

## AGENDA ITEM MEMO

**BOARD MEETING DATE:** March 3, 2022

**TO:** Board Members

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

**FROM:** T. Clay Schultz, Ph.D., Director, Regional Water Project  
Development  
Dain Larsen, Manager, Regional Water Project Development

**SUBJECT:** Request for Extension of Closing

### **ACTION REQUESTED**

Amend by resolution, previously adopted Texas Water Development Board (TWDB) Resolution No. 21-039, to modify the City of New Braunfels's Drinking Water State Revolving Fund commitment to extend the commitment period.

### **BACKGROUND**

In March 2021, the TWDB, through Resolution No. 21-039, approved a \$40,000,000 commitment to the City of New Braunfels (City) from the Drinking Water State Revolving Fund for the planning, design, and construction of an upgrade of the City's 8 million-gallons-per-day (MGD) water treatment plant to 16 MGD. The commitment expires March 31, 2022.

### **KEY ISSUES**

In November 2021, the City requested a change of project scope due to the reprioritization of the City's water system capital improvement plan. The City requests a six-month extension of the commitment to September 2022 to allow sufficient time for evaluation of a change of scope request prior to closing on the project financing.

#### [Our Mission](#)

Leading the state's efforts in ensuring a secure water future for Texas and its citizens

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Brooke T. Paup, Chairwoman | Kathleen Jackson, Board Member

Jeff Walker, Executive Administrator

Board Members

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**RECOMMENDATION**

The Executive Administrator recommends that TWDB Resolution No. 21-039 be amended to extend the commitment to September 2022 to allow the City to obtain necessary approvals for closing on the funds and time for consideration of the City's request to change the project scope.

Attachment(s):

1. Resolution (22-)
2. Resolution (21-039)
3. Extension Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AMENDING TWDB RESOLUTION NO. 21-039  
TO EXTEND THE LOAN COMMITMENT PERIOD FOR THE  
\$40,000,000 CITY OF NEW BRAUNFELS, TEXAS UTILITY SYSTEM REVENUE BONDS,  
PROPOSED SERIES 2021 TO BE ISSUED BY  
THE CITY OF NEW BRAUNFELS

(22 - )

WHEREAS, at its meeting on March 10, 2021, the Texas Water Development Board (TWDB), by TWDB Resolution No. 21-039, made a commitment to provide financial assistance in the amount of \$40,000,000 to the City of New Braunfels (City) from the Drinking Water State Revolving Fund, to finance improvements to its water system, to be secured by the TWDB's purchase of \$40,000,000 City of New Braunfels, Texas Utility System Revenue Bonds, Proposed Series 2021, for Project No. 62903; and

WHEREAS, pursuant to TWDB Resolution No. 21-039, the commitment period will expire March 31, 2022; and

WHEREAS, the City has submitted a request to extend the TWDB's commitment for an additional six (6) months to allow time to evaluate a change of scope request and prepare documentation for closing on the funding, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that granting an extension of six (6) months is in the public interest.

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

1. the commitment of the TWDB to provide financial assistance in the amount of \$40,000,000, as authorized in TWDB Resolution No. 21-039, is amended to extend the commitment to September 30, 2022; and
2. all other terms and conditions of TWDB Resolution No. 21-039 shall remain in full force and effect.

APPROVED and ordered of record this the 3rd day of March 2022.

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  
\$40,000,000 TO THE CITY OF NEW BRAUNFELS  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$40,000,000 CITY OF NEW BRAUNFELS, TEXAS UTILITY SYSTEM REVENUE BONDS,  
PROPOSED SERIES 2021

(21-039)

WHEREAS, the City of New Braunfels (City), located in Comal and Guadalupe Counties, has filed an application for financial assistance in the amount of \$40,000,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, design and construction of certain water system improvements identified as Project No. 62903; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$40,000,000 City of New Braunfels, Texas Utility System Revenue Bonds, Proposed Series 2021 (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 City has offered a pledge of a first lien on the net revenues of the City's utility system as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 371.13; and

WHEREAS, the TWDB hereby finds:

1. that the revenues pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* as well as state law, in accordance with Texas Water Code § 15.607;
3. that the City has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB's rules;
4. that the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and the needs to be addressed by the project will be addressed in a manner that is consistent with the approved regional and state water plans, as required by Texas Water Code § 16.053(j); and

5. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.053(j).

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

A commitment is made by the TWDB to the City of New Braunfels for financial assistance in the amount of \$40,000,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$40,000,000 City of New Braunfels, Texas Utility System Revenue Bonds, Proposed Series 2021. This commitment will expire on March 31, 2022.

