

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER APPROVING (1) AN ENGINEERING PROJECT AND THE ISSUANCE OF \$6,370,000 IN UNLIMITED TAX BONