

# Texas Water Development Board

## PROJECT FUNDING REQUEST

**BOARD DATE:** August 10, 2023

**Team Manager:** Dain Larsen

### ACTION REQUESTED

Consider approving by resolution a request from the City of Bay City (Matagorda County) for a) \$15,000,000 in financial assistance consisting of \$14,500,000 in financing and \$500,000 in principal forgiveness from the Drinking Water State Revolving Fund for planning, acquisition, design, and construction of water system improvements; and b) a waiver from the requirement to include funds to mitigate water loss as part of this project.

### STAFF RECOMMENDATION

Approve       No Action

### BACKGROUND

The City of Bay City (City) is approximately 80 miles south of Houston. The City provides water and wastewater services to a population of approximately 17,487 with approximately 6,927 water and wastewater accounts.

### PROJECT NEED AND DESCRIPTION

The City's largest groundwater well exceeds the maximum contaminant level (MCL) for arsenic set by the Texas Commission on Environmental Quality and is no longer in production. The City has five additional wells and is in the design stage for two new wells funded in 2021 through the Drinking Water State Revolving Fund.

The City has identified two potential approaches to reduce the arsenic in its water system. The first approach would be construction of a new well and adding storage and pumping capacity. The second approach would be adding iron adsorption media vessels. The first approach is the current preferred option. At the conclusion of the project planning the City will select one of these options.

### PROJECT SCHEDULE

Task	Schedule Date
Closing	November 1, 2023
Engineering Feasibility Report Completion (End of Planning Phase)	February 1, 2024
Design Phase Completion	January 1, 2025
Start of Construction	April 1, 2025
Construction Completion	April 1, 2027

### KEY ISSUES

The City qualified for \$500,000 in principal forgiveness as urgent need, \$2,590,000 at zero percent interest, and \$11,910,000 in financing at regular interest rates.

**COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE FEBRUARY 29, 2024**

The City exceeds its water loss thresholds for real and apparent loss and is already taking actions to mitigate its water loss. Therefore, the City is requesting a waiver from having to include funds in this request to mitigate its water loss. In January 2022, to address its apparent water loss, the City began construction on its advance metering infrastructure project funded by the Drinking Water State Revolving Fund. To address its real water loss, the City has recently contracted with a third-party to repair leaks already identified by the City.

#### **LEGAL/SPECIAL CONDITIONS**

- Executed Principal Forgiveness Agreement
- Return of surplus principal forgiveness funds
- Water rights certification

#### **Attachments**

1. Project Data Summary
2. Project Budget
3. Resolution (23- )
4. Water Conservation Review
5. Water Loss Waiver Request
6. Location Map

# Financial Review

## City of Bay City

Risk Score: 2B

Audit Reviewed: FY 2022

### Key Indicators

Indicator	Result	Benchmark
Population Growth, Average Annual 2010-2020	County: 0.25%	State: 1.49%
Cash Balance Ratio	5.90%	0-9.99%
Median Household Income as % of State	81%	100%
Days of Cash on Hand (3-year Average)	187 days	30-149 days
Net Fixed Assets/ Annual Depreciation	9 years	12-24 years
Debt Service Coverage Ratio	0.87x	1.10x
Debt-to-Operating Revenues	4.93x	4.00-5.99x
Unemployment Rate (May 2023)	Matagorda County: 5.5%	State: 4.1%
Total Assessed Valuation per Capita	\$57,699	\$30,000-\$64,999

### Key Risk Score Strengths

- The City's days of cash on hand is above the benchmark, indicating it can pay operating expenses with the cash available.
- The City's taxable assessed valuation has increased approximately 27 percent over the past five years and the tax collection rate average is 98 percent.
- The City's top 10 customers of the utility system are at 8 percent indicating that it does not rely on one customer to generate most of its revenue.

### Key Risk Score Concerns

- Based on the 2022 audited revenues, the City's debt service coverage ratio is below 1.1x coverage; however, a recent rate increase was implemented in October of 2022. In a no-growth scenario with the October rate increase, the City needs a combined water and sewer rate increase of \$15.14 to meet the debt service coverage requirements.

### PLEDGE

Legal Pledge Name	Ad Valorem Tax and Utility System Revenues
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 (Year 2024)	Current Household Cost Factor	Projected Household Cost Factor
Water	4,400	\$32.21	\$39.78	1.75	2.11
Wastewater	4,400	\$41.00	\$48.57		

**TAXES**

	2022 Tax Year Rate	Max Projected Tax Rate (Year 2022)	Maximum Allowable Rate	3-Year Avg Current Tax Collections	Assessed Valuation
Maintenance & Operation	\$0.4808	\$0.4808	\$1.50	98%	\$1,031,765,076
Interest & Sinking	\$0.1542	\$0.1542			
Total Tax Rate	\$0.6350	\$0.6350			

**Cost Savings**

Based on a 28-year maturity schedule and current interest rates, the City could save approximately \$4,625,853 over the life of the financing. The City is also saving \$500,000 in principal forgiveness.

## Project Data Summary

<b>Responsible Authority</b>	Bay City
<b>Program</b>	DWSRF
<b>Commitment Number</b>	L1001654, L1001655, LF1001656
<b>Project Number</b>	62957
<b>List Year</b>	2023
<b>Type of Pledge</b>	Combo Tax and Revenue
<b>Pledge Level (if applicable)</b>	Third Lien
<b>Legal Description</b>	\$11,910,000 City of Bay City, Texas Combination Tax & Surplus Revenue Certificates of Obligation, Proposed Series 2023D, \$2,590,000 City of Bay City, Texas Combination Tax & Surplus Revenue Certificates of Obligation, Proposed Series 2023C, \$500,000 Principal Forgiveness Agreement
<b>Tax-exempt or Taxable</b>	Tax-Exempt
<b>Refinance</b>	No
<b>Outlay Requirement</b>	Yes
<b>Disbursement Method</b>	Escrow
<b>Outlay Type</b>	Outlay = Escrow Release
<b>Qualifies as Disadvantaged</b>	No
<b>State Revolving Fund Type</b>	Non-Equivalency
<b>Financial Managerial &amp; Technical Complete</b>	Yes
<b>Phases Funded</b>	Planning, Acquisition, Design, and Construction
<b>Pre-Design</b>	Yes
<b>Project Consistent with State Water Plan</b>	Yes
<b>Water Conservation Plan</b>	Adopted
<b>Overall Risk Score</b>	2B

### PROJECT TEAM

<b>Team Manager</b>	<b>Financial Analyst</b>	<b>Engineering Reviewer</b>	<b>Environmental Reviewer</b>	<b>Attorney</b>
Dain Larsen	Caaren Skrobarczyk	Shubham Aggarwal	Kristin Miller	Marshall Walters

ISSUE BEING EVALUATED  
FOR ILLUSTRATION PURPOSES ONLY  
City of Bay City

**\$11,910,000 City of Bay City, Texas Combination Tax & Surplus Revenue Certificates of Obligation, Proposed Series 2023D**

Dated Date: 11/1/2023 Source: DWSRF-NON-EQUIVALENCY  
 Delivery Date: 11/1/2023 Rate: 2.92%  
 First Interest: 3/1/2024 IUP Year: 2023  
 First Principal: 9/1/2024 Case: Tax and Revenue  
 Last Principal: 9/1/2052 Admin.Fee: \$233,529  
 Fiscal Year End: 9/30 Admin. Fee Payment Date: 11/1/2023  
 Required Coverage: 1.1 Total Assessed Valuation: \$1,031,765,076

**\$2,590,000 City of Bay City, Texas Combination Tax & Surplus Revenue Certificates of Obligation, Proposed Series 2023C**

Dated Date: 11/1/2023 Source: DWSRF-NON-EQUIVALENCY  
 Delivery Date: 11/1/2023 Rate: 0.00%  
 First Interest: 3/1/2024 IUP Year: 2023  
 First Principal: 9/1/2024 Case: Tax & Revenue  
 Last Principal: 9/1/2052 Admin.Fee: \$50,784  
 Fiscal Year End: 9/30 Admin. Fee Payment Date: 11/1/2023  
 Required Coverage: 1.1

