

Texas Water Development Board

PROJECT FUNDING REQUEST

BOARD DATE: December 15, 2022

Team Manager: Tom Barnett

ACTION REQUESTED

Approve by resolution a request from the City of Lexington (Lee County) for \$2,454,100 in financial assistance consisting of \$1,765,000 in financing and \$689,100 in principal forgiveness from the Drinking Water State Revolving Fund for planning, acquisition, design, and construction of a water system improvements project.

STAFF RECOMMENDATION

Approve No Action

BACKGROUND

The City of Lexington (City) is located approximately 50 miles east of Austin. The City provides water and wastewater services to approximately 1,370 residents and 800 connections.

PROJECT NEED AND DESCRIPTION

In 2018, one of the City's two operating municipal water supply wells suffered a structural breach and a patch liner was installed to repair the breach. In 2021, the well ceased pumping again and a new pump and motor were installed. During the repairs, additional well casing damage occurred such that water production decreased from 600 gallons per minute (GPM) to 350 GPM. If it is lost, the City's only other operating public water supply well would not be able to meet system demand. To ensure public health and safety, the City was forced to issue multiple boil water notices since these failures occurred. In addition to resolving its groundwater supply well issues, the City also needs to increase its pumping and storage capacity to meet requirements of the Texas Commission on Environmental Quality.

The City's proposed water system improvements include drilling a new water well to replace existing Well No. 4, and installing a new ground storage tank, two new booster pumps, new treatment and disinfection equipment, new yard piping, new electrical, new SCADA system, and a new building to house this equipment. Proposed improvements also include a new generator and an access road onto this City-owned tract of land where the existing Giddings Street Elevated Storage Tank is located. These improvements will be sized to meet maximum daily and peak hourly demands, minimum water system pressures, and projected water system growth. A water conservation plan was developed during the application phase to meet programmatic requirements and is a part of this project.

COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE JUNE 30, 2023

PROJECT SCHEDULE

Task	Schedule Date
Closing	March 15, 2023
Engineering Feasibility Report Completion (End of Planning Phase)	September 30, 2023
Design Phase Completion	January 31, 2024
Start of Construction	June 1, 2024
Construction Completion	May 31, 2025

KEY ISSUES

The City qualified for principal forgiveness as a disadvantaged community and for a portion of the remaining financing to be zero interest as a disadvantaged small/rural community.

The City anticipates receiving supplemental funding through the Texas Department of Agriculture Community Development Block Grant program to address rising costs needed to complete this project.

LEGAL/SPECIAL CONDITIONS

- Executed Principal Forgiveness Agreement
- Return of Unused Principal Forgiveness Funds

Attachments

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

Financial Review City of Lexington

Attachment 1

Risk Score: 2A

Audit Reviewed: FY 2021

Key Indicators

Indicator	Result	Benchmark
Population Growth, Average Annual 2010-2020	City: 0.33%	State: 1.49%
Top 10 Customers % of Total Tax Revenue	5%	10-15%
Median Household Income as % of State	82%	100%
Days of Cash on Hand (3-year Average)	240 days	30-149 days
Debt Service Coverage Ratio	1.30x	1.1x
Debt-to-Operating Revenues	1.05	4.00-5.99x
Unemployment Rate (September, 2022)	County: 3.3%	State: 3.80%
Working Capital Ratio	2.99	> 1.0
Total Debt per Capita	\$ 1,606	\$ 2,065 - \$ 4,541

Key Risk Score Strengths

- The City's top ten customers make up only five percent of total revenue, indicating it does not rely on a few large customers to generate income.
- The City has a low amount of debt per capita at \$1,606. This indicates a low debt service burden on the citizens of the city.
- The City has a high working capital ratio of 2.99, indicating that it has enough resources to pay off its short-term debt and a strong liquidity position.

