

AGENDA ITEM MEMO

BOARD MEETING DATE: October 5, 2023

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Jessica Peña, Deputy Executive Administrator, Water Supply and
Infrastructure

FROM: T. Clay Schultz, Ph.D., Director, Regional Water Project Development
Joe Koen, Manager, Regional Water Project Development

SUBJECT: North Texas Municipal Water District Change of Project Scope

ACTION REQUESTED

Consider amending by resolution, the previously adopted Texas Water Development Board Resolution No. 20-064, to transfer a \$75,470,000 multi-year commitment for North Texas Municipal Water District's Clean Water State Revolving Fund Rowlett Creek Regional Wastewater Treatment Plant Project No. 73881 to the North Texas Municipal Water District's Clean Water State Revolving Fund Sister Grove Regional Water Resource Recovery Facility Project No. 73855.

BACKGROUND

In February 2020, the Texas Water Development Board (TWDB) approved a \$458,920,000 commitment to North Texas Municipal Water District (District) for design, acquisition, and construction of the Sister Grove Regional Water Resource Recovery Facility (Project No. 73855) (Sister Grove project). In June 2020, the District closed on \$458,920,000 for the Sister Grove project. TWDB has authorized \$407,198,136.51 in contracts eligible for funding for the Sister Grove project. The District has experienced significant construction cost increases due to unanticipated site conditions, and needs additional funding for completion of the project.

In July 2020, the TWDB approved a \$75,470,000 multi-year commitment to the District for construction of the Rowlett Creek Regional Wastewater Treatment Plant (Project No. 73881) (Rowlett Creek project). In February 2021, the District closed on \$37,615,000 in

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Jeff Walker, Executive Administrator

anticipation of beginning construction of the Rowlett Creek project. The remaining \$37,855,000 is scheduled to expire in June 2024. The District has experienced significant delays in the environmental review and design phase of the Rowlett Creek project, and is currently reviewing options to address these issues. However, the District does not believe these issues will be resolved prior to the expiration of this commitment and has determined not to utilize TWDB funding on the Rowlett Creek project. The District will pursue other financing options for the completion of this project.

KEY ISSUES

The District is requesting to transfer the \$75,470,000 multi-year commitment from the Rowlett Creek project, to the Sister Grove project. This will allow the District to address both the cost overruns associated with the Sister Grove project and the unutilized funds from the Rowlett Creek project. Note that the Rowlett Creek project is a non-equivalency Clean Water State Revolving Fund commitment, while the Sister Grove project is an equivalency Clean Water State Revolving Fund commitment. With this amendment all funds will be subject to equivalency requirements of TWDB Resolution 20-018. The requested amendments do not change the total amount of financing to the District.

Year	Amount per Resolution No. 20-018	Amount per Resolution 20-064	Proposed Amended Resolution No. 20-018
2020	\$458,920,000	\$0	\$458,920,000 (Closed)
2021	\$0	\$37,615,000	\$37,615,000 (Closed)
2022	\$0	\$0	\$0
2023	\$0	\$37,855,000	\$37,855,000

RECOMMENDATION

In order to meet the District's financing needs and address cost overruns, the Executive Administrator recommends that TWDB Resolution 20-064 be amended to transfer the \$75,470,000 multi-year commitment from the Rowlett Creek project, to the Sister Grove project.

Attachments:

1. Resolution (23-)
2. Resolution 20-64
3. Resolution 20-18
4. North Texas Municipal Water District Change Funding Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NOS. 20-064 AND 20-018
TO MODIFY AND EXTEND THE LOAN COMMITMENT PERIOD FOR THE
\$458,920,000 NORTH TEXAS MUNICIPAL WATER DISTRICT NORTH TEXAS MUNICIPAL
WATER DISTRICT REGIONAL WASTEWATER SYSTEM REVENUE BONDS

(23-)

Recitals:

At its February 20, 2020 meeting, Texas Water Development Board (TWDB), by TWDB Resolution No. 20-018, made a commitment to provide financial assistance to the North Texas Municipal Water District (District) for the purpose of financing improvements to the District's wastewater system in the amount of \$458,920,000 consisting of the TWDB's purchase of \$458,920,000 North Texas Municipal Water District Regional Wastewater System Revenue Bonds, Proposed Series 2020, from the Clean Water State Revolving Fund program, for design, acquisition, and construction of the Sister Grove Regional Water Resource Recovery Facility Project No. 73855, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made.

In June 2020, the District closed on North Texas Municipal Water District Regional Wastewater System Revenue Bonds, Series 2020A in the amount of \$458,920,000.

At its July 23, 2020 meeting, the TWDB, by TWDB Resolution No. 20-064, made a multi-year commitment to provide financial assistance to the District wastewater system in the amount of \$75,470,000, consisting of the TWDB's purchase of \$37,615,000 North Texas Municipal Water District Regional Wastewater System Revenue Bonds, Proposed Series 2020B and \$37,855,000 North Texas Municipal Water District Regional Wastewater System Revenue Bonds, Proposed Series 2023, from the Clean Water State Revolving Fund program, for construction of the Rowlett Creek Regional Wastewater Treatment Plant Project No. 73881, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made.

In February 2021, the District closed on North Texas Municipal Water District Regional Wastewater System Revenue Bonds, Series 2020B in the amount of \$37,615,000.

By a letter dated December 1, 2021, the District requested that the TWDB amend TWDB Resolution No. 20-018 to transfer all funds from Project No. 73881 consisting of the \$37,615,000 and the unclosed commitment of \$37,855,000 to Project No. 73855 to allow the District to address both the cost overruns associated with Project No. 73855 and the unutilized funds from Project No. 73881.

Findings:

The TWDB hereby finds that the amendments to the terms of these commitments are reasonable and that the request is in the public interest and will serve a public purpose.

In accordance with the Texas Water Code, the TWDB has carefully considered all matters required by law.

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

1. TWDB Resolution 20-064 is amended to reflect the transfer of the \$75,470,000 in remaining unused funds to Project No. 73855.
2. TWDB Resolution No. 20-018 is amended to increase the amount of funds available for Project No. 73855 from \$458,920,000 to \$534,390,000 through the transfer of funds in the amount of \$75,470,000.
3. The transfer of funds from Project No. 73881 to Project No. 73855 must be completed before July 31, 2024.
4. All other terms and conditions of TWDB Resolution No. 20-018 shall remain in full force and effect.

APPROVED and ordered of record this the 5th day of October 2023.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$75,470,000 TO THE NORTH TEXAS MUNICIPAL WATER DISTRICT
IN THE FORM OF A MULTI-YEAR COMMITMENT
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$75,470,000 NORTH TEXAS MUNICIPAL WATER DISTRICT REGIONAL WASTEWATER
SYSTEM REVENUE BONDS,
PROPOSED SERIES 2020B AND PROPOSED SERIES 2023**

(20-064)

WHEREAS, the North Texas Municipal Water District (District), located in Collin, Dallas, Kaufman, Rockwall, and Denton Counties, has filed an application for financial assistance in the amount of \$75,470,000 from the Clean Water State Revolving Fund (CWSRF) to finance the construction of certain wastewater system improvements identified as Project No. 73881; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) in the form of a multi-year commitment through the TWDB's proposed purchase of \$75,470,000 North Texas Municipal Water District Regional Wastewater System Revenue Bonds, Proposed Series 2020B and Proposed Series 2023 (together with all authorizing documents, (Obligations)), 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 a first lien on the system revenues of the District's wastewater 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 § 375.14; and

WHEREAS, the TWDB hereby finds:

1. that the System 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 Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;
3. that the 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; and

4. that the District has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007.

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

1. A commitment is made by the TWDB to the North Texas Municipal Water District for financial assistance in the amount of \$75,470,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of \$75,470,000 North Texas Municipal Water District Regional Wastewater System Revenue Bonds, Proposed Series 2020B and Proposed Series 2023 as follows:

- a) \$37,615,000 Proposed Series 2020B, to expire on July 31, 2021; and
- b) \$37,855,000 Proposed Series 2023 to expire on July 31, 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;
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 375;
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 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;

Conditions Related to Tax-Exempt Status

17. 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;
18. 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;
19. 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);
20. 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;
21. 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;

22. 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;
23. 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;
24. 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;
25. the Obligations must contain a provision that the District will refrain from using 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);
26. 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;
27. 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

28. the District shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
29. 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;

30. 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;
31. 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;
32. the Obligations 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 § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines;
33. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;
34. the District shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

35. for each proposed bond series as described in the commitment of this Resolution, the District shall pay at closing an origination fee approved by the Executive Administrator to the TWDB pursuant 31 TAC Chapter 375;
36. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the

purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;

Pledge Conditions for the Loan

- 37. 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; and
- 38. 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.

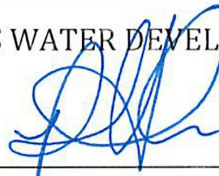
PROVIDED, however, the commitment is subject to the following special condition:

Special Conditions

- 39. 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.

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

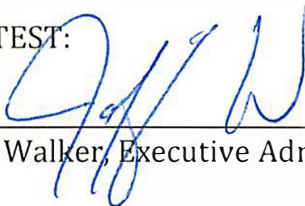
TEXAS WATER DEVELOPMENT BOARD



Peter M. Lake, Chairman

DATE SIGNED: 7/23/20

ATTEST:



Jeff Walker, Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$458,920,000 TO THE NORTH TEXAS MUNICIPAL WATER DISTRICT
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$458,920,000 NORTH TEXAS MUNICIPAL WATER DISTRICT REGIONAL WASTEWATER
SYSTEM REVENUE BONDS,
PROPOSED SERIES 2020**

(20-018)

WHEREAS, the North Texas Municipal Water District (District), located in Collin, Rockwall, Dallas, Kaufman, Denton, Fannin, and Grayson Counties has filed an application for financial assistance in the amount of \$458,920,000 from the Clean Water State Revolving Fund (CWSRF) to finance the acquisition, design and construction of certain wastewater system improvements identified as Project No. 73855; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$458,920,000 North Texas Municipal Water District Regional Wastewater System Revenue Bonds, Proposed Series 2020 (together with all authorizing documents, (Obligations)), 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 net system revenue 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 § 375.14; 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 Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;**
- 3. that the 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; and**
- 4. that the District has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007.**

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

A commitment is made by the TWDB to the North Texas Municipal Water District for financial assistance in the amount of \$458,920,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of \$458,920,000 North Texas Municipal Water District Regional Wastewater System Revenue Bonds, Proposed Series 2020. This commitment will expire on February 28, 2021.

Such commitment is conditioned as follows:

Standard Conditions

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;
2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that 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 375;
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;

Conditions Related to Tax-Exempt Status

17. 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;
18. 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;
19. 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);
20. 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

23. 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;
24. 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;
25. the Obligations must contain a provision that the District will refrain from using 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);
26. 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;
27. 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

28. the District shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
29. 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;
30. 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;

31. 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;
32. the Obligations 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 § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines;
33. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;
34. the District shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

35. the District shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant 31 TAC Chapter 375;
36. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;
37. prior to 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;
38. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design,

engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102(2)(A)-(C), the District must provide documentation that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 *et seq* and 33 U.S.C. § 1382(b)(14).