Such commitment is conditioned as follows:

Standard Conditions

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;
2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the City;
3. this commitment is contingent upon the City's compliance with all applicable requirements contained in 31 TAC Chapter 371;
4. the Obligations must provide that the City agrees to comply with all of the conditions set forth in the TWDB Resolution, which conditions are incorporated herein;
5. the Obligations must provide that the Obligations can be called for early redemption on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;
6. the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure

- undertaking being for the benefit of the TWDB and the beneficial owners of the City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;
7. the Obligations must contain a provision requiring the City to maintain and collect sufficient rates and charges to produce system funds in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;
  8. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds;
  9. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting in a manner as approved by the Executive Administrator;
  10. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
  11. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;
  12. loan proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
  13. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges and/or the levy of an interest

and sinking tax rate (if applicable) sufficient for the repayment of all system debt service requirements;

14. prior to closing, and if not previously provided with the application, the City shall submit executed contracts for engineering and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator;
15. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
16. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
17. the TWDB retains the option to purchase the Obligations in separate lots and/or on an installment basis, with delivery of the purchase price for each installment to be paid against delivery of the relevant installment of Obligations as approved by the Executive Administrator;
18. the Obligations must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
19. the Obligations must provide that the City must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;
20. the Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;

#### Conditions Related to Tax-Exempt Status

21. 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;
22. 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;

23. 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);
24. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be “arbitrage bonds” within the meaning of section 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB’s bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:
  - a. proceeds of the TWDB’s Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
  - b. amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Regulations; and
  - c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;
25. the Obligations must include a provision requiring the City take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of section 148 of the Code. The Obligations must provide that the City will:
  - a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;
  - b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its Loan, not less frequently than each Computation Date, in



accordance with rules set forth in section 148(f) of the Code, section 1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least six years after the final Computation Date;

- c. as additional consideration for the making of the Loan, and in order to induce the making of the Loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;
  - d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;
- 26. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
  - 27. the Obligations must provide that the 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;
  - 28. 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;
  - 29. 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);
  - 30. the transcript must include evidence that the information reporting requirements of section 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of section 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;
  - 31. the Obligations must provide that neither the City nor a related party thereto will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the City by the TWDB;

### State Revolving Fund Conditions

32. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
33. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The 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;
34. the Obligations must include a provision stating that the City shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;
35. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the City will adhere to the approved project schedule;
33. the Obligations must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;

### Drinking Water State Revolving Fund Conditions

34. the City shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant to 31 TAC Chapter 371;
35. 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

36. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) following the issuance of the Obligations;
37. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;
38. the Obligations must contain a provision providing that additional parity revenue obligations may only be incurred if net system revenues are at least 1.40 times the average annual debt service requirements after giving effect to the additional obligations when net revenues are a) determined from the last completed fiscal year or a 12 consecutive calendar month period out of the preceding 15 months, ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant; or b) the City, or otherwise authorized City representative having primary responsibility for the fiscal affairs of the City's system, certifies that the City is expected to continue to meet or exceed the net system revenue test with a minimum coverage of 1.40 times the average annual debt service requirement. An authorized representative of the City must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator. The City representative must also certify that (i) that the City is not then in default as to any covenant, obligation or agreement contained in any ordinance or other proceeding relating to any obligations of the City payable from and secured by a lien on and pledge of the Net Revenues of the System and (ii) payments into all special funds or accounts created and established solely for the payment and security of any outstanding obligations payable from and secured by a lien on and pledge of the net revenues of the City's system have been duly made and that the amounts on deposit in such special funds or accounts are the amounts then required to be deposited therein.

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

Special Condition:

39. prior to the release of funds, the City shall provide a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average estimated useful life of the project, as determined by the schedule.

APPROVED and ordered of record this 10th day of March, 2021.



TEXAS WATER DEVELOPMENT BOARD

A handwritten signature in blue ink, appearing to be "P. Lake", is written over a horizontal line.

Peter M. Lake, Chairman

DATE SIGNED: 3/10/21

ATTEST:

A handwritten signature in blue ink, appearing to be "J. Walker", is written over a horizontal line.

Jeff Walker, Executive Administrator



December 14, 2021

Dain Larsen  
Central Region Team Manager  
Regional Water Project Development  
Texas Water Development Board  
1700 N. Congress Ave.  
Austin, TX 78701

Re: New Braunfels Utilities Drinking Water State Revolving Fund Closing

Dear Mr. Larsen,

NBU is requesting a six-month commitment deadline extension, from March 31, 2022 to September 30, 2022, to allow NBU staff the necessary time to comply with the NBU Board and City Council calendar deadlines in order to get the appropriate approvals on items such as a bond ordinance and other related documents.

Sincerely,

A handwritten signature in black ink that reads 'John Warren'.

John Warren  
Finance Manager  
New Braunfels Utilities

