

Texas Water Development Board

P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

March 17, 2022

Mr. Rey Garcia
City of San Marcos
630 East Hopkins
San Marcos, TX 78666

Re: City of San Marcos Briarwood and River Ridge Improvements
TWDB Project No. 40189 Closing Requirements
Flood Infrastructure Fund Financial Commitment
\$1,200,000 Loan (L1001477) and \$1,152,770 Grant Agreement (G1001478)

Dear Mr. Garcia:

Thank you for utilizing the Texas Water Development Board (TWDB) financial assistance programs. On March 3, 2022, TWDB approved the City's financial assistance request. A copy of the Board item is located at <https://www.twdb.texas.gov/board/2022/03/Board/Brd11.pdf>. A copy of the TWDB resolution is enclosed. The news release is located at: <https://texaswaternewsroom.org/pressreleases/index.html>. The financial assistance commitment expires on September 30, 2022.

Prior to the release of funds, the City must execute a grant agreement/contract. The TWDB will prepare a draft grant agreement for your review. Included in the agreement/contract are a budget and project schedule which will be conditions of performance of the contract. It is very important that the project proceed, and funds be used in a timely manner. Execution of the agreement/contract will be via DocuSign.

The loan will become effective with the TWDB's purchase of your bonds. Using the outline provided below, please create a schedule for closing the loan and receiving the funds. Deadlines are listed in business days.

Documentation or Event	Deadline (business days)	Due To
1. Bond ordinance, draft	20 business days prior to adoption date	TWDB Attorney
Bond ordinance adoption		
2. Final closing documents (see below)	8 business days prior to closing date	TWDB Financial Analyst and TWDB Attorney
Closing		

**If required, a template for an outlay report and instructions will be provided*

Our Mission

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

Board Members

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

Jeff Walker, Executive Administrator

Prior to submitting draft documents, please provide to your TWDB financial analyst the dates for your bond ordinance adoption and preferred closing date. These dates will be used to generate a closing schedule. If you would like to schedule a closing conference call to go over the process, you may contact the TWDB financial analyst or Team Manager. Required closing documents and TWDB team contact information are shown below.

Required final closing documents – All Projects:

- Executed Escrow Agreement
- TWDB Vendor Set-up or Direct Deposit Form (attached)
- Sufficiency of Funds Statement
- Wire Transfer Letter (for wire transfers only)
- Agreement Execution Resolution (labeled as TWDB-0169 at <http://www.twdb.texas.gov/financial/instructions/index.asp>)
- Executed Grant Agreement (only applies to projects with grants)
 - a. Grant Agreement document
 - b. Scope of Work including detailed project area map identifying tasks to be performed
 - c. Budget with task budget breakdown
 - d. Schedule (including any required public meetings)
 - e. List of deliverables
- Executed Consultant Contract(s)
 - a. May include items (b) through (e) listed above
 - b. Fee Schedule, if applicable
- Documentation of in-kind contributions or local funds (cash contributions)

Additional Required final closing documents – Loan:

- Bond Ordinance or Resolution adopting the issuance
- Attorney General Opinion (5 business days prior to closing)
- Comptroller's Certificate (5 business days prior to closing)
- Debt Service Schedule
- Financial Advisor's Closing Instructions
- Executed Paying Agent Agreement
- Private Placement Memorandum – with all attachments
- Blanket Issuer Letter of Representations (BLOR)
- Bond Counsel Opinion
- No Litigation Certificate
- No Arbitrage/Federal Tax Certificate

Release of funds requires the submittal of outlay report. An outlay report template will be sent to you within the next two weeks. You may submit a request for release of funds via a completed outlay report prior to closing, however the initial release of funds will be delivered no earlier than seven (7) days after closing. Instructions on submitting an outlay can be found at <http://www.twdb.texas.gov/financial/outlay/index.asp>.

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Our team looks forward to working with you to make this a successful project. Please include the project number listed above when sending correspondence related to this project. If you have any questions or seek additional information, you may contact any of the team members or me at dain.larsen@twdb.texas.gov or 512-463-1618. Team members contact information:

Claudia Corsetti, Engineer, 512-475-1602
Thomas Quick, Financial Analyst, 512-463-7971
Kristin Miller, Environmental Reviewer, 512-475-1701
Marshall Walters, Attorney, 512-463-9105

Sincerely,

Dain Larsen
Team Manager/ Central Region

DL/TQ/ep

Enclosure

cc via email: Dan Wegmiller, Specialized Public Finance, dan@spubfin.com
Jacob Peetz, City of San Marcos, jpeetz@sanmarcostx.gov
Laurie Moyer P.E., City of San Marcos, lmoyer@sanmarcostx.gov
J. Bart Fowler, McCall, Parkhurt & Horton, jbfowler@mphlegal.com
Marie Kalka, City of San Marcos, mkalka@sanmarcostx.gov

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$2,352,770 TO THE CITY OF SAN MARCOS
FROM THE FLOOD INFRASTRUCTURE FUND
THROUGH THE PROPOSED PURCHASE OF
\$1,200,000 CITY OF SAN MARCOS, TEXAS COMBINATION TAX AND
SURPLUS REVENUE CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2022
AND
THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$1,152,770

(22-023)

WHEREAS, the City of San Marcos (City), located in Hays County, Texas, has filed an application for financial assistance from the Flood Infrastructure Fund (FIF) in accordance with Texas Water Code Chapter 15, Subchapter I, to construct a flood project, identified as Project No. 40189; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$2,352,770 through the TWDB's proposed purchase of \$1,200,000 City of San Marcos, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2022 and \$1,152,770 through execution of a Grant Agreement (together with all authorizing documents (Obligations)), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City has offered a pledge of ad valorem taxes and surplus revenues of the City's stormwater utility system as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the application and financial assistance requested meet the requirements of Texas Water Code, Chapter 15, Subchapter I; 31 TAC Chapter 363, Subchapters A and D; and the State Fiscal Year 2020 Flood Intended Use Plan (FIUP);
2. the City has demonstrated a sufficient level of cooperation among eligible political subdivisions and has included all of the eligible political subdivisions substantially affected by the flood project in accordance with Texas Water Code § 15.536(2);
3. that the City has submitted a written memorandum of understanding relating to the management of the project watershed executed by all governing bodies of eligible political subdivisions located in the project watershed;

4. that in its opinion the taxes or revenues pledged by the City will be sufficient to meet all Obligations assumed by the City in accordance with Texas Water Code § 15.536(3);
5. that the City is eligible to receive grant funding in accordance with Texas Water Code § 15.534 and the FIUP;
6. that the City has demonstrated that the benefit-cost ratio of the Project meets the requirements of the FIUP;
7. that the request for financial assistance does not include redundant funding for activities already performed and/or funded through another source, in accordance with the FIUP;
8. that the City has demonstrated that the application meets the requirements of the FIUP related to the National Flood Insurance Program in the area to be served by the Project;
9. that the Project was developed using the best and most recent available data, in accordance with the FIUP;
10. that the City has documented that it has planned for operations and maintenance costs associated with the Project, in accordance with the FIUP;
11. that the City has considered possible floodwater capture techniques that could be associated with the Project for water supply purposes, in accordance with the FIUP; and
12. that the current water audit has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.0121.

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

13. A commitment is made by the TWDB to the City of San Marcos for financial assistance in the amount of \$2,352,770 from the Flood Infrastructure Fund, to be evidenced by the TWDB's proposed purchase of \$1,200,000 City of San Marcos, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2022, and the execution of a Grant Agreement in the amount of \$1,152,770. This commitment will expire on September 30, 2022; however, the Executive Administrator may, at his discretion, grant up to one extension for a maximum of three months.

Such commitment is conditioned as follows:

Standard Conditions:

1. this commitment is contingent on availability of TWDB 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 the City has complied with all of the requirements of the laws under which said Obligations were issued, 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 continued compliance with all applicable laws, rules, policies, and guidance (as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement), including but not limited to 31 TAC Chapter 363;
4. the City shall use a paying agent/registrar in accordance with 31 TAC § 363.42(c)(2);

The Following Conditions Must Be Included in the Obligations:

5. the Obligations must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
6. 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;
7. the Obligations must provide that the City will not begin construction for a portion of the Project until the environmental finding has been issued for that portion of the Project;
8. the Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
9. the Obligations must include a provision wherein 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;

10. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce revenues 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;
11. the Obligations must include a provision requiring a final accounting to be made of the total sources and authorized use of Project funds within 60 days of the completion of the Project;
12. the Obligations must include a provision requiring the City to deposit any bond proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the Project and completion of a final accounting, including any interest earned on the bond proceeds, into the Interest and Sinking Fund;
13. the Grant Agreement must include a provision stating that the City shall either return or deposit into the Interest and Sinking Fund any grant funds that are determined to be surplus funds remaining after completion of the Project and completion of a final accounting, including any interest earned on the grant funds;
14. 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;
15. financial assistance 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;
16. financial assistance 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, recycling, 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;

- 17. the Obligations must contain a provision stating that the City shall abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by Texas Government Code, Chapter 2252, Subchapter G;
- 18. 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 § 149(b) of the Code;
- 19. the Obligations must contain a covenant that the City will refrain from using the proceeds of the Obligations to pay debt service on another issue of obligations of the borrower in contravention of section 149(d) of the Code (related to “advance refundings”);
- 20. the Obligations must contain a provision requiring the City to submit quarterly status reports on the progress of the project that details information requested by the Executive Administrator. The Executive Administrator may withhold authorization to release funds from escrow or adjust the amount of funds to be released from escrow based on the receipt of the quarterly status reports and the projected quarterly needs for the project.
- 21. the Obligations shall include a special covenant prohibiting the City from encumbering, pledging, or otherwise impairing the revenues of the System in any manner with respect to the payment of any Obligations or with respect to any liability, except for the payment of the following: (1) maintenance and operating expenses payable within the current fiscal year with current revenues; and (2) additional debt, and that the City shall in no way encumber, pledge, or otherwise impair its title to the land used by or for the System or any interests therein, including improvements and facilities of the System, without prior TWDB approval;

Pledge Conditions for the Loan:

- 22. the Obligations must contain a provision that provides as follows:
 - a. if system revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied and collected may be reduced to the extent and by the amount of revenues then on deposit in the Interest and Sinking Fund; or
 - b. if surplus revenues are based upon budgeted amounts:
 - i. the Obligations must include a requirement that the City transfer and deposit in the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Obligations

until the amount on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Obligations; further, that the ordinance authorizing the issuance of the Obligations must include a requirement that the City shall not transfer any funds from the City's pledged system revenues to any fund other than the Interest and Sinking Fund until such time as an amount equal to the annual debt service on the Obligations for the then-current fiscal year has been deposited in the Interest and Sinking Fund;

- ii. the Obligations must include a requirement that for each year the Obligations are outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient surplus pledged revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Obligations; and
- iii. the Obligations must include a requirement that the City shall at all times maintain and collect sufficient rates and charges so that after payment of the costs of operating and maintaining the project, 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 that 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 that 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;

Conditions to Close or for Release of Funds:

- 23. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
- 24. prior to release of funds for the relevant services, and if required under the TWDB's financial assistance program and if not previously provided with the application, the City shall submit executed contracts for engineering and, if applicable, financial advisor and bond counsel, 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;

25. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the City shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
26. prior to closing, the City's bond counsel must prepare a written, unqualified approving opinion acceptable to the executive administrator. Bond counsel may rely on covenants and representations of the City when rendering this opinion;
27. prior to release of funds for construction, the City must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the City has the legal authority necessary to complete the acquisitions;

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

Special Condition:

28. prior to closing, the City shall execute a Grant Agreement in a form and substance acceptable to the Executive Administrator.


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

TEXAS WATER DEVELOPMENT BOARD


Brooke T. Paup
Brooke T. Paup, Chairwoman

DATE SIGNED: 3/3/22

ATTEST:



Jeff Walker, Executive Administrator