

RESOLUTION NO. 15-1463

A RESOLUTION approving and authorizing the execution of a Loan Forgiveness Agreement between the Texas Water Development Board and the City of Euless, Texas and an Escrow Agreement relating thereto.

WHEREAS, the Texas Water Development Board (the "TWDB") adopted Resolution No. 14-95 on November 6, 2014 (the "TWDB Resolution") making a commitment to provide financial assistance to the City of Euless, Texas (the "City") in the amount of \$5,493,050 from the Drinking Water State Revolving Fund to finance waterworks system improvements; and

WHEREAS, in connection with such commitment, the TWDB determined that the City qualifies for a subsidy as a disadvantaged community and agreed, pursuant to the TWDB Resolution, to provide a loan in the amount of \$4,685,000 to the City (evidenced by the issuance of the \$4,685,000 "City of Euless, Texas, Waterworks and Sewer System Revenue Bonds, Series 2015A" authorized pursuant to an ordinance adopted on the date hereof) and further agrees that \$808,050 will be forgiven upon execution of a Loan Forgiveness Agreement; and

WHEREAS, the City Council hereby finds and determines that (1) the Loan Forgiveness Agreement between the City and the TWDB substantially in the form and content of **Attachment A** attached hereto and (2) the Escrow Agreement substantially in the form and content of **Attachment B** attached hereto should be approved and authorized to be executed; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EULESS, TEXAS:

Section 1. The form of Loan Forgiveness Agreement between the TWDB and the City of Euless attached hereto as **Attachment A** and incorporated herein for all purposes is hereby approved for and on behalf of the City as to form and content, and such agreement in substantially the form and substance attached hereto, together with such changes or revisions as the Mayor and/or City Secretary may deem necessary to accomplish the financing contemplated, is hereby authorized to be executed by the Mayor for and on behalf of the City and as the act and deed of this Council; and such Loan Forgiveness Agreement as executed by said officials shall be deemed approved by the City Council and constitute the agreement herein approved.

Section 2. Upon receipt, the loan forgiveness proceeds shall be deposited in an account to be maintained by BOKF, NA dba Bank of Texas (the "Escrow Agent") and held in escrow pending written authorization to release said moneys. The Escrow Agreement between the Escrow Agent and the City attached hereto as **Attachment B** and incorporated herein for all purposes is hereby approved for and on behalf of the City as to form and content, and such agreement in substantially the form and substance attached hereto, together with such changes or revisions as the Mayor and/or City Secretary may deem necessary to accomplish the financing contemplated, is hereby authorized to be executed by the Mayor for and on behalf of the City and as the act and deed of this City Council; and such Escrow Agreement as executed by said officials shall be deemed approved by this City Council and constitute the Escrow Agreement herein approved.

Section 3. The City Council hereby authorizes the execution and delivery of any and all other documents related to the Loan Forgiveness Agreement including any required documents, instruments or certificates related to obtaining the Loan Forgiveness.

PASSED AND ADOPTED, this June 23, 2015.

CITY OF EULESS, TEXAS

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

(City Seal)

**ATTACHMENT A**

**LOAN FORGIVENESS AGREEMENT BETWEEN THE  
TEXAS WATER DEVELOPMENT BOARD AND THE CITY  
OF EULESS**

**ATTACHMENT B**  
**ESCROW AGREEMENT**



# **Loan Forgiveness Agreement Drinking Water State Revolving Fund**

**TEXAS WATER DEVELOPMENT BOARD**

**AND**

**CITY OF EULESS**

**TARRANT COUNTY, TEXAS**

**TWDB COMMITMENT NO. LF1000353**

**TWDB PROJECT NO. 62647 (IUP FISCAL YEAR 2014)**

**TWDB RESOLUTION NO. 14-95**

**CFDA # 66.468**

CITY OF EULESS  
TWDB COMMITMENT NO. LF1000353  
TWDB PROJECT NO. 62647  
TWDB RESOLUTION NO. 14-95

**LOAN FORGIVENESS AGREEMENT**

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**LOAN FORGIVENESS AGREEMENT  
BETWEEN THE  
TEXAS WATER DEVELOPMENT BOARD  
AND THE  
CITY OF EULESS**

WHEREAS, the City of Euless, located in Tarrant County, Texas (City) has filed an application with the Texas Water Development Board (TWDB) for a loan in the amount of \$5,493,050 from the Drinking Water State Revolving Fund (DWSRF) to finance water system improvements identified as Project No. 62647; and

WHEREAS, on November 6, 2014, the TWDB determined that the City qualifies for a subsidy because it meets Green Project requirements pursuant to 31 Texas Administrative Code (TAC) § 371.17 and the criteria set forth in the 2014 DWSRF Intended Use Plan (IUP) and agreed, pursuant to the TWDB Resolution to provide a loan in the amount of \$5,493,050 to the City and further agreed that \$808,050 will be forgiven; and

WHEREAS, the TWDB and the City are the Parties to this Agreement.

NOW, THEREFORE, the Parties mutually agree to adhere to the terms of this Agreement and to administer the Loan Forgiveness Funds provided through this Agreement in conformance with all applicable state and federal laws and regulations, the TWDB Resolution, and all terms and conditions set forth herein.

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**ARTICLE I. DEFINITIONS**

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The following terms, as used in this Agreement, have the meanings assigned below:

Agreement means this Loan Forgiveness Agreement and the attached exhibits.

CFR means the Code of Federal Regulations.

Construction Account means an account dedicated to the payment of Project costs, as defined by 31 TAC § 371.1(17) and required by the TWDB Resolution.

Disadvantaged Community means an area that meets the requirements of a disadvantaged community as defined in 31 TAC § 371.1(24) and the criteria identified in the 2014 DWSRF IUP.

DWSRF means the Drinking Water State Revolving Fund, a program of financial assistance administered by the TWDB for water projects pursuant to the Safe Drinking Water Act, 42

U.S.C. §§ 300f *et seq.*; applicable federal regulations; Texas Water Code, Chapter 15, §§ 15.601 – 15.618; and 31 TAC Chapter 371.

Eligible Expenses means the expenses allowed by TWDB program requirements and authorized by the TWDB in the approved Project Budget.

EPA means the U.S. Environmental Protection Agency.

Escrow Account means an account established by the City that will be used to manage the Loan Forgiveness Funds in accordance with an escrow agreement acceptable to the Executive Administrator, which is attached hereto as **EXHIBIT G**, until such time as the Executive Administrator authorizes the release of the Loan Forgiveness Funds to the Construction Account.

Executive Administrator means the Executive Administrator of the TWDB or designated representative.

Force Majeure means a failure or delay in a Party's performance under this Agreement that is caused by acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such Party is unable to overcome.

Green Project means a project or portion of a project that meets the EPA criteria for inclusion in the Green Project Reserve, including green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

Green Project Reserve means the equivalent amount of the EPA capitalization grant that is reserved for projects that meet the EPA's criteria for green projects.

IUP means the Intended Use Plan, State Fiscal Year 2014, approved by the TWDB and the EPA in which the Project was prioritized for funding.

Loan means the total amount of financial assistance from the TWDB under numbers L1000338 and LF1000353 in \$5,493,050 from the DWSRF to finance the Project.

Loan Forgiveness Funds means the portion of the Loan that is forgiven identified as LF1000353, in an amount not to exceed \$808,050.

Obligations means the \$4,685,000 City of Euless, Texas Waterworks and Sewer System Revenue Bonds, Series 2015A, together with all authorizing documents, which evidence the portion of the Loan that is not forgiven, identified as L1000338.

Outlay Report means the TWDB form regarding the total amount of costs incurred by the City relating to the Project for the specified period.

Parties or Party means the TWDB and the City and their authorized successors and assignees.

Project means the project for which the TWDB is providing financial assistance under this Agreement and as further described in the TWDB Resolution and identified as Project No. 62647.

State means the State of Texas.

TAC means the Texas Administrative Code.

TWDB means the Texas Water Development Board.

TWDB Resolution means TWDB Resolution No. 14-95, dated November 6, 2014, approving the application for financial assistance filed by the City and authorizing the execution of this Agreement.

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## ARTICLE II. AUTHORITY AND RECITALS

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**2.01. AUTHORITY.** This Agreement is authorized and required by the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, and is also governed by terms of the IUP; Texas Water Code, Chapter 6; Texas Water Code; Chapter 15, §§ 15.601 – 15.618; 31 TAC Chapter 371; and the TWDB Resolution.

**2.02. RECITALS.** The Parties agree that the following representations are true and correct and form the basis of this Agreement:

- A. The TWDB may provide financial assistance in the form of a subsidy, such as loan forgiveness, for all or a portion of the Project costs in an amount which the TWDB has determined to be eligible.
- B. On November 6, 2014, the TWDB considered an Application filed by the City for financial assistance from the DWSRF program. Based on the representations made by the City in that Application, the TWDB adopted the TWDB Resolution in which the TWDB:
  - 1. determined that the City qualifies for loan forgiveness and is eligible for financial assistance; and
  - 2. made a commitment to provide financial assistance in the form of a loan in an amount not to exceed \$5,493,050 for the construction of the Project and to provide a subsidy in the form of loan forgiveness to the City in an amount not to exceed \$808,050 as Loan Forgiveness Funds without the expectation of repayment.
- C. The TWDB and the City enter this Agreement to memorialize and set forth the terms and conditions for the Loan Forgiveness Funds in an amount not to exceed \$808,050. The Executive Administrator is authorized to execute this Agreement on behalf of the TWDB

pursuant to the TWDB Resolution, which is attached to this Agreement as **EXHIBIT A**. The City is authorized to execute this Agreement through its authorized representative designated in a resolution duly adopted by the governing body of the City, a copy of which is attached hereto as **EXHIBIT B**.

- D. Nothing in this Agreement supersedes or affects any provisions of the Obligations relating to the Loan amount not forgiven.

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### ARTICLE III. LEGAL REQUIREMENTS

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**3.01. APPLICABLE LAWS.** In consideration of the performance of the mutual agreements set forth in this Agreement, the City, by and through its designated and authorized representatives, agrees to plan, design, and/or construct the Project in compliance with the following:

- A. the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, and the EPA regulations at 40 CFR Part 35;
- B. all federal laws and regulations identified on **EXHIBIT C**;
- C. Texas Water Code; Chapter 15, §§ 15.601 – 15.618;
- D. 30 TAC Chapter 290; and
- E. 31 TAC Chapter 371.

**3.02. LABOR STATUTES AND REGULATIONS.** The City agrees to comply with the following statutes and regulations, and shall execute the certifications required by the TWDB related to same. Further, the City shall ensure that each contract for work on the Project shall also contain the following requirements:

- A. Equal Employment Opportunity. The City shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and U.S. Department of Labor regulations at 41 CFR Chapter 60, relating to Office of Federal Contract Compliance, EEO. The City shall include this provision in any contract or subcontract in excess of \$10,000 as required by 40 CFR § 31.36.
- B. Davis-Bacon Act Wage Rates. The City, its contractors and its subcontractors, for the Project that is funded in whole or in part with Loan Forgiveness Funds, shall pay all laborers and mechanics at rates not less than those prevailing on similar projects in the same locality, as determined by the U.S. Secretary of Labor’s Wage and Hour Division, in conformance with the Davis–Bacon Act, 40 U.S.C. §§ 3141 - 3148, 29 CFR Part 5, relating to Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, and 29 CFR Part 3, relating to Contractors and Subcontractors on Public Work Financed in Whole or in Part by Loans or Grants from

the United States. All contracts and subcontracts for the construction of the Project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contracts clauses as attached hereto as **EXHIBIT D**.

- C. Contract Work Hours and Safety Standards Act. The City shall ensure that its contractors and subcontractors comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701 - 3708 and 29 CFR Part 5.

**3.03. NO LOBBYING.** The City agrees to comply with 40 CFR Part 34, relating to New Restrictions on Lobbying. The City understands and agrees that none of the Loan Forgiveness Funds provided under this Agreement shall be expended to pay any person for influencing or attempting to influence an officer or employee of any federal entity, or a Member of Congress, with regard to the awarding of any federal contract, federal grant, federal loan, or the extension, continuation, renewal, amendment or modification of any federal contract, loan, or grant. The City shall require that all contracts in excess of \$100,000 for work implementing the Project contain the following statement: IN ACCORDANCE WITH THE BYRD ANTI-LOBBYING AMENDMENT, ANY RECIPIENT WHO MAKES A PROHIBITED EXPENDITURE UNDER TITLE 40 CFR PART 34 OR FAILS TO FILE THE REQUIRED CERTIFICATION OR LOBBYING FORMS SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN \$10,000 AND NOT MORE THAN \$100,000 FOR EACH SUCH EXPENDITURE.

**3.04. IRON AND STEEL.** 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 the 2014 Federal Appropriations Act, related EPA SRF Policy Guidelines and the TWDB American Iron and Steel Guidance, unless the City has requested and obtained a waiver from EPA pertaining to the Project. This section applies in a manner consistent with United States obligations under international agreements. If the City is a signatory to such an agreement, then the City is under the obligation to determine its applicability and requirements and document the actions taken to comply for the TWDB.

**3.05. PROCUREMENT.** The City shall comply with the following when procuring goods and services for work on the Project according to the requirements in this section.

- A. Debarred and Suspended Vendors. Prior to selecting any contractor, the City shall ensure that the contractor is not listed on the federal Excluded Parties List System and is not suspended or disbarred by either the State or the federal government. See the following websites for lists of suspended and debarred federal and State vendors: [www.sam.gov](http://www.sam.gov) and [www.window.state.tx.us/procurement/prog/vendor\\_performance/debarred](http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred).
- B. State Procurement Requirements. All purchases for goods, services or commodities made with funds provided under this Agreement shall comply with State and local procurement and contracting laws.
- C. Disadvantaged Business Enterprises. The City agrees to comply with 40 CFR Part 33, relating to Participation by Disadvantaged Business Enterprises in United States

Environmental Protection Agency Programs.

**3.06. FINANCIAL, MANAGERIAL AND TECHNICAL CAPABILITIES.** The City covenants to maintain its technical, financial, and managerial capability to ensure compliance with the Safe Drinking Water Act § 300-j12.

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#### ARTICLE IV. CONSTRUCTION

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**4.01. PROJECT REQUIREMENTS.** The City shall comply with the following requirements:

- A. Plans and Specifications. The City shall construct the Project in accordance with the plans and specifications as sealed by a State licensed engineer and as approved by the Executive Administrator in compliance with 31 TAC §§ 371.60-371.62.
- B. Changes to Plans and Specifications. The City shall not make or implement any changes to the scope of the Executive Administrator's approved Project or to the specifications for the Project including, but not limited to, changes to the Green Project Reserve portion of the Project without the written approval of the Executive Administrator.
- C. Project Schedule. The City shall adhere to the TWDB approved Project schedule, attached as **EXHIBIT E**, and shall timely and expeditiously use loan proceeds and complete the Project. The City shall not exceed or revise the Project schedule except upon written approval from the TWDB. The City shall not delay the Project completion date except by Amendment to this Agreement.
- D. Project Budget. The City shall be solely responsible for all costs that exceed the TWDB approved Project budget, attached as **EXHIBIT F**. The City shall notify the Executive Administrator immediately when it appears that the Project budget may not be sufficient to complete the Project. The City shall not exceed the Project budget except by Amendment to this Agreement.
- E. Environmental Compliance. The City shall comply with all environmental conditions and shall implement environmental mitigation measures as required through TWDB environmental review under 31 TAC Chapter 371, Subchapter E.