PLEDGE

Legal Pledge Name	Ad Valorem Tax and Surplus Utility System Revenue
Type of Pledge	<input type="checkbox"/> Tax <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Tax & Revenue <input type="checkbox"/> Contract <input type="checkbox"/> Other
Revenue Pledge Level	<input type="checkbox"/> First <input type="checkbox"/> Second <input checked="" type="checkbox"/> Third <input type="checkbox"/> N/A

RATES AND CHARGES

Average Residential Use	Gallons/Month	Current Rates	Projected Rates	Current Household Cost Factor	Projected Household Cost Factor
Water	6,950	\$34.99	\$34.99	1.31	1.31
Wastewater	7,146	\$20.49	\$20.49		

TAXES

	2021 Tax Year Rate	Max Projected Tax Rate	Maximum Allowable Rate	3-Year Avg Current Tax Collections	Assessed Valuation
Maintenance & Operation	\$0.4695	\$0.4695	\$2.50	97%	\$68,297,529
Interest & Sinking	\$0.0000	\$0.0000			
Total Tax Rate	\$0.4695	\$0.4695			

Cost Savings

Based on a 30-year maturity schedule and current interest rates, the City could save approximately \$1,113,511 over the life of the financing. The City is also saving \$689,100 in principal forgiveness.

Project Data Summary

Responsible Authority	Lexington
Program	DWSRF
Commitment Number	L1001459, L1001595, LF1001585
Project Number	62914
List Year	2021
Type of Pledge	Combo Tax and Revenue
Pledge Level (if applicable)	N/A
Legal Description	\$ 1,020,000 City of Lexington, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023A, \$ 745,000 City of Lexington, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023B, \$689,100 City of Lexington, Texas Principal Forgiveness
Tax-exempt or Taxable	Tax-Exempt
Refinance	No
Outlay Requirement	Yes
Disbursement Method	Escrow
Outlay Type	Outlay = Escrow Release
Qualifies as Disadvantaged	No
State Revolving Fund Type	Equivalency
Financial Managerial & Technical Complete	Yes
Phases Funded	Planning, Acquisition, Design, and Construction
Pre-Design	Yes
Project Consistent with State Water Plan	Yes
Water Conservation Plan	Adopted
Overall Risk Score	2A

PROJECT TEAM

Team Manager	Financial Analyst	Engineering Reviewer	Environmental Reviewer	Attorney
Tom Barnett	Jacob Berdoll	Connie Townsend	Tim Harlow	Marshall Walters

ISSUE BEING EVALUATED
FOR ILLUSTRATION PURPOSES ONLY
City of Lexington

\$ 1,020,000 City of Lexington, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023A

Dated Date: 3/15/2023
 Delivery Date: 3/15/2023
 First Interest: 8/15/2023
 First Principal: 8/15/2024
 Last Principal: 8/15/2053
 Fiscal Year End: 09/30

Source: DWSRF-EQUIVALENCY
 IUP Year: 2021
 Case: Tax and Revenue
 Admin.Fee: \$20,000
 Admin. Fee Payment Date: 3/15/2023
 Required Coverage: 1.1

\$745,000 City of Lexington, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023B

Dated Date: 3/15/2023
 Delivery Date: 3/15/2023
 First Interest: 8/15/2023
 First Principal: 8/15/2024
 Last Principal: 8/15/2053
 Fiscal Year End: 9/30

Source: DWSRF-EQUIVALENCY
 IUP Year: 2021
 Case: Tax and Revenue
 Admin.Fee: \$14,608
 Admin. Fee Payment Date: 3/15/2023
 Required Coverage: 1.1