Pledge Conditions for the Loan

39. 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;
40. the Obligations must contain a provision providing that the District issue no additional revenue bonds unless (a) an independent, registered professional engineer of the State of Texas or a firm of such engineers executes a certificate or report to the effect that in his or her opinion the Pledge Revenues in each complete fiscal year thereafter will be at least equal to 1.25 times the average annual principal and interest requirements of all Parity Bonds and Additional Bonds to be outstanding after the delivery of the then proposed Additional Bonds, or (b) in the alternative to (a), above, the President and Secretary of the Board sign a written certificate to the effect that, based upon an opinion of legal counsel to the Issuer, there are Contracts then in effect pursuant to which the Member Cities and other which are parties to such Contracts are obligated to make minimum payments to the Issuer at such times (including during periods when water is not available to such Member Cities and others) and in such amounts as shall be necessary to provide to the Issuer Net Revenues of the System sufficient to pay when due all principal of an interest on all Parity Bonds and Additional Bonds to be outstanding after the issuance of the proposed Additional Bonds, and to make depositis in the Reserve Fund as required under this Resolution;
41. upon request by the Executive Administrator, the District shall submit annual audits of contracting parties for the Executive Administrator's review;
42. the Obligations must contain a provision requiring the District to maintain and enforce the contracts with its customers so that revenues paid to the District by its customers are sufficient to meet the revenue requirements of the District's obligations arising from the operation of the water and sewer system;
43. the Obligations must contain a provision that the pledged contract revenues from the District may not be pledged to the payment of any additional parity obligations of the District secured by a pledge of the same contract revenues unless the District demonstrates to the Executive Administrator's satisfaction that the pledged contract revenues will be sufficient for the repayment of all Obligations and additional parity obligations; and

44. prior to closing, the District must submit executed contracts between the District and the contracting parties regarding the contract revenues pledged to the payment of the District's Obligations, in form and substance acceptable to the Executive Administrator. Such contracts shall include provisions consistent with the provisions of this Resolution regarding the contracting parties' annual audits, the setting of rates and charges and collection of revenues sufficient to meet the District's debt service obligations and additional parity obligations.

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

Special Conditions:

45. 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.
46. 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; and
47. the District shall not amend or revise the contracts for sewer service between the District and their member cities, which is the revenue source for the pledge, if the revision or amendment affects the financial condition of the District or its ability to repay the loan described in this Commitment without receiving the written approval of the Executive Administrator.

APPROVED and ordered of record this 27th day of February, 2020.

TEXAS WATER DEVELOPMENT BOARD



Peter M. Lake, Chairman

DATE SIGNED: 2/20/27

ATTEST:



Jeff Walker, Executive Administrator



Regional. Reliable. Everyday.

December 22, 2022

Mr. Joe Koen, Manager
Texas Water Development Board
919 Congress Avenue, Suite 100
Austin, Texas 78701

Re: North Texas Municipal Water District (NTMWD) request to utilize TWDB committed unused funds from Rowlett Creek CWSRF non-equivalency project for components of the Sister Grove CWSRF equivalency project.

Dear Mr. Koen:

This letter is a formal request to utilize the remaining committed unclosed Rowlett Creek Regional Wastewater Treatment Plant Peak Flow Management – CWSRF non-equivalency project (No. 73881) funds in the amount of \$37.855 million for project components related to the Sister Grove Regional Wastewater Treatment Plant - CWSRF equivalency project (No. 73855). The NTMWD is making this request due to the Rowlett Creek Phase I project experiencing delays in the design and environmental review process. Since the Rowlett Creek funding commitment has been approved but not closed on, NTMWD requests to utilize the remaining multiyear committed funds to fund components on the Sister Grove project for cost over runs and to provide sufficient funding for the remainder of the project costs.

NTMWD requests that upon approval to utilize funds for the Sister Grove project that the funds remain exempt from the BABA requirements since the commitment on these funds was established prior to those requirements being put in place. NTMWD understands that the use of these funds will follow the previously approved use of funds and will be required to follow stricter requirements related to equivalency funding.

We appreciate your consideration regarding this request. Should you have any questions or need additional information, please contact Drew Farris, Finance Manager, at dfarris@ntmwd.com, or Kassi Jones, Financial Analyst (Special Projects), at kjones@ntmwd.com.

Sincerely,

DocuSigned by:

E46722C7E84467
JENNAFER P. COVINGTON
Executive Director

JPC/JC/EF/DF/MJK/kjj