provision requiring the District take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal

government in order to satisfy the requirements of section 148 of the Code. The Obligations must provide that the District will:

- a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The District may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of the District, provided that the District separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;
 - b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its Loan, not less frequently than each Computation Date, in accordance with rules set forth in section 148(f) of the Code, section 1.148-3 of the Regulations, and the rulings thereunder. The District shall maintain a copy of such calculations for at least six years after the final Computation Date;
 - c. as additional consideration for the making of the Loan, and in order to induce the making of the Loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;
 - d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;
26. the Obligations must include a provision prohibiting the District from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 27. the Obligations must provide that the District will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of section 149(b) of the Code;
 28. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the District's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;

29. the Obligations must contain a provision that the District will refrain from using the proceeds provided by this TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Obligations in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);
30. the transcript must include evidence that the information reporting requirements of section 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of section 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;
31. the Obligations must provide that neither the District nor a related party thereto will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the District by the TWDB;

State Revolving Fund Conditions:

32. the District shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
33. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The District, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of \$2,000 the contracts clauses as provided by the TWDB;
34. the Obligations must include a provision stating that the District shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The District shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;
35. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the District will adhere to the approved project schedule;

36. Obligations and Principal Forgiveness Agreement must contain a covenant that the District will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions:

37. the District shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant to 31 TAC Chapter 371;
38. prior to closing, the Texas Commission on Environmental Quality, must make a determination, the form and substance of which is satisfactory to the Executive Administrator, that the District has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of these Obligations;
39. prior to the release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the District 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;

Pledge Conditions for the Loan:

40. 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;
41. if the District 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
42. 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 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.

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

Special Conditions:

43. the District must notify the Executive Administrator in writing, thirty (30) days prior to taking any actions to alter its legal status in any manner; and
44. the Obligations must include a provision requiring that the District notify the Executive Administrator in writing prior to any action by it to convey its Obligations held by the TWDB to another entity, the conveyance and the assumption of the Obligations must be approved by the TWDB;
45. prior to closing, the District shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
46. the Principal Forgiveness Agreement must include a provision stating that the District shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator.

APPROVED and ordered of record this 7th Day of July, 2022.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

Water
 Wastewater
 Other

WATER CONSERVATION REVIEW

Entity: _____

Review date: _____

WATER CONSERVATION PLAN DATE: **Approvable** **Adopted**

| | Total GPCD | Residential GPCD | Water Loss GPCD | Water Loss Percent |
|---------------------|------------|------------------|-----------------|--------------------|
| Baseline | | | | |
| 5-year Goal | | | | |
| 10-year Goal | | | | |

WATER LOSS AUDIT YEAR:

Total water loss (GPCD): _____ Total water loss (percent): _____ Wholesale Water
 Total no. of connections: _____ Length of mains (miles): _____ Connections per mile: _____
 If > 16 connections per mile and > 3,000 connections, Infrastructure Leakage Index (ILI): _____

WATER LOSS THRESHOLDS:

| | Apparent Loss Gallons per connection per day | Real Loss Gallons per mile per day | Real Loss Gallons per connection per day | Apparent Threshold Gallons per connection per day | Real Threshold Gallons per mile per day | Real Threshold Gallons per connection per day |
|--|---|---------------------------------------|---|--|--|--|
| If population ≤ 10K, connections/mile < 32 : | | | NA | | | NA |
| If population ≤ 10K, connections/mile ≥ 32 : | | NA | | | NA | |
| If population > 10K : | | NA | | | NA | |

Does the applicant meet Water Loss Threshold requirements? Yes No NA

ADDITIONAL INFORMATION:

STAFF NOTES AND RECOMMENDATIONS:

DEFINITIONS

Adopted refers to a water conservation plan that meets the minimum requirements of the water conservation plan rules and has been formally approved and adopted by the applicant's governing body.

Apparent loss refers to unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

Approvable refers to a water conservation plan that substantially meets the minimum requirements of the water conservation plan rules but has not yet been adopted by the applicant's governing body.

Best Management Practices are voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

GPCD means gallons per capita per day.

Infrastructure Leakage Index (ILI) is the current annual real loss divided by the unavoidable annual real loss (theoretical minimum real loss) and only applies to utilities with more than 5,000 connections, average pressure greater than 35 psi, and a connection density of more than 32 connections per mile. The **ILI** is recommended to be less than 3 if water resources are greatly limited and difficult to develop, between 3 and 5 if water resources are adequate to meet long-term needs but water conservation is included in long-term water planning, and between 5 and 8 if water resources are plentiful, reliable, and easily extracted. The **ILI** is recommended as a benchmarking tool, but until there is increased data validity of the variables used in the calculation, the **ILI** should be viewed with care.

NA means not applicable.

Produced water is the total amount of water purchased or produced by the utility.

Real loss comes from main breaks and leaks, storage tank overflows, customer service line breaks, and leaks.

Residential GPCD is the amount of water per capita used solely for residential use and ideally includes both single and multi-family customer use.

Total baseline GPCD is the amount of all water purchased or produced by the utility divided by the service area population and then divided by 365.

Total water loss is the sum of the apparent and real water losses.

Water loss is the difference between the input volume and the authorized consumption within a water system. Water Loss consists of real losses and apparent losses.

Water Loss Thresholds are levels of real and apparent water loss determined by the size and connection density of a retail public utility, at or above which a utility receiving financial assistance from the Texas Water Development Board must use a portion of that financial assistance to mitigate the utility's system water loss.



East Texas MUD Smith County