**4.02. PROGRESS REPORTS.** The Executive Administrator may request reports on the progress of the Project at any time. The reports shall contain information as directed by the Executive Administrator and shall be submitted periodically as requested. The City shall respond as requested and a failure to respond may result in withholding the release of funds from the Escrow Account.

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#### ARTICLE V. SPECIAL COVENANTS AND REPRESENTATIONS

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**5.01. CONDITIONS FOR DISBURSEMENT OF LOAN FORGIVENESS FUNDS.** No Loan Forgiveness Funds shall be deposited into the Escrow Account or released until the

applicable requirements and conditions in the TWDB Resolution and 31 TAC § 371.72, relating to Disbursement of Funds, are met. Construction funds shall not be released unless the City has complied with 31 TAC Chapter 371, Subchapter E, relating to Environmental Reviews and Determinations, and 31 TAC Chapter 371, §§ 371.60 – 371.62, relating to Engineering Review and Approval. If other conditions affect the release of funds, the Parties agree to negotiate in good faith regarding any new or different terms or conditions that become applicable to the release of Loan Forgiveness Funds.

**5.02. DELIVERY OF LOAN FORGIVENESS FUNDS.** The TWDB shall deposit the Loan Forgiveness Funds in an approved Escrow Account to be released to the City’s Construction Account at the direction of the Executive Administrator.

A. Outlay Reports and Invoices. The City shall submit the following documentation:

1. TWDB Outlay Report forms identifying:
  - a. the total amount of expenses incurred by the City for the period covered by the Outlay Report; and
  - b. invoices, receipts or other documentation satisfactory in form and in substance to the TWDB sufficient to establish the requested amount as an eligible expense incurred by the City.
2. Outlay Report forms are due to TWDB monthly during the construction phase of the Project until the completion of the Project.

B. Release from Escrow Account. The Executive Administrator shall authorize the release of Loan Forgiveness Funds from Escrow when Outlay Reports have been approved by the TWDB.

**5.03. INELIGIBLE EXPENSES.** The City must use Loan Forgiveness Funds for Eligible Expenses. The City must return any Loan Forgiveness Funds that are used for expenses that cannot be verified as eligible or that are ineligible. The amount of Loan Forgiveness Funds used for any ineligible or unverified expenses shall be credited against verified Eligible Expenses. If the total amount of Eligible Expenses is insufficient to fully offset the amount of improperly expended Loan Forgiveness Funds, the City must use other funds to fully repay the TWDB.

**5.04. FINAL ACCOUNTING.** The City shall provide a final accounting of funds expended on the Project pursuant to 31 TAC § 371.85 and return any remaining Loan Forgiveness Funds in a manner determined by the Executive Administrator.

**5.05. LEGAL STATUS.** The City must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by conversion to a conservation and reclamation district or a sale-transfer-merger with another retail public utility.

**5.06. WATER CONSERVATION AND DROUGHT CONTINGENCY PLAN.** If applicable, the City shall adopt and implement a water conservation and drought contingency plan that complies with Texas Water Code §§ 11.1271 and 11.1272 and 31 TAC §§ 363.15 and 371.34.

**5.07. WATER AUDIT.** If the City is a retail public utility as defined in Texas Water Code § 13.002 and the City provides potable water, then the City annually shall perform and file a water audit computing the City's most recent annual system water loss with the TWDB. The first water audit shall be submitted by May 1<sup>st</sup> following the passage of one year after the effective date of this Agreement and then by May 1<sup>st</sup> every year thereafter during the term of this Agreement. The City agrees to comply with 31 TAC § 358.6 relating to water audits.

**5.08. REGISTRATION REQUIREMENT.** Pursuant to 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 maintain registration in the System for Award Management (SAM).

**5.09. ANNUAL FINANCIAL AUDIT.** During the Term of this Agreement, the City shall submit an annual audit of the general purpose financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) by a certified public accountant or licensed public accountant. Audits shall be submitted to the TWDB no later than 180 days after the close of the City's fiscal year.

**5.10. INVESTMENT AND COLLATERALIZATION OF PUBLIC FUNDS.** Loan proceeds are public funds and, as such, 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.

**5.11. SPECIAL CONDITIONS.** The City must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources, as more fully specified in the final environmental finding of the Executive Administrator.

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## **ARTICLE VI. NON-PERFORMANCE AND REMEDIES**

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**6.01. STOP WORK ORDERS.**

- A. Stop Work Order (SWO). The Executive Administrator may issue a written SWO to the City at any time for failure to comply with any provision of this Agreement. The SWO shall provide the City with notice of the facts supporting the determination to issue the SWO. The SWO may require cessation of work immediately or at a definite future date. The SWO shall provide the City with a specified time to cure.
  
- B. City's Response. The City shall provide a written response to the SWO and shall provide the Executive Administrator with a detailed plan to address and cure the conditions causing the SWO. The City shall provide the response within five business days from its

receipt of the SWO.

- C. Executive Administrator's Reply. The Executive Administrator may accept, reject or amend the City's plan and shall provide notice of such action to the City within five business days of receipt of the plan. The Executive Administrator may issue an amended SWO that allows resumption of work contingent upon the City's execution of the plan to cure. The Executive Administrator may modify the City's plan to cure only in a manner consistent with the terms and conditions of this Agreement.
- D. City's Option. The City shall notify the Executive Administrator within five business days whether it accepts the amended plan. If the City does not accept the amended plan, the Executive Administrator may terminate this Agreement. Upon successful completion of the plan to cure the conditions causing the SWO, the City shall continue work to complete all obligations under this Agreement.

**6.02. TERMINATION.** The TWDB may terminate this Agreement in writing at any time. Upon receipt of a notice of termination, the City shall immediately discontinue all work in connection with the performance of this Agreement and shall promptly cancel all existing orders or other financial commitments chargeable to funding provided pursuant to this Agreement, provided, however, that any costs for Eligible Expenses incurred prior to the receipt of such written notice by the City shall be payable from the funding provided pursuant to this Agreement.

Within thirty days of the notice of termination, the City shall submit a statement showing in detail the work performed, all payments received by the City, and all payments made by or due from the City to any contractor prior to the date of termination.

**6.03. SURVIVAL OF TERMS AND CONDITIONS.**

- A. Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement that:
  - 1. the Parties have expressly agreed shall survive any such termination or expiration, if any; or
  - 2. by their nature, would be intended to be applicable following any such termination or expiration.
- B. The Parties expressly agree that the following terms and conditions survive the termination or expiration of this Agreement.
  - 1. Article V, Sections 5.03, 5.04, 5.05, 5.07 and 5.08.
  - 2. Article VII, General Terms and Conditions.

**6.04. REAL ESTATE.** If the City purchases real estate for the Project with Loan Forgiveness Funds and any of the real estate or portion of the real estate is not used for the Project, the City shall repay to the TWDB the full amount of the Loan Forgiveness Funds for purchase of the real estate that is not used for the Project. Such amount shall be due and payable within 90 days after termination or expiration of this Agreement.

**6.05. REMEDIES.**

- A. The City shall have all remedies available in law or equity.
- B. The TWDB shall have all remedies available in law or equity, including remedies available under Tex:

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**ARTICLE VII. GENERAL TERMS AND CONDITIONS**

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**7.01. INSURANCE AND INDEMNIFICATION.**

- A. The City shall at all times keep insured with a responsible insurance company or companies such portions of the Project as are customarily insured by political subdivisions in the State that operate like properties in similar locations under similar circumstances. The City shall insure against risks, accidents, casualties or loss in an amount that is customarily carried by such municipalities and political subdivisions and is at least sufficient to protect the TWDB's interest in the Project.
- B. The City is solely responsible for liability resulting from acts or omissions of the City, its employees, contractors, or agents. The City shall indemnify and hold the TWDB and the State harmless, to the extent that the City may do so in accordance with State law.
- C. Loan Forgiveness 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 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.

**7.02. PERMITS.** The City shall be responsible for timely filing applications for all licenses, permits, registrations and other authorizations that the City has identified in the application for financial assistance as required for the construction of the Project. The City shall submit copies of all of these final licenses, permits, registrations and other authorizations issued by local, state and federal agencies to the TWDB within thirty (30) days of receipt from the issuing agency.

**7.03. RECORDS.** The City shall comply with all terms and conditions relating to records of the Project as follows:

- A. Duty to Maintain Records. The City shall maintain financial accounting records relating to the Project in accordance with Generally Accepted Accounting Principles. The City shall also require its contractors to maintain financial accounting records consistent with Generally Accepted Accounting Principles and with State laws applicable to government accounting. All accounting and other financial documentation shall be accurate, current, and shall reflect recordation of the transactions at or about the time the transactions occurred;
1. Single Audit Act, 31 U.S.C. §§ 7501 - 7507. The City shall comply with the Single Audit Act and with Office of Management and Budget (OMB) Circular A-133, ensuring an audit is conducted in accordance with OMB Circulars.
  2. Green Projects. If all or part of the Project is designated as a Green Project, then the City shall maintain separate tracking of the expenses related to that Project or portion of the Project that has been designated as an approved Green Project.
- B. Duty to Retain Records. The City shall retain all financial records and supporting documents and any other documents pertinent to the Project in accordance with the requirements of 31 TAC § 371.86, relating to Records Retention. The TWDB requires the City to retain all records related to this Agreement for a period of three (3) years after the Obligations are paid in full (for all others).
- C. Public Records. The City understands and agrees that all documents relating to this Agreement are subject to the Public Information Act, Texas Government Code, Chapter 552, and that such documents may not be withheld from public disclosure, except in accordance with law and with the rulings of the Texas Attorney General. The City is required to make any information created or exchanged pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge. The City shall promptly respond to a request by the TWDB for copies of any of the City's records related to this Agreement; and
- D. Access to Records.
1. State Auditor. By executing this Agreement, the City accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all Loan Forgiveness Funds received pursuant to this Agreement. The City shall comply with directives from the Texas State Auditor and shall cooperate in any such investigation or audit. The City agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit. The City also agrees to include a provision in any contract or subcontract related to this Agreement that requires the contractor and the subcontractor to submit to audits and investigations by the Texas State Auditor's Office in connection with all Loan Forgiveness Funds received pursuant to the contract or subcontract.

2. TWDB, EPA, and Comptroller General of the United States. The City agrees that the TWDB, the EPA, and the Comptroller General of the United States shall have full access to any books, documents, papers, and records which are related to the funds expended under this Agreement and that further these federal entities may audit, examine, copy excerpts, and make transcriptions of any such books, documents, papers, and records. The standards of administration, property management, audit procedures, procurement and financial management, and the records and facilities of the City and its contractors are subject to audit and inspection by the TWDB and by the EPA and by any other authorized state or federal entity. All books, documents, papers, and records of the City related to this Agreement shall be made available for audit, examination, excerpt, and transcription by the staff of the TWDB within a reasonable time after a request from the TWDB. The City understands and agrees that the EPA's Regional Administrator may, after a thirty day written notice, review any records the Regional Administrator deems necessary to determine compliance with all requirements concerning the Loan Forgiveness Funds provided under this Agreement.

**7.04. UPDATING INFORMATION.** The City shall provide the TWDB with updated information, reports, statements and certifications as requested by the Executive Administrator relating to the financial condition of the City or the Project and the use of Loan Forgiveness Funds. The City shall promptly notify the TWDB of any material change in the activities, prospects or conditions of the City relating to the Project, or its ability to observe and perform its duties, covenants, obligations and agreements under this Loan Forgiveness Agreement.

**7.05. FORCE MAJEURE.** Unless otherwise provided, neither the City nor the TWDB nor any agency of the State shall be liable to the other for any delay in or failure of performance of a requirement contained in this Agreement caused by *Force Majeure*. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of such *Force Majeure* or otherwise waive this right as a defense.

**7.06. NON-ASSIGNABILITY.** The terms and conditions of the financial assistance provided by this Agreement may not be assigned, transferred, or subcontracted in any manner without the express written consent of the TWDB.

**7.07. ENTIRE AGREEMENT AND AMENDMENT.** This Agreement, which incorporates all attached Exhibits, constitutes the entire agreement between the Parties. This Agreement may be amended only in writing signed by the Parties. The changes allowed under Section 4.01 do not require an amendment to this Agreement unless a change to the Project Schedule, **EXHIBIT E** or the Project Budget, **EXHIBIT F**, results in a different project completion date or total budget amount.

**7.08. NO WAIVER.** The failure of any Party to insist upon the strict performance of any of the terms, provisions, or conditions of this Agreement shall not be construed as a waiver or relinquishment for the future of the strict performance of any such term, provision, or condition or any other term, provision, or condition.

**7.09. NO DEBT CREATED.** Each Party agrees and understands that, by this Agreement, the State, acting through the TWDB, is not lending its credit or in any manner creating a debt on behalf of the State. To the extent that the City is not securing the Obligations with ad valorem taxes, each Party agrees and understands that, pursuant to this Agreement, the City is not lending its credit or in any other manner creating a debt on behalf of the City.

**7.10. LAW AND VENUE.** The validity, operation, and performance of this Agreement shall be governed and controlled by the laws of the State of Texas and applicable federal regulations, and the terms and conditions of this Agreement shall be construed and interpreted in accordance with the laws of the State. The Parties understand and agree that this Agreement is for the provision of financial assistance for the construction of the Project and as such all or part of the performance of the terms and obligations of the Agreement will be performed in Tarrant County, Texas. Notwithstanding the location of the Project, the Parties understand and agree that any proceeding brought for any breach of this Agreement involving the TWDB shall be in Travis County, Texas. This section does not waive the sovereign immunity of the State or the TWDB.

**7.11. NOTICES.** All notices, notifications, or requests required or permitted by this Agreement shall be in writing and shall be transmitted by personal delivery or transmitted by United States certified mail, return receipt requested, postage prepaid, to the addresses of the Parties shown below. Notice shall be effective when received by the Party to whom notice is sent:

Texas Water Development Board  
Attn: Executive Administrator  
1700 N. Congress Ave., 6<sup>th</sup> Floor  
Austin, Texas 78701-1496

City of Euless  
Attn: City Manager  
201 N. Ector Drive  
Euless, Texas 76039-3595

**7.12. TERM.** This Agreement is effective on the date signed by the Executive Administrator. The Agreement shall expire upon the successful completion of the Project and Final Accounting in accordance with Section 5.04 of this Agreement.

**TEXAS WATER DEVELOPMENT BOARD      CITY OF EULESS**

\_\_\_\_\_  
Kevin Patteson  
Executive Administrator

\_\_\_\_\_  
Loretta Getchell  
City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A**  
TWDB Resolution No. 14-95

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$5,493,050 TO CITY OF EULESS  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$4,685,000 CITY OF EULESS WATERWORKS AND SEWER SYSTEM REVENUE  
BONDS, PROPOSED SERIES 2015  
AND  
\$808,050 IN LOAN FORGIVENESS**

(14-95)

WHEREAS, the City of Euless, located in Tarrant County, Texas (City) has filed an application for financial assistance in the amount of \$5,493,050 from the Drinking Water State Revolving Fund (DWSRF) to finance the construction of certain water system improvements identified as Project No. 62647; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$4,685,000 City of Euless Waterworks and Sewer System Revenue Bonds, Proposed Series 2015 (together with all authorizing documents, "Obligations"), and the execution of a Loan Forgiveness Agreement in an amount of \$808,050, 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 net revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* as well as state law, in accordance with Texas Water Code § 15.607;
3. that the City has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB's rules;
4. the needs to be addressed by this project will be addressed in a manner that is consistent with the State Water Plan;
5. due to the interregional conflict between the Regional Water Planning Regions C and D, Region C currently does not have a Board approved Regional Water Plan;

6. that the TWDB has made a timely and concerted effort to solicit projects that address green infrastructure, water, or energy efficiency improvements and other environmentally innovative activities and has determined that the entire Project, or a portion of the Project satisfies the EPA's criteria for Green Projects;
7. that the Executive Administrator issued a Categorical Exclusion on August 8, 2014, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator; and
8. that the conditions, as described above, warrant a waiver of the requirements that the TWDB determine that the needs to be addressed by the project will be addressed in a manner that is consistent with the State Water Plan, and with the approved Regional Water Plan that includes the area that will benefit from the proposed project.

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

1. for the reasons stated above and pursuant to Texas Water Code § 16.053(k), the TWDB hereby finds that current conditions warrant a waiver of the requirements of Texas Water Code § 16.053(j).
2. a commitment is made by the TWDB to the City of Euless for financial assistance in the amount of \$5,500,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$4,685,000 City of Euless Waterworks and Sewer System Revenue Bonds, Proposed Series 2015, and the execution of a Loan Forgiveness Agreement in the amount of \$808,050. This commitment will expire on November 30, 2015.

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 Obligations can be called for early redemption only in inverse order of maturity, and 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;

5. 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;
6. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce system 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;
7. 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 for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) eligible project costs as authorized by the Executive Administrator;
8. 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;
9. 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;
10. 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;

11. 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;
12. 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;
13. 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;
14. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
15. 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;

Conditions Related To Tax-Exempt Status

16. 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;
17. 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;
18. 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 § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
19. 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 § 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 § 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;
20. 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 § 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 § 148(f) of the Code, § 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;

21. 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;
22. 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;
23. 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;
24. the transcript must include evidence that the information reporting requirements of § 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 § 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;
25. 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**

26. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
27. 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;
28. 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;

29. 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;
30. The Obligations and Loan Forgiveness Agreement must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines;

#### Drinking Water State Revolving Fund Conditions

31. prior to or at closing, the City shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;
32. 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;
33. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City must provide documentation that it has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program;

#### Pledge Conditions for the Loan

34. the Obligations must contain a provision providing that the amount to be accumulated and maintained in the reserve fund shall be increased to an amount equal to not less than the average annual principal and interest requirements of all bonds payable from and secured by a first lien on and pledge of the net revenues of the system (after giving effect to the issuance of the additional bonds). The additional amount to be accumulated in the reserve fund shall be deposited in not more than five years and one month from the date of the passage of the ordinance authorizing the issuance of the additional bonds;
35. 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;
36. the Obligations must contain a provision providing that the net revenues of the system for

the twelve-month period for the fiscal year next preceding the month of the adoption of the ordinance authorizing the issuance of any additional bonds, as shown by a report of a certified public accountant or licensed public accountant, are equal to at least one and one-fourth times the average annual principal and interest requirements of all bonds which will be secured by a first lien on and pledge of the net revenues of the system, and which will be outstanding upon the issuance of the additional bonds.

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

Special Conditions:

37. prior to closing, the City shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
38. the Loan Forgiveness Agreement must include a provision stating that the City shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator; and
39. the City must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources, as more fully specified in the final environmental finding of the Executive Administrator.

APPROVED and ordered of record this 6th day of November, 2014.

TEXAS WATER DEVELOPMENT BOARD



\_\_\_\_\_  
Carlos Rubinstein, Chairman

DATE SIGNED: 11-6-14

ATTEST:



\_\_\_\_\_  
Kevin Patteson  
Executive Administrator

**EXHIBIT B**  
City of Euless's Resolution

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION approving and authorizing the execution of a Loan Forgiveness Agreement between the Texas Water Development Board and the City of Euless, Texas and an Escrow Agreement relating thereto.

WHEREAS, the Texas Water Development Board (the "TWDB") adopted Resolution No. 14-95 on November 6, 2014 (the "TWDB Resolution") making a commitment to provide financial assistance to the City of Euless, Texas (the "City") in the amount of \$5,493,050 from the Drinking Water State Revolving Fund to finance waterworks system improvements; and

WHEREAS, in connection with such commitment, the TWDB determined that the City qualifies for a subsidy as a disadvantaged community and agreed, pursuant to the TWDB Resolution, to provide a loan in the amount of \$4,685,000 to the City (evidenced by the issuance of the \$4,685,000 "City of Euless, Texas, Waterworks and Sewer System Revenue Bonds, Series 2015A" authorized pursuant to an ordinance adopted on the date hereof) and further agrees that \$808,050 will be forgiven upon execution of a Loan Forgiveness Agreement; and

WHEREAS, the City Council hereby finds and determines that (1) the Loan Forgiveness Agreement between the City and the TWDB substantially in the form and content of **Exhibit A** attached hereto and (2) the Escrow Agreement substantially in the form and content of **Exhibit B** attached hereto should be approved and authorized to be executed; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EULESS, TEXAS:

Section 1. The form of Loan Forgiveness Agreement between the TWDB and the City of Euless attached hereto as **Exhibit A** and incorporated herein for all purposes is hereby approved for and on behalf of the City as to form and content, and such agreement in substantially the form and substance attached hereto, together with such changes or revisions as the Mayor and/or City Secretary may deem necessary to accomplish the financing contemplated, is hereby authorized to be executed by the Mayor for and on behalf of the City and as the act and deed of this Council; and such Loan Forgiveness Agreement as executed by said officials shall be deemed approved by the City Council and constitute the agreement herein approved.

Section 2. Upon receipt, the loan forgiveness proceeds shall be deposited in an account to be maintained by BOKF, NA dba Bank of Texas (the "Escrow Agent") and held in escrow pending written authorization to release said moneys. The Escrow Agreement between the Escrow Agent and the City attached hereto as **Exhibit B** and incorporated herein for all purposes is hereby approved for and on behalf of the City as to form and content, and such agreement in substantially the form and substance attached hereto, together with such changes or revisions as the Mayor and/or City Secretary may deem necessary to accomplish the financing contemplated, is hereby authorized to be executed by the Mayor for and on behalf of the City and as the act and deed of this City Council; and such Escrow Agreement as executed by said officials shall be deemed approved by this City Council and constitute the Escrow Agreement herein approved.

Section 3. The City Council hereby authorizes the execution and delivery of any and all other documents related to the Loan Forgiveness Agreement including any required documents, instruments or certificates related to obtaining the Loan Forgiveness.

PASSED AND ADOPTED, this June 23, 2015.

CITY OF EULESS, TEXAS

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Mayor

ATTEST:

---

City Secretary

(City Seal)

**EXHIBIT A**

**LOAN FORGIVENESS AGREEMENT  
BETWEEN THE TEXAS WATER DEVELOPMENT BOARD  
AND THE CITY OF EULESS**

**EXHIBIT B**  
**ESCROW AGREEMENT**

## **EXHIBIT C**

### **List of Federal Laws and Authorities (Cross-Cutters)**

The basic rules for complying with cross-cutting federal authorities are set-out in the CWSRF regulations at 40 C.F.R. § 35.3145 and in the DWSRF regulations at 40 C.F.R. § 35.3575. A list of and link to these authorities is provided below and also available from the Environmental Protection Agency (EPA) at: [http://water.epa.gov/grants\\_funding/dwsrf/xcuts.cfm](http://water.epa.gov/grants_funding/dwsrf/xcuts.cfm). A handbook on the applicability of the cross-cutting federal authorities is available from EPA at <http://www.epa.gov/owm/cwfinance/cwsrf/enhance/DocFiles/Other%20Docs/CrosscutterHandbook.pdf>.

#### **Environmental Authorities**

- Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
- Clean Air Act, Pub. L. 84-159, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Environmental Justice, Executive Order 12898
- Floodplain Management, Executive Order 11988 as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, Pub. L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

#### **Economic and Miscellaneous Authorities**

- Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended
- Debarment and Suspension, Executive Order 12549

#### **Social Policy Authorities**

- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352 (2)
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- Anti-Lobbying Provisions (40 CFR Part 30) [applies only to capitalization grant recipients]

**The Civil Rights Act and related anti-discrimination statutes apply to all the operations of the SRF program.**

## **EXHIBIT D**

### **Davis-Bacon Contract and Subcontract Provisions**

#### **(a) GENERAL CONTRACT AND SUBCONTRACT PROVISIONS.**

The subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses:

#### **(1) Minimum Wages**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage

determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **(2) Withholding**

The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **(3) Payrolls and basic records**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the

required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **(4) Apprentices and trainees**

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

**(5) Compliance with Copeland Act requirements**

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**(6) Subcontracts.**

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**(7) Contract termination; debarment.**

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**(8) Compliance with Davis-Bacon and Related Act requirements.**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(9) Disputes concerning labor standards.**

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

**(10) Certification of eligibility.**

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**b. CONTRACT PROVISIONS FOR CONTRACTS IN EXCESS OF \$100,000**

Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**(1) Overtime requirements**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or

mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.**

In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

**(3) Withholding for unpaid wages and liquidated damages**

The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

**(4) Subcontracts**

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

**(c) MAINTENANCE OF RECORDS**

In addition to the clauses contained in Section (a), above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

**(d) COMPLIANCE VERIFICATION**

(1) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(2) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract.<sup>1</sup> Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(3) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(4) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(5) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

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<sup>1</sup> The provision that read "At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract" was issued a waiver in EPA Class Deviation memo dated November 16, 2012.

**EXHIBIT E**  
Project Schedule

Project Task	Schedule Date
Engineering Feasibility Report Completion (End of Planning Phase)	6/15/2015
Design Phase Complete	6/15/2015
Start of Construction	9/1/2015
Construction Completion	9/1/2016

## EXHIBIT F

### Project Budget

Budget Items	TWDB Funds	Total
<b>Construction</b>		
Construction	\$5,000,000.00	\$5,000,000.00
Construction Contract	\$0.00	\$0.00
<b>Subtotal for Construction</b>	<b>\$5,000,000.00</b>	<b>\$5,000,000.00</b>
<b>Fiscal Services</b>		
Loan Origination Fee	\$103,093.00	\$103,093.00
<b>Subtotal for Fiscal Services</b>	<b>\$103,093.00</b>	<b>\$103,093.00</b>
<b>Contingency</b>		
Contingency	\$389,957.00	\$389,957.00
<b>Subtotal for Contingency</b>	<b>\$389,957.00</b>	<b>\$389,957.00</b>
<b>Total</b>	<b>\$5,493,050.00</b>	<b>\$5,493,050.00</b>

**EXHIBIT G**  
Escrow Agreement

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of June 23, 2015, made by and between the City of Euless, Texas, a political subdivision of the State of Texas in Tarrant County (the "City"), acting by and through the Mayor and City Secretary and BOKF, NA dba Bank of Texas, a banking association duly organized and existing under the laws of the United States of America (the "Bank"), as Escrow Agent (the "Escrow Agent") together with any successor in such capacity:

### WITNESSETH:

WHEREAS, pursuant to a Loan Forgiveness Agreement dated as of \_\_\_\_\_, 2015 (the "Loan Forgiveness Agreement"), the City accepted certain contractual obligations (the "Obligations") to obtain financial assistance from the Texas Water Development Board ("TWDB") for the purpose of funding the construction of improvements and extensions to the City's waterworks system (the "Project"); and

WHEREAS, the Escrow Agent is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral in accordance with Texas Government Code, Chapter 404, Subchapter D and is otherwise qualified and empowered to enter into this Agreement, and hereby acknowledges its acceptance of the terms and provisions hereof; and

WHEREAS, a condition of the Obligations is the deposit of the proceeds of the Obligations (Proceeds) in escrow subject to being withdrawn only with the approval of the Executive Administrator or another designated representative; provided, however, the Proceeds can be transferred to different investments so long as all parties hereto consent to such transfer;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and in consideration of the amount of fees to be paid by the City to the Escrow Agent, as set forth on **EXHIBIT A**, the receipt of which is hereby acknowledged, and in order to secure the delivery of the Obligations, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives and successors, as follows:

**SECTION 1: ESCROW ACCOUNT.** Upon the delivery of the Obligations described above, the Proceeds identified under TWDB Commitment Number L\_\_\_\_\_ shall be deposited to the credit of a special escrow account or escrow subaccount (the "Escrow Account") maintained at the Escrow Agent on behalf of the City and the TWDB and shall not be commingled with any other accounts or with any other proceeds or funds. The Proceeds received by the Escrow Agent under this Agreement shall not be considered as a banking deposit by the City, and the Escrow Agent shall have no right to title with respect thereto except as Escrow Agent under the terms of this Agreement.

The Escrow Account shall be entitled "CITY OF EULESS, TEXAS WATERWORKS AND SEWER SYSTEM REVENUE BONDS, SERIES 2015A LOAN FORGIVENESS TEXAS WATER DEVELOPMENT BOARD L\_\_\_\_\_ ESCROW ACCOUNT" and shall not be subject to warrants, drafts or checks drawn by the City but shall be disbursed or withdrawn to pay the costs of the project for which the Obligations were issued or other purposes in accordance with the Loan Forgiveness Agreement and solely upon written authorization from the Executive Administrator, or his/her designated representative. The Escrow Agent shall provide to the City and to the TWDB the Escrow Account bank statements upon request.

**SECTION 2: COLLATERAL.** All cash deposited to the credit of such Escrow Account and any accrued interest in excess of the amounts insured by the FDIC and remaining uninvested under the terms of this Agreement shall be continuously secured by a valid pledge of direct obligations of the United States of America or other collateral meeting the requirements of the Public Funds Collateral Act, Texas Government Code, Chapter 2257, as amended.

**SECTION 3: INVESTMENTS.** While the Proceeds are held in escrow, the Escrow Agent shall only invest escrowed Proceeds in investments that are authorized by the Public Funds Investment Act, Texas Government Code, Chapter 2256 ("PFIA"). It is the City's responsibility to direct the Escrow Agent to invest all public funds in a manner that is consistent not only with the PFIA but also with its own written investment policy.

**SECTION 4: DISBURSEMENTS.** The Escrow Agent shall not honor any disbursement from the Escrow Account, or any portion thereof, unless and until it has been supplied with written approval and consent by the Executive Administrator or his/her designated representative. However, no written approval and consent by the Executive Administrator shall be required if the disbursement involves transferring Proceeds from one investment to another within the Escrow Account provided that all such investments are consistent with the PFIA requirements.

**SECTION 5: UNEXPENDED FUNDS.** Any Proceeds remaining unexpended in the Escrow Account after completion of the Project and after the final accounting has been submitted to and approved by the TWDB shall be disposed of pursuant to the provisions of the Loan Forgiveness Agreement. The City shall deliver a copy of such TWDB approval of the final accounting to the Escrow Agent together with instructions concerning the disbursement of unexpended Proceeds hereunder. The Escrow Agent shall have no obligation to ensure that such unexpended Proceeds are used as required by the provisions of the Loan Forgiveness Agreement, that being the sole obligation of the City.

**SECTION 6: CERTIFICATIONS.** The Escrow Agent shall be authorized to accept and rely upon the certifications and documents furnished to the Escrow Agent by the City and shall not be liable for the payment of any funds made in reliance in good faith upon such certifications or other documents or approvals, as herein recited.

**SECTION 7: LIABILITY OF ESCROW AGENT.** To the extent permitted by law, the Escrow Agent shall not be liable for any act done or step taken or omitted by it or any mistake of fact or law, except for its negligence or default or failure in the performance of any obligation imposed upon it hereunder. The Escrow Agent shall not be responsible in any manner for any proceedings in connection with the Obligations or any recitation contained in the Obligations.

**SECTION 8: RECORDS.** The Escrow Agent will keep complete and correct books of record and account relating to the receipts, disbursements, allocations and application of the money deposited to the Escrow Account, and investments of the Escrow Account and all proceeds thereof. The records shall be available for inspection and copying at reasonable hours and under reasonable conditions by the City and the TWDB.

**SECTION 9: MERGER/CONSOLIDATION.** In the event that the Escrow Agent merges or consolidates with another bank or sells or transfers substantially all of its assets or corporate trust business, then the successor bank shall be the successor Escrow Agent without the necessity of further action as long as the successor bank is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral in

accordance with Texas Government Code Chapter 404, Subchapter D. The Escrow Agent must provide the TWDB with written notification within 30 days of acceptance of the merger, consolidation, or transfer. If the merger, consolidation or other transfer has occurred between state banks, the newly-created entity shall forward the certificate of merger or exchange issued by the Texas Department of Banking as well as the statement filed with the pertinent chartering authority, if applicable, to the TWDB within five business days following such merger, consolidation or exchange.

**SECTION 10: AMENDMENTS.** This Agreement may be amended from time to time as necessary with the written consent of the City and the TWDB, but no such amendments shall increase the liabilities or responsibilities or diminish the rights of the Escrow Agent without its consent.

**SECTION 11: TERMINATION.** In the event that this Agreement is terminated by either the City or by the Escrow Agent, the Escrow Agent must report said termination in writing to the TWDB within five business days of such termination. The City is responsible for ensuring that the following criteria are satisfied in selecting the successor escrow agent and notifying the TWDB of the change in escrow agents: (a) the successor escrow agent must be an FDIC-insured state or national bank designated by the Texas Comptroller as a state depository; (b) the successor escrow agent must be retained prior to or at the time of the termination; (c) an escrow agreement must be executed by and between the City and the successor escrow agent and must contain the same or substantially similar terms and conditions as are present in this Agreement; and (d) the City must forward a copy of the executed escrow agreement with the successor escrow agent within five business days of said termination. No funds shall be released by the TWDB until it has received, reviewed and approved the escrow agreement with the successor escrow agent. If the City has not appointed a successor escrow agent within thirty (30) days of the notice of termination, the Escrow Agent may petition any court of competent jurisdiction in Texas for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the City. Whether appointed by the City or a court, the successor escrow agent and escrow agreement must be approved by the TWDB for the appointment to be effective. The Escrow Agent is responsible for performance under this Agreement until a successor has been approved by the TWDB and has signed an acceptable escrow agreement.

**SECTION 12: EXPIRATION.** This Agreement shall expire upon final transfer of the funds in the Escrow Account to the City.

**SECTION 13: POINT OF CONTACT.** The points of contact for the Escrow Agent and the TWDB are as follows:

BOKF, NA dba Bank of Texas  
5956 Sherry Lane, Suite 1201  
Dallas, Texas 75225  
Attention: Caresse Tankersley  
Phone Number: 214-987-8886  
Fax Number: 214-256-7517  
Email Address: CTankersley@bankoftexas.com

Executive Administrator  
Texas Water Development Board  
1700 North Congress Avenue  
Austin, Texas 78701

**SECTION 14: CHOICE OF LAW.** This Agreement shall be governed exclusively by the applicable laws of the State of Texas. Venue for disputes shall be in the District Court of Travis County, Texas.

**SECTION 15: ASSIGNABILITY.** This Agreement shall not be assignable by the parties hereto, in whole or in part, and any attempted assignment shall be void and of no force and effect.

**SECTION 16: ENTIRE AGREEMENT.** This Agreement evidences the entire Escrow Agreement between the Escrow Agent and the City and supersedes any other agreements, whether oral or written, between the parties regarding the Proceeds or the Escrow Account. No modification or amendment of this Agreement shall be valid unless the same is in writing and is signed by the City and consented to by the Escrow Agent and the TWDB.

**SECTION 17: VALIDITY OF PROVISIONS.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**SECTION 18: COMPENSATION FOR ESCROW SERVICES.** The Escrow Agent shall be entitled to compensation for its services as stated in Exhibit A, which compensation shall be paid by the City but may not be paid directly from the Escrow Account.

*[remainder of page left blank intentionally]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF EULESS, TEXAS

By: \_\_\_\_\_  
Mayor

Address: 201 North Ector Drive  
Euleless, Texas 76039

(City Seal)

\_\_\_\_\_  
City Secretary

BOKF, NA dba Bank of Texas  
as Escrow Agent

By: \_\_\_\_\_

Title: \_\_\_\_\_

(Bank Seal)

Address: 5956 Sherry Lane, Suite 1201  
Dallas, Texas 75225

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**Fee Schedule**

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of June 23, 2015, made by and between the City of Euless, Texas, a political subdivision of the State of Texas in Tarrant County (the "City"), acting by and through the Mayor and City Secretary and BOKF, NA dba Bank of Texas, a banking association duly organized and existing under the laws of the United States of America (the "Bank"), as Escrow Agent (the "Escrow Agent") together with any successor in such capacity:

### W I T N E S S E T H:

WHEREAS, pursuant to a Loan Forgiveness Agreement dated as of \_\_\_\_\_, 2015 (the "Loan Forgiveness Agreement"), the City accepted certain contractual obligations (the "Obligations") to obtain financial assistance from the Texas Water Development Board ("TWDB") for the purpose of funding the construction of improvements and extensions to the City's waterworks system (the "Project"); and

WHEREAS, the Escrow Agent is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral in accordance with Texas Government Code, Chapter 404, Subchapter D and is otherwise qualified and empowered to enter into this Agreement, and hereby acknowledges its acceptance of the terms and provisions hereof; and

WHEREAS, a condition of the Obligations is the deposit of the proceeds of the Obligations (Proceeds) in escrow subject to being withdrawn only with the approval of the Executive Administrator or another designated representative; provided, however, the Proceeds can be transferred to different investments so long as all parties hereto consent to such transfer;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and in consideration of the amount of fees to be paid by the City to the Escrow Agent, as set forth on **EXHIBIT A**, the receipt of which is hereby acknowledged, and in order to secure the delivery of the Obligations, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives and successors, as follows:

**SECTION 1: ESCROW ACCOUNT.** Upon the delivery of the Obligations described above, the Proceeds identified under TWDB Commitment Number L\_\_\_\_\_ shall be deposited to the credit of a special escrow account or escrow subaccount (the "Escrow Account") maintained at the Escrow Agent on behalf of the City and the TWDB and shall not be commingled with any other accounts or with any other proceeds or funds. The Proceeds received by the Escrow Agent under this Agreement shall not be considered as a banking deposit by the City, and the Escrow Agent shall have no right to title with respect thereto except as Escrow Agent under the terms of this Agreement.

The Escrow Account shall be entitled "CITY OF EULESS, TEXAS WATERWORKS AND SEWER SYSTEM REVENUE BONDS, SERIES 2015A LOAN FORGIVENESS TEXAS WATER DEVELOPMENT BOARD L\_\_\_\_\_ ESCROW ACCOUNT" and shall not be subject to warrants, drafts or checks drawn by the City but shall be disbursed or withdrawn to pay the costs of the project for which the Obligations were issued or other purposes in accordance with the Loan Forgiveness Agreement and solely upon written authorization from the Executive Administrator, or his/her designated representative. The Escrow Agent shall provide to the City and to the TWDB the Escrow Account bank statements upon request.

SECTION 2: **COLLATERAL.** All cash deposited to the credit of such Escrow Account and any accrued interest in excess of the amounts insured by the FDIC and remaining uninvested under the terms of this Agreement shall be continuously secured by a valid pledge of direct obligations of the United States of America or other collateral meeting the requirements of the Public Funds Collateral Act, Texas Government Code, Chapter 2257, as amended.

SECTION 3: **INVESTMENTS.** While the Proceeds are held in escrow, the Escrow Agent shall only invest escrowed Proceeds in investments that are authorized by the Public Funds Investment Act, Texas Government Code, Chapter 2256 ("PFIA"). It is the City's responsibility to direct the Escrow Agent to invest all public funds in a manner that is consistent not only with the PFIA but also with its own written investment policy.

SECTION 4: **DISBURSEMENTS.** The Escrow Agent shall not honor any disbursement from the Escrow Account, or any portion thereof, unless and until it has been supplied with written approval and consent by the Executive Administrator or his/her designated representative. However, no written approval and consent by the Executive Administrator shall be required if the disbursement involves transferring Proceeds from one investment to another within the Escrow Account provided that all such investments are consistent with the PFIA requirements.

SECTION 5: **UNEXPENDED FUNDS.** Any Proceeds remaining unexpended in the Escrow Account after completion of the Project and after the final accounting has been submitted to and approved by the TWDB shall be disposed of pursuant to the provisions of the Loan Forgiveness Agreement. The City shall deliver a copy of such TWDB approval of the final accounting to the Escrow Agent together with instructions concerning the disbursement of unexpended Proceeds hereunder. The Escrow Agent shall have no obligation to ensure that such unexpended Proceeds are used as required by the provisions of the Loan Forgiveness Agreement, that being the sole obligation of the City.

SECTION 6: **CERTIFICATIONS.** The Escrow Agent shall be authorized to accept and rely upon the certifications and documents furnished to the Escrow Agent by the City and shall not be liable for the payment of any funds made in reliance in good faith upon such certifications or other documents or approvals, as herein recited.

SECTION 7: **LIABILITY OF ESCROW AGENT.** To the extent permitted by law, the Escrow Agent shall not be liable for any act done or step taken or omitted by it or any mistake of fact or law, except for its negligence or default or failure in the performance of any obligation imposed upon it hereunder. The Escrow Agent shall not be responsible in any manner for any proceedings in connection with the Obligations or any recitation contained in the Obligations.

SECTION 8: **RECORDS.** The Escrow Agent will keep complete and correct books of record and account relating to the receipts, disbursements, allocations and application of the money deposited to the Escrow Account, and investments of the Escrow Account and all proceeds thereof. The records shall be available for inspection and copying at reasonable hours and under reasonable conditions by the City and the TWDB.

SECTION 9: **MERGER/CONSOLIDATION.** In the event that the Escrow Agent merges or consolidates with another bank or sells or transfers substantially all of its assets or corporate trust business, then the successor bank shall be the successor Escrow Agent without the necessity of further action as long as the successor bank is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral in

accordance with Texas Government Code Chapter 404, Subchapter D. The Escrow Agent must provide the TWDB with written notification within 30 days of acceptance of the merger, consolidation, or transfer. If the merger, consolidation or other transfer has occurred between state banks, the newly-created entity shall forward the certificate of merger or exchange issued by the Texas Department of Banking as well as the statement filed with the pertinent chartering authority, if applicable, to the TWDB within five business days following such merger, consolidation or exchange.

**SECTION 10: AMENDMENTS.** This Agreement may be amended from time to time as necessary with the written consent of the City and the TWDB, but no such amendments shall increase the liabilities or responsibilities or diminish the rights of the Escrow Agent without its consent.

**SECTION 11: TERMINATION.** In the event that this Agreement is terminated by either the City or by the Escrow Agent, the Escrow Agent must report said termination in writing to the TWDB within five business days of such termination. The City is responsible for ensuring that the following criteria are satisfied in selecting the successor escrow agent and notifying the TWDB of the change in escrow agents: (a) the successor escrow agent must be an FDIC-insured state or national bank designated by the Texas Comptroller as a state depository; (b) the successor escrow agent must be retained prior to or at the time of the termination; (c) an escrow agreement must be executed by and between the City and the successor escrow agent and must contain the same or substantially similar terms and conditions as are present in this Agreement; and (d) the City must forward a copy of the executed escrow agreement with the successor escrow agent within five business days of said termination. No funds shall be released by the TWDB until it has received, reviewed and approved the escrow agreement with the successor escrow agent. If the City has not appointed a successor escrow agent within thirty (30) days of the notice of termination, the Escrow Agent may petition any court of competent jurisdiction in Texas for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the City. Whether appointed by the City or a court, the successor escrow agent and escrow agreement must be approved by the TWDB for the appointment to be effective. The Escrow Agent is responsible for performance under this Agreement until a successor has been approved by the TWDB and has signed an acceptable escrow agreement.

**SECTION 12: EXPIRATION.** This Agreement shall expire upon final transfer of the funds in the Escrow Account to the City.

**SECTION 13: POINT OF CONTACT.** The points of contact for the Escrow Agent and the TWDB are as follows:

BOKF, NA dba Bank of Texas  
5956 Sherry Lane, Suite 1201  
Dallas, Texas 75225  
Attention: Caresse Tankersley  
Phone Number: 214-987-8886  
Fax Number: 214-256-7517  
Email Address: CTankersley@bankoftexas.com

Executive Administrator  
Texas Water Development Board  
1700 North Congress Avenue  
Austin, Texas 78701

**SECTION 14: CHOICE OF LAW.** This Agreement shall be governed exclusively by the applicable laws of the State of Texas. Venue for disputes shall be in the District Court of Travis County, Texas.

SECTION 15: **ASSIGNABILITY.** This Agreement shall not be assignable by the parties hereto, in whole or in part, and any attempted assignment shall be void and of no force and effect.

SECTION 16: **ENTIRE AGREEMENT.** This Agreement evidences the entire Escrow Agreement between the Escrow Agent and the City and supersedes any other agreements, whether oral or written, between the parties regarding the Proceeds or the Escrow Account. No modification or amendment of this Agreement shall be valid unless the same is in writing and is signed by the City and consented to by the Escrow Agent and the TWDB.

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CITY OF EULESS, TEXAS

By: \_\_\_\_\_  
Mayor

Address: 201 North Ector Drive  
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(City Seal)

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City Secretary

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Fee Schedule