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Executive Secretary

09/10/2024

The Honorable Donia Jessop, Mayor                      hildale@hildalecity.com  
Hildale City  
PO Box 840490  
Hildale, Utah 84784

Subject: **State Loan Authorization and Procedures for Committal of Funds; Hildale City, System #27006, Loan #3S2669**

Dear Mayor Jessop and Town Council:

**On August 28, 2024, the Drinking Water Board (hereinafter called the "Board") authorized a construction grant of \$237,500.00 and a loan of \$551,000.00 at 1.73% interest for 30 years to Hildale City (hereinafter called the "Recipient") for the construction of a booster pump station (hereinafter called the "Project").** The loan from the Board will be secured by General Obligation bond(s), Non-voted Water Revenue bond(s), or a combination thereof issued by the Recipient (hereinafter referred to as the "Bonds"). The Board has determined the retirement period for the Bonds is to be no more than 30 annual installments with interest payable on the unpaid principal balance from the date of issuance at an annual rate of 1.73%. The Board will require annual payments on the Bonds in the amount of approximately \$23,000 (proposed bond repayment schedule is enclosed). Interest only payments calculated from the date of closing through the following January, will be due on the first day of January. If a revenue bond is used, a debt service reserve fund equal to this annual amount must be established by no more than ten equal annual deposits.

The construction grant portion will be available for deposit in the escrow account mentioned in item 2 along with other funds after completion and signing of the construction grant agreement and completion of bonding requirements for the loan.

As a condition of this loan, the Board will require the Recipient to conduct a review of the charges for service with the assistance of the Division of Drinking Water, establish a rate structure that will conserve water and provide funds for debt service, and to resolve the appropriate issues on

their Compliance Report. As an additional condition, the Board will require the Recipient to establish a capital facilities replacement reserve account. Annual Payments/Deposits to this fund shall be 5% of the Recipient's drinking water system's annual operating budget including debt service and depreciation and must continue until the Bond is redeemed. This capital facilities replacement reserve fund shall not serve as security for the payment of principal or interest on the loan. The Recipient shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system and to notify the Board prior to making any disbursements from the fund so the Board can confirm that any expenditure is for an acceptable purpose, the Recipient will not need the consent of the Board prior to making any expenditure from the fund.

The Bonds may be prepaid, in whole or in part, at any time in minimum amounts of \$1,000 or any integral multiple thereof, with the prepayments applied against the Bond principal in inverse order of maturities. In addition, if any Bond proceeds remain after the Project is completed, those remaining proceeds shall be used to redeem Bond principal in inverse order of maturities. The Bond documents must contain the following provisions:

- i] The Bonds will be issued initially in the form of a single, fully-registered bond in the amount of \$551,000.00 with provisions for incremental advances quarterly, based on a schedule that coincides with the rate at which engineering/construction related costs are expected to be incurred for the Project. However, provisions shall be made which would allow the Bonds to be exchanged for separate serial bonds in minimum denominations of \$1,000.
- ii] If a revenue bond is used the Bonds must be secured by a pledge by the Recipient of 100% of the net revenue produced by the Recipient's water system, and the Recipient will be required to warrant and demonstrate that those net revenues equal or exceed 125% of the total annual debt service requirements on the Bonds and any other obligations secured by a pledge of those revenues.
- iii] If interest is payable on the Bonds, that interest must be tax-exempt, and delivery of the Bonds must be accompanied by an opinion of recognized bond counsel that the interest is not subject to state or federal income taxes.
- iv] If a revenue bond is used, and if the Recipient has previously issued bonds or other obligations secured by a pledge of water system revenues, the Bonds to be purchased by the Board shall be issued on a parity with those prior bonds or obligations with respect to the revenue. If it is not possible for the Bonds to be issued on a parity basis, the Recipient shall contact Mr. Michael Grange immediately at (801) 674-2563.

Based on the information presented to the Board, the following sources of funding will be available for the construction of the Project:

Agency	Share	% of Total
Drinking Water Board (Grant)	\$237,500.00	30%
Drinking Water Board (Loan)	\$551,000.00	70%
Total Project Cost	\$788,500.00	100.0%

As a condition to the purchase of the Bonds by the Board, the Recipient must advertise for bids for the construction of the Project, based on plans and specifications approved by the Division of Drinking Water, must open bids, and must demonstrate that available sources of funding are adequate to cover the cost of the project and the bond insurance costs. In addition, prior to bond closing, the Recipient must make arrangements for all loan proceeds and all other Project funds to be available for deposit into the escrow account described below at the time the Board delivers funds unless other acceptable arrangements have been previously made.

The financial assistance is conditioned upon the availability of funds at the time of closing, satisfaction of the conditions specified in this letter, and adherence to the project schedule approved at that time. If the Project does not proceed according to the project schedule, the Board may withdraw project authorization, so that other projects ready to proceed can obtain necessary funding. The Board may consider extensions to the project schedule. Any extension requested must be fully justified. After the Project's construction bids have been opened and the below listed requirements have been met, and if the project remains substantially as approved, loan closing will proceed subject to funds available at that time. But, if substantial changes in the Project are required, they must be considered by the Board for committal of funds.

As Recipient of this project, you will need to complete the following items before the Board will purchase your Bonds:

1. The State of Utah has appointed William L. Prater Esq. as special legal counsel to the Board (the "Board's Attorney") and has assigned to him the responsibility of reviewing all proceedings and documents relating to the sale of bonds to the Board. His address is 6925 Union Park Center, Suite 265, Midvale, Utah 84047; telephone number (801) 566-8882 or mail to P.O. Box 71368, Salt Lake City, Utah 84171. The Recipient's bond counsel shall submit the following items to his office at the times indicated below.
  - a. No later than one week prior to the meeting at which the Recipient intends to adopt its Resolution for the issuance of the Bonds, a complete copy of the Resolution shall be submitted for review.
  - b. No later than two weeks after the adoption of the Resolution, the following items shall be submitted:

- i] A true and complete photocopy of the Resolution as adopted, showing signatures of the appropriate officials of the Recipient on the Resolution and on the Notice of Meeting, Acknowledgment of Notice and Consent, Certificate of Publication, Open Meeting Certificate, and other similar documents relating to the Resolution.
- ii] A true and complete photocopy of the minutes, notices, resolutions, and other documents relating to the Bonds, showing signatures of the appropriate officials.
- iii] A complete copy of the proposed documents to be signed at Closing, including (but not necessarily limited to) General Certificate, Signature Identification and Non-Litigation Certificate, Receipt, Arbitrage Certificate (if required), Recipient Attorney's Non-Litigation Certificate, Certificate of Clerk (or Recorder) as to contents of Bond Transcript File, Escrow Agreement, and the Bond Attorney's Opinion.
- iv] A copy of the water rate structure described in paragraph 3 below of this letter.
- v] A copy of the proposed opinion letter of the Recipient's attorney described in paragraph 7 of this letter. The procedures for bond approval will be substantially the same as required by the Utah Municipal Bond Act as it applies to cities and towns. The opinion of the bond attorney must accompany delivery of the Bonds to the Board before proceeds of the loan will be released.

**At or after the Closing, the Recipient will be billed by the Board's Attorney, and those legal fees must be paid by the Recipient. This is an eligible project expenditure. If the Recipient fails to close the loan after this authorization, it will nonetheless be billed for the actions taken by the Board's Attorney prior to loan cancellation.**

2. Consistent with requirements of the law and the covenants of applicable bond resolutions, the actual payment of funds by the Board to the Recipient will not take place until the Board has assurance the funds will be used for Project costs and the Project will actually be completed. To assure this, all monies to be expended on the Project, including the Recipient's share, shall be placed in an escrow account supervised by the Recipient and the Board. A Copy of the proposed escrow agreement shall be submitted to the Board and the Board's Attorney for review.

Disbursements from the escrow account will be reviewed and approved by the Division of Drinking Water. A Disbursement Request Form must be completed and submitted along with each request. **Disbursement amounts must be authorized in writing by the Recipient and the State prior to any funds being released from the escrow account.**

3. At the time of the adoption of the bond resolution, the Recipient shall have passed an ordinance or resolution establishing reasonable water use rates and collection enforcement remedies, taking into account many factors including the need to have sufficient revenue income for all outstanding water system debts, operation and maintenance costs, and any reserve funds. It will then be necessary to implement effective collection procedures. A copy of the rate ordinance and collection enforcement procedures shall be submitted to the Board and the Board's Attorney for review.
4. The Recipient's contract with its engineer shall include the cost of developing the plans and specifications and the construction inspection of the Project. The contract shall be submitted to the Division of Drinking Water for review. (This requirement is to assure the Board that adequate and appropriate arrangements are made for completing and inspecting the project within the guidelines set by the Board.)
5. The project engineer shall submit, *in accordance with R309-500*, plans and specifications, bidding documents, and general conditions to the Division of Drinking Water for review *and Plan Approval* prior to soliciting bids on the Project. The engineer shall submit project documents via [ddwpmf@utah.gov](mailto:ddwpmf@utah.gov) per <https://deq.utah.gov/drinking-water/general-plan-approval-process> for the expeditious assignment and review of the plans and specifications. Any changes to approved plans and specifications prior to finalizing the Recipient Agreement must be reviewed and approved by the Division of Drinking Water. These funds cannot be disbursed until after the bid opening *has occurred and a copy of the bid tabulation has been reviewed by the Division* to assure that sufficient funds are authorized to complete the Project. If substantial changes in the Project are required, they must be considered by the Board for committal of additional funds.
6. Rights-of-way and easements for construction, and operation and maintenance of the Project shall be acquired. The Recipient, through its engineer, shall furnish its attorney a right-of-way map showing the location of all sources, buildings, structures, pipelines, and other pertinent facilities not only in the Project but for the entire water system. This map will be signed by the engineer and presiding officer of the Recipient and a copy provided to the Recipient's attorney as a basis for the certification described below.
7. The Recipient's attorney shall certify the following items in writing to the Board:
  - a. The Recipient is a legal entity.
  - b. The Recipient has valid legal title to the rights-of-way both for the project to be constructed and the remainder of the existing water system.
  - c. The Recipient has established the ownership of water rights to any and all water used in the system and such rights are summarized with associated water right numbers.

- d. The bidding process and contract documents for the construction of the Project have the proper and legal format and are in compliance with the Utah Code Annotated 1953 (including, but not limited to Title 34, Chapter 30).
- e. After the completed and executed construction contract, along with the performance and payment bonds and evidence of necessary insurance, has been reviewed by the Recipient's attorney, the Recipient's attorney shall furnish to the Board his legal opinion that all of such items are legal and binding and in compliance with the Utah Code.

As indicated earlier a draft of this letter is to be submitted to the Board and the Board's Attorney two weeks after the adoption of the resolution.

8. The Bonds must be accompanied by a legal opinion of recognized municipal bond counsel that interest on the bond obligations is exempt from federal income taxation. Unless otherwise covered, the opinion must also include a statement that the project to be constructed with the Bond proceeds is not for private activity and that the Recipient has complied with all the covenants of the Board with respect to the State of Utah Revolving Fund Recapitalization Program.
9. The Recipient must obtain and maintain continuously throughout the loan repayment period, a fidelity bond on the positions handling the Recipient's funds, in an amount at least equal to the total amount of funds that will be on hand at any one time, exclusive of loan funds. This amount should be at least \$46,000.00. This fidelity bond must be obtained and furnished to the Board prior to the loan closing date. The name of the insured on the position fidelity bond will be "Hildale City and the State of Utah acting through the Drinking Water Board."
10. As a condition of a non-voted revenue bond, either:
  - a. The Recipient must provide to the Board a legal petition signed by a majority of the users of the Recipient 's service area approving the issuance of a non-voted revenue bond to the Board: or
  - b. The Recipient must mail notices to each water user in the Recipient's service area informing them of a public hearing. In addition to time and location of the public hearing the notice shall inform water users of the Recipient's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the rate of interest, the repayment schedule and shall describe the impact of the project. User charge rates and connection fees shall be noted in the notice. The notice shall state that water users may respond to the Recipient in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of a public hearing shall be forwarded to the Division of Drinking Water. If the Board feels there is significant opposition to the proposed