FISCAL YEAR	REQUIRED															
	CURRENT TAX RATE	TAX REVENUES WITH COLL. @ 98%	PROJECTED NET REVENUES	PROJECTED TOTAL REVENUES	CURRENT DEBT SERVICE	\$11,910,000 ISSUE				\$2,590,000 ISSUE				DEBT SERVICE	ACTUAL COVERAGE	
						PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT			
2024	\$0.1542	\$1,559,162	\$4,780,717	\$6,339,879	\$4,305,500	\$290,000	2.31%	\$270,110	\$560,110	\$90,000	-	\$0	\$90,000	\$4,955,610	1.28	
2025	\$0.1542	1,559,162	4,780,717	6,339,879	5,057,671	295,000	2.24%	317,433	612,433	90,000	-	-	90,000	5,760,104	1.10	
2026	\$0.1542	1,559,162	4,780,717	6,339,879	4,635,112	300,000	2.15%	310,825	610,825	90,000	-	-	90,000	5,335,937	1.19	
2027	\$0.1542	1,559,162	4,780,717	6,339,879	4,405,071	310,000	2.09%	304,375	614,375	90,000	-	-	90,000	5,109,446	1.24	
2028	\$0.1542	1,559,162	4,780,717	6,339,879	4,403,248	315,000	2.04%	297,896	612,896	90,000	-	-	90,000	5,106,144	1.24	
2029	\$0.1542	1,559,162	4,780,717	6,339,879	3,586,504	320,000	2.06%	291,470	611,470	90,000	-	-	90,000	4,287,974	1.48	
2030	\$0.1542	1,559,162	4,780,717	6,339,879	3,607,841	325,000	2.03%	284,878	609,878	90,000	-	-	90,000	4,307,719	1.47	
2031	\$0.1542	1,559,162	4,780,717	6,339,879	3,595,118	335,000	2.02%	278,281	613,281	90,000	-	-	90,000	4,298,399	1.47	
2032	\$0.1542	1,559,162	4,780,717	6,339,879	3,279,092	340,000	2.05%	271,514	611,514	90,000	-	-	90,000	3,980,605	1.59	
2033	\$0.1542	1,559,162	4,780,717	6,339,879	3,292,491	350,000	2.07%	264,544	614,544	90,000	-	-	90,000	3,997,034	1.59	
2034	\$0.1542	1,559,162	4,780,717	6,339,879	3,285,142	355,000	2.25%	257,299	612,299	90,000	-	-	90,000	3,987,440	1.59	
2035	\$0.1542	1,559,162	4,780,717	6,339,879	3,276,736	365,000	2.39%	249,311	614,311	90,000	-	-	90,000	3,981,047	1.59	
2036	\$0.1542	1,559,162	4,780,717	6,339,879	3,055,599	370,000	2.56%	240,588	610,588	90,000	-	-	90,000	3,756,186	1.69	
2037	\$0.1542	1,559,162	4,780,717	6,339,879	2,580,477	380,000	2.70%	231,116	611,116	90,000	-	-	90,000	3,281,593	1.93	
2038	\$0.1542	1,559,162	4,780,717	6,339,879	2,200,999	390,000	2.79%	220,856	610,856	90,000	-	-	90,000	2,901,855	2.18	
2039	\$0.1542	1,559,162	4,780,717	6,339,879	2,204,828	400,000	2.84%	209,975	609,975	90,000	-	-	90,000	2,904,803	2.18	
2040	\$0.1542	1,559,162	4,780,717	6,339,879	2,208,196	415,000	2.88%	198,615	613,615	90,000	-	-	90,000	2,911,811	2.18	
2041	\$0.1542	1,559,162	4,780,717	6,339,879	2,205,467	425,000	2.92%	186,663	611,663	90,000	-	-	90,000	2,907,130	2.18	
2042	\$0.1542	1,559,162	4,780,717	6,339,879	2,202,749	440,000	2.96%	174,253	614,253	90,000	-	-	90,000	2,907,001	2.18	
2043	\$0.1542	1,559,162	4,780,717	6,339,879	2,213,876	450,000	3.00%	161,229	611,229	90,000	-	-	90,000	2,915,104	2.17	
2044	\$0.1542	1,559,162	4,780,717	6,339,879	2,209,620	465,000	3.03%	147,729	612,729	90,000	-	-	90,000	2,912,349	2.18	
2045	\$0.1542	1,559,162	4,780,717	6,339,879	2,204,423	480,000	3.05%	133,639	613,639	90,000	-	-	90,000	2,908,062	2.18	
2046	\$0.1542	1,559,162	4,780,717	6,339,879	2,204,272	495,000	3.09%	118,999	613,999	90,000	-	-	90,000	2,908,271	2.18	
2047	\$0.1542	1,559,162	4,780,717	6,339,879	2,102,215	510,000	3.11%	103,704	613,704	90,000	-	-	90,000	2,805,919	2.26	
2048	\$0.1542	1,559,162	4,780,717	6,339,879	2,103,068	525,000	3.13%	87,843	612,843	90,000	-	-	90,000	2,805,911	2.26	
2049	\$0.1542	1,559,162	4,780,717	6,339,879	2,103,008	540,000	3.14%	71,410	611,410	90,000	-	-	90,000	2,804,418	2.26	
2050	\$0.1542	1,559,162	4,780,717	6,339,879	2,103,140	560,000	3.15%	54,454	614,454	90,000	-	-	90,000	2,807,594	2.26	
2051	\$0.1542	1,559,162	4,780,717	6,339,879	2,096,380	575,000	3.16%	36,814	611,814	90,000	-	-	90,000	2,798,194	2.27	
2052	\$0.1542	1,559,162	4,780,717	6,339,879	1,799,943	590,000	3.16%	18,644	608,644	70,000	-	-	70,000	2,478,587	2.56	
				\$183,856,501	\$84,527,786	\$11,910,000		\$5,794,460	\$17,704,460	\$2,590,000		\$0	\$2,590,000	\$104,822,246		

\$11,910,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	16.64 YEARS
NET INTEREST RATE	2.923%
COST SAVINGS	\$2,973,003
AVERAGE ANNUAL REQUIREMENT	\$610,499

\$2,590,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	14.73 YEARS
NET INTEREST RATE	0.000%
COST SAVINGS	\$1,652,850
AVERAGE ANNUAL REQUIREMENT	\$89,310

TOTAL AVERAGE ANNUAL REQUIREMENTS
\$3,614,560

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 regarding the applicability of the information at closing, at which time actual rates will be set.

Budget Items	This Commitment	Total TWDB Funds
<b>Construction</b>		
Construction	\$10,671,500.00	\$10,671,500.00
<b>Subtotal for Construction</b>	<b>\$10,671,500.00</b>	<b>\$10,671,500.00</b>
<b>Basic Engineering Services</b>		
Construction Engineering	\$450,000.00	\$450,000.00
Design	\$1,245,000.00	\$1,245,000.00
Planning	\$600,000.00	\$600,000.00
<b>Subtotal for Basic Engineering Services</b>	<b>\$2,295,000.00</b>	<b>\$2,295,000.00</b>
<b>Special Services</b>		
Environmental	\$100,000.00	\$100,000.00
Geotechnical	\$50,000.00	\$50,000.00
Inspection	\$15,000.00	\$15,000.00
Permits	\$10,000.00	\$10,000.00
Surveying	\$100,000.00	\$100,000.00
Testing	\$50,000.00	\$50,000.00
<b>Subtotal for Special Services</b>	<b>\$325,000.00</b>	<b>\$325,000.00</b>
<b>Fiscal Services</b>		
Bond Counsel	\$77,000.00	\$77,000.00
Financial Advisor	\$218,000.00	\$218,000.00
Fiscal/Legal	\$9,500.00	\$9,500.00
Issuance Costs	\$9,000.00	\$9,000.00
Loan Origination Fee	\$295,000.00	\$295,000.00
<b>Subtotal for Fiscal Services</b>	<b>\$608,500.00</b>	<b>\$608,500.00</b>
<b>Other</b>		
Land/Easements Acquisition	\$100,000.00	\$100,000.00
<b>Subtotal for Other</b>	<b>\$100,000.00</b>	<b>\$100,000.00</b>
<b>Contingency</b>		
Contingency	\$1,000,000.00	\$1,000,000.00
<b>Subtotal for Contingency</b>	<b>\$1,000,000.00</b>	<b>\$1,000,000.00</b>
<b>Total</b>	<b>\$15,000,000.00</b>	<b>\$15,000,000.00</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$15,000,000 TO THE CITY OF BAY CITY  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$2,590,000 CITY OF BAY CITY, TEXAS  
COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION,  
PROPOSED SERIES 2023C  
AND  
\$11,910,000 CITY OF BAY CITY, TEXAS  
COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION,  
PROPOSED SERIES 2023D,  
AND  
\$500,000 IN PRINCIPAL FORGIVENESS

(23 - )

WHEREAS, the City of Bay City (City), located in Matagorda County, Texas, has filed an application for financial assistance in the amount of \$15,000,000 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. 62957; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$2,590,000 City of Bay City, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023C and \$11,910,000 City of Bay City, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023D (together with all authorizing documents (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of \$500,000, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the City has offered a pledge of ad valorem taxes and surplus revenues of the City's water and sewer 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 City is requesting a waiver of the requirement that a portion of the financial assistance received from the TWDB be used to mitigate the City's system water loss because the City has begun construction on an advance metering project and has contracted to repair sources of loss identified by the City; and



WHEREAS, the TWDB hereby finds:

1. that the revenue and 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 term of the Obligations does not exceed the expected useful life of the project proposed by the City;
4. 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;
5. 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);
6. 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);
7. that, based on the conditions described above, the City is satisfactorily addressing the City's system water loss, which supports a waiver of the requirement that a portion of the financial assistance received from the TWDB be used to mitigate the City's system water loss in accordance with Texas Water Code § 16.0121(g); and
8. that the project qualifies for \$500,000 as an Urgent Need project in accordance with the applicable Intended Use Plan and 31 TAC § 371.21(f), is eligible for financial assistance of \$2,590,000 with a reduced interest rate, and is eligible for principal forgiveness in the amount of \$500,000.

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

1. For the reasons stated above, the TWDB hereby waives the requirements of Texas Water Code § 16.0121(g); and
2. A commitment is made by the TWDB to the City of Bay City for financial assistance in the amount of \$15,000,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$2,590,000 City of Bay City, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2023C and \$11,910,000 City of Bay City, Texas Combination Tax and Surplus

Revenue Certificates of Obligation, Proposed Series 2023D and the execution of a Principal Forgiveness Agreement in the amount of \$500,000. This commitment will expire on February 29, 2024.

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 as determined by the TWDB. 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;
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 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 the conditions set forth in the TWDB Resolution;
5. the Series 2023D 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 Series 2023C Obligations must provide that the Obligations can be called for early redemption on any date beginning on or after ten years from the dated date of the Obligations, at a redemption price of par;
7. 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;

8. the Obligations must contain a provision requiring the City to levy a tax 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;
9. 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;
10. 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 approved by the Executive Administrator;
11. 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;
12. 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;
13. loan proceeds shall not be used by the City when sampling, testing, removing, or disposing of contaminated soils 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, 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;
14. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or the levy of an interest and sinking tax rate (if applicable) sufficient for the repayment of all system debt service requirements;

15. 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;
16. 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;
17. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
18. 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;
19. the Obligations must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
20. 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;
21. the Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
22. 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);
23. the Obligations must provide that the City will submit annually, an audit prepared by a certified public accountant in accordance with generally accepted auditing standards;

Conditions Related to Tax-Exempt Status:

24. 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;

25. 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;
26. 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);
27. 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;
28. 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 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 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;
29. 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;
30. 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;
31. 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;
32. 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);
33. 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;

34. 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;
35. the City's federal tax certificate shall provide that the weighted average maturity of the Obligations purchased by the TWDB does not exceed 120% of the weighted average reasonably expected economic life of the Project;

State Revolving Fund Conditions:

36. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
37. 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;
38. 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 Unique Entity Identification Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;
39. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and shall provide that the City will adhere to the approved project schedule;
40. 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;

41. The Obligations and Principal Forgiveness Agreement must contain a covenant that the City shall abide by the prohibition on certain telecommunications and video surveillance services or equipment as required by 2 CFR § 200.216;

Drinking Water State Revolving Fund Conditions:

42. the City shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant to 31 TAC Chapter 371;
43. 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;

Pledge Conditions for the Loan:

44. 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 or tax revenues or both, 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:

45. prior to the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must either issue a written finding that the City has the right to use the water that the project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction;
46. prior to the release of construction funds for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that the City has the right to use the water that the project financed by the TWDB will provide;
47. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
48. 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 10th day of August 2023.

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**

	<b>Total GPCD</b>	<b>Residential GPCD</b>	<b>Water Loss GPCD</b>
<b>Baseline</b>			
<b>5-year Goal</b>			
<b>10-year Goal</b>			

**WATER LOSS AUDIT YEAR:**

Service connections:

Length of main lines (miles):

Water Loss GCD:

Retail population:

Connections per mile:

Water Loss GPCD:

ILI<sup>1</sup>:

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 BAY CITY



SHAWNA BURKHART  
CITY MANAGER

ANNE MARIE ODEFEY  
CITY ATTORNEY

JEANNA THOMPSON  
CITY SECRETARY

## CITY COUNCIL

ROBERT K. NELSON  
MAYOR

JIM FOLSE  
MAYOR PRO TEM

BLAYNE FINLAY  
BRADELY WESTMORELAND  
BECCA SITZ

FLOYCE BROWN

May 5, 2023

Mr. Jeff Walker  
Executive Administrator  
Texas Water Development Board  
Stephen F. Austin Building  
1700 N. Congress Avenue, 5<sup>th</sup> Floor  
Austin, TX 78711-3231

Re: City of Bay City, PWS ID No. 1610001

Dear Mr. Walker,

The City of Bay City is formally requesting a water loss waiver for its proposed DWSRF-funded Water System Improvements project (TWDB project number 62957). The City of Bay City is working diligently to decrease the water loss in the water system.

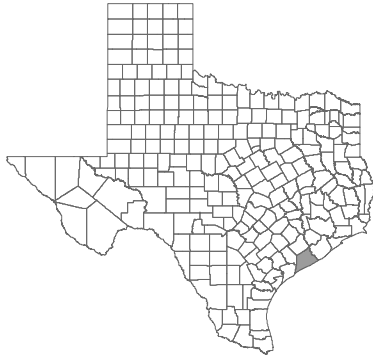
First, in the last quarter of 2021, the City of Bay City initiated a city-wide AMI Meter Replacement Program with funding provided by the DWSRF (Project #62902). The AMI project was completed last month. As we moved through the change-out process we identified some billing discrepancies, unmetered connections, and unauthorized consumption that impacted water loss. Now that the project is complete, we are confident that all connections have been evaluated, properly metered, and any found issues, resolved.

Second, the City of Bay City has faced a serious staffing shortage that has affected our ability to address reported breaks and leaks in a timely manner. Recently, we have started preparations to work with a contractor to repair all known outstanding water leaks. We have also re-organized our Utility Department to put more boots on the ground fixing reported breaks and leaks. As the outstanding leaks are repaired by the contractor, our maintenance crews will address newly reported leaks and breaks and even take proactive steps in chasing down non-surfacing leaks.

In summary, the City of Bay City is committed to taking necessary steps to control water loss. The City of Bay City greatly appreciates the TWDB making water system projects possible for our citizens. Please feel free to contact me if you have any questions regarding our waiver request.

Sincerely,

  
Shawna Burkhart  
City Manager



# City of Bay City Matagorda County