FISCAL YEAR	PROJECTED NET SYSTEM REVENUES	CURRENT DEBT SERVICE	\$1,020,000 ISSUE				\$745,000 ISSUE				TOTAL DEBT SERVICE	ACTUAL COVERAGE		
			PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT				
2023	\$252,698	\$125,218	-	-	-	-	-	-	-	2.02%	\$9,541	\$9,541	\$134,759	1.88
2024	252,698	121,968	35,000	-	-	35,000	15,000	2.08%	22,899	37,899	37,899	194,867	1.30	
2025	252,698	123,643	35,000	-	-	35,000	15,000	2.10%	22,587	37,587	37,587	196,230	1.29	
2026	252,698	120,245	35,000	-	-	35,000	15,000	2.14%	22,272	37,272	37,272	192,517	1.31	
2027	252,698	121,773	35,000	-	-	35,000	15,000	2.21%	21,951	36,951	36,951	193,724	1.30	
2028	252,698	-	35,000	-	-	35,000	20,000	2.32%	21,620	41,620	41,620	76,620	3.30	
2029	252,698	-	35,000	-	-	35,000	20,000	2.43%	21,156	41,156	41,156	76,156	3.32	
2030	252,698	-	35,000	-	-	35,000	20,000	2.50%	20,670	40,670	40,670	75,670	3.34	
2031	252,698	-	35,000	-	-	35,000	20,000	2.61%	20,170	40,170	40,170	75,170	3.36	
2032	252,698	-	35,000	-	-	35,000	20,000	2.66%	19,648	39,648	39,648	74,648	3.39	
2033	252,698	-	35,000	-	-	35,000	20,000	2.81%	19,116	39,116	39,116	74,116	3.41	
2034	252,698	-	35,000	-	-	35,000	20,000	2.95%	18,554	38,554	38,554	73,554	3.44	
2035	252,698	-	35,000	-	-	35,000	20,000	3.01%	17,964	37,964	37,964	72,964	3.46	
2036	252,698	-	35,000	-	-	35,000	20,000	3.04%	17,362	37,362	37,362	72,362	3.49	
2037	252,698	-	35,000	-	-	35,000	25,000	3.07%	16,754	41,754	41,754	76,754	3.29	
2038	252,698	-	35,000	-	-	35,000	25,000	3.12%	15,986	40,986	40,986	75,986	3.33	
2039	252,698	-	35,000	-	-	35,000	25,000	3.16%	15,206	40,206	40,206	75,206	3.36	
2040	252,698	-	35,000	-	-	35,000	25,000	3.19%	14,416	39,416	39,416	74,416	3.40	
2041	252,698	-	35,000	-	-	35,000	25,000	3.25%	13,619	38,619	38,619	73,619	3.43	
2042	252,698	-	35,000	-	-	35,000	25,000	3.28%	12,806	37,806	37,806	72,806	3.47	
2043	252,698	-	35,000	-	-	35,000	25,000	3.32%	11,986	36,986	36,986	71,986	3.51	
2044	252,698	-	35,000	-	-	35,000	30,000	3.34%	11,156	41,156	41,156	76,156	3.32	
2045	252,698	-	35,000	-	-	35,000	30,000	3.35%	10,154	40,154	40,154	75,154	3.36	
2046	252,698	-	35,000	-	-	35,000	30,000	3.37%	9,149	39,149	39,149	74,149	3.41	
2047	252,698	-	35,000	-	-	35,000	30,000	3.37%	8,138	38,138	38,138	73,138	3.46	
2048	252,698	-	35,000	-	-	35,000	30,000	3.38%	7,127	37,127	37,127	72,127	3.50	
2049	252,698	-	35,000	-	-	35,000	35,000	3.39%	6,113	41,113	41,113	76,113	3.32	
2050	252,698	-	35,000	-	-	35,000	35,000	3.39%	4,927	39,927	39,927	74,927	3.37	
2051	252,698	-	35,000	-	-	35,000	35,000	3.40%	3,740	38,740	38,740	73,740	3.43	
2052	252,698	-	35,000	-	-	35,000	35,000	3.40%	2,550	37,550	37,550	72,550	3.48	
2053	252,698	-	5,000	-	-	5,000	40,000	3.40%	1,360	41,360	41,360	46,360	5.45	
		\$ 612,847	\$1,020,000			\$1,020,000		\$745,000	\$440,691	\$1,185,691		\$2,818,538		

\$1,020,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	15.49 YEARS
NET INTEREST RATE	0.000%
COST SAVINGS	\$ 858,777
AVERAGE ANNUAL REQUIREMENT	\$32,903

\$745,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	18.2 YEARS
NET INTEREST RATE	3.251%
COST SAVINGS	\$ 254,734
AVERAGE ANNUAL REQUIREMENT	\$38,248

TOTAL AVERAGE ANNUAL REQUIREMENTS	
	\$90,921

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



Project Budget Summary

City of Lexington

62819 - New Water Well No. 8 and Water Plant Improvements

Budget Items	TWDB Funds	Other Funds (TDA-CDBG)	Total Funds
Construction			
Construction	\$1,782,600.00	\$290,500.00	\$2,073,100.00
Subtotal for Construction	\$1,782,600.00	\$290,500.00	\$2,073,100.00
Basic Engineering Services			
Construction Engineering	\$60,000.00	\$12,000.00	\$72,000.00
Planning	\$35,000.00	\$0.00	\$35,000.00
Design	\$37,500.00	\$30,000.00	\$67,500.00
Subtotal for Basic Engineering Services	\$132,500.00	\$42,000.00	\$174,500.00
Special Engineering Services			
Application	\$5,000.00	\$0.00	\$5,000.00
Environmental	\$20,000.00	\$8,500.00	\$28,500.00
Water Conservation Plan	\$15,000.00	\$0.00	\$15,000.00
Surveying	\$30,000.00	\$0.00	\$30,000.00
Geotechnical	\$7,500.00	\$0.00	\$7,500.00
Permits	\$2,500.00	\$0.00	\$2,500.00
Testing	\$10,000.00	\$0.00	\$10,000.00
Inspection	\$50,000.00	\$0.00	\$50,000.00
O&M Manual	\$1,000.00	\$0.00	\$1,000.00
Project Management (by engineer)	\$20,000.00	\$0.00	\$20,000.00
Subtotal for Special Engineering Services	\$161,000.00	\$8,500.00	\$169,500.00
Other			
Land/Easements Acquisition	\$7,500.00	\$0.00	\$7,500.00
Administration	\$52,000.00	\$26,500.00	\$78,500.00
Subtotal for Other	\$59,500.00	\$26,500.00	\$86,000.00
Fiscal Services			
Financial Advisor	\$25,050.00	\$0.00	\$25,050.00
Bond Counsel	\$37,500.00	\$0.00	\$37,500.00
Loan Origination Fee	\$34,608.00	\$0.00	\$34,608.00
Subtotal for Fiscal Services	\$97,158.00	\$0.00	\$97,158.00
Contingency			
Contingency	\$221,342.00	\$0.00	\$221,342.00
Subtotal for Contingency	\$221,342.00	\$0.00	\$221,342.00
Total	\$2,454,100.00	\$367,500.00	\$2,821,600.00

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$2,454,100 TO THE CITY OF LEXINGTON
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$1,020,000 CITY OF LEXINGTON, TEXAS COMBINATION TAX AND SURPLUS REVENUE
CERTIFICATES OF OBLIGATION, PROPOSED SERIES 2023A
AND
\$745,000 CITY OF LEXINGTON, TEXAS COMBINATION TAX AND SURPLUS REVENUE
CERTIFICATES OF OBLIGATION, PROPOSED SERIES 2023B
AND
\$689,100 IN PRINCIPAL FORGIVENESS

(22 -)

WHEREAS, the City of Lexington (City), located in Lee County, Texas, has filed an application for financial assistance in the amount of \$2,454,100 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, acquisition, design, and construction of certain water system improvements identified as Project No. 62914; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$1,020,000 City of Lexington, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023A and \$745,000 City of Lexington, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023B (together with all authorizing documents (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of \$689,100, 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 revenue of the City's combined 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 § 371.13; 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 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 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 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 a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.053(j);
6. that the City meets the definition of "Disadvantaged Community" in 31 TAC § 371.1(23) and is therefore eligible for principal forgiveness in the amount of \$689,100; and
7. that the City meets the definition of a "small" or "rural" disadvantaged community in the applicable IUP and is therefore eligible for funding with an interest rate of zero percent (0%) in an amount, including the origination fee, not to exceed \$1,020,000.

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

A commitment is made by the TWDB to the City of Lexington for financial assistance in the amount of \$2,454,100 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$1,020,000 City of Lexington, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023A and \$745,000 City of Lexington, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023B, and the execution of a Principal Forgiveness Agreement in the amount of \$689,100. This commitment will expire on June 30, 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 City;

3. this commitment is contingent upon the City's compliance with all applicable requirements contained in 31 TAC Chapter 371;
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 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 City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
19. 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;
20. the Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
21. the City must immediately notify TWDB, in writing, of any suit against it by the Attorney General of Texas under Texas Penal Code § 1.10(f) (related to federal laws regulating firearms, firearm accessories, and firearm ammunition);

Conditions Related to Tax-Exempt Status:

22. 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;
23. 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;
24. 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 section 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
25. 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;
26. 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 section 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 section 148(f) of the Code, section 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; and
 - 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;

27. 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;
28. 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 section 149(b) of the Code;
29. 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;
30. the Obligations must contain a provision that the City 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);
31. 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;
32. 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:

33. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
34. 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;

35. 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;
36. 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;
37. 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 § 371.4 and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions:

38. the City shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant to 31 TAC Chapter 371;
39. 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 City 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;
40. prior to the 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;

Pledge Conditions for the Loan:

41. 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:

44. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
45. 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 15th day of December 2022.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

Review Date:

Project ID:

Water
Wastewater
Other

WATER CONSERVATION REVIEW

Entity:

Other entity:

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

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

WATER LOSS AUDIT YEAR:

Service connections:

Length of main lines (miles):

Water Loss GCD:

Retail population:

Connections per mile:

Water Loss GPCD:

ILI¹:

1 – Infrastructure Leakage Index only applicable if > 16 connections per mile and > 3,000 service connections

WATER LOSS THRESHOLDS

Water Loss Project:

Wholesale Adjusted:

Threshold Type:

Apparent Loss Gallons per connection per day	Real Loss Gallons per mile per day	Real Loss Gallons per connection per day	Apparent Loss Threshold Gallons per connection per day	Real Loss Threshold Gallons per mile per day	Real Loss Threshold Gallons per connection per day

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 losses are paper losses that occur when the water reaches a customer, but the volume is not accurately measured and/or recorded due to unauthorized consumption, customer meter inaccuracy, or billing system and collection data errors.

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.

GCD means gallons per connection 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 3,000 connections and a connection density of more than 16 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 bench marking 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.

Real losses are the physical losses, largely leakage, from the infrastructure: mains, valves, and storage tank overflows. Real loss constitutes background leakage (unreported and difficult to detect), unreported leakage (leaks that do not surface but could be detected), and reported leakage (leaks that often surface and those that are detected by the utility through leak detection).

Residential GPCD is the amount of residential water use (single and multi-family customer use) divided by the residential population divided by 365.

Total GPCD is the amount of total system input volume divided by the retail population 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 GPCD is the amount of water loss divided by the retail population divided by 365.

Water Loss per Connection per Day Calculated as the water loss volume divided by the number service connections divided by 365. This indicator allows for reliable performance tracking in the water utility's efforts to reduce water losses. It replaces water loss percentage.

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.

Wholesale Adjusted represents that some utilities provide large volumes of wholesale water to other providers that travel through the general distribution system, so a calculation has been established to adjust for that volume of wholesale water. These adjustments are only applicable for use in determining whether a utility meets or exceeds water loss thresholds in review of their application for financial assistance. These adjustments should not be used for performance tracking or benchmarking.



City of Lexington Lee County