Project, it may require the Recipient to hold a bond election before the Board's funds will be made available.

11. As a condition of this loan, the Board will require the Recipient to complete a Water Conservation Plan. If your system has less than 500 connections, the plan must be submitted to the Division of Drinking Water prior to loan closing. If your system has more than 500 connections, the plan must be submitted to the Division of Water Resources for review and approval, and the approved plan must be adopted (completing the *Certification of Adoption*) prior to loan closing. If the Recipient has already adopted such a plan, that plan and its certification of adoption may be submitted to the Division of Drinking Water for verification.
12. In compliance with Utah Code Annotated 9-8-404, the project engineer shall submit a report to the Division of Drinking Water that demonstrates a reasonable and good faith effort was made to identify and gather information to determine if cultural resources are present in the area of potential effects. The report format shall meet SHPO State of Utah Archaeological Compliance Guidance. Cultural resource reporting guidance is outlined in the Utah SHPO Short Cultural Resources Inventory Report Form.
13. In compliance with Utah Code Annotated 13-8-5, if construction retention proceeds are withheld by the Recipient from any payment due the Contractor under the terms of the construction contract, such withholdings shall comply with all terms outlined in the specified Utah Code section. Including, but not limited to:
  - a. Retention proceeds may not exceed 5% of the payment
  - b. Total retention proceeds may not exceed 5% of the total construction price
  - c. Any retention proceeds withheld shall be placed in an interest-bearing account and accounted for separately from other amounts paid under the contract

Furthermore, all retention proceeds shall be managed and maintained by the Recipient in accordance with Utah Code 13-8-5. Neither the Drinking Water Board nor the Division of Drinking Water shall bear any responsibility for retention proceeds or retention proceed accounts.

14. In compliance with Utah Code Annotated 73-10g-402, political subdivisions applying for state or federal financing for improvements to capital assets related to water infrastructure shall commit to adopt a capital asset management plan. The Asset Management Plan shall be submitted to the Division for review and approval prior to loan closing, unless preparing an Asset Management Plan is included as part of the project for which the entity has applied for financial assistance. In which case, the Asset Management Plan shall be submitted to the Division as soon as it is completed or prior to the entity submitting its final project reimbursement request.

To facilitate the timely completion of the financial assistance requirements outlined in this letter, the Recipient and its attorney and engineer shall submit to the Division of Drinking Water all of

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the items listed in numbered paragraphs 2 through 11 above prior to seeking committal of funds from the Board and no later than 30 days before the bond closing, and the Recipient's bond attorney shall submit to the Board's Attorney the items listed in subsection "b" of paragraph 1 on or before this date. As much as possible, this information shall apply to the Project in general to allow a single review.

**These requirements must be completed on or before August 28, 2025.** If the Recipient fails to reasonably comply with the Project schedule, the Authorization may be withdrawn in accordance with R309-700-12.

These requirements will probably not cover all the matters pertaining to the Project. We anticipate that specific questions on matters relating to your Project will arise, and we are confident that a joint cooperative effort can resolve the issues.

If you have any questions concerning these requirements, please contact Cadence Hernandez at (385) 515-2381 or me at (801) 536-4200.

Sincerely,

DRINKING WATER BOARD



Michael J. Grange, P.E.  
Assistant Executive Secretary

MJG/ch/hp

Enclosures

cc: William Prater, Esq., William L. Prater, LLC, P.O. Box 71368, SLC, UT 84171, bill@billprater.com  
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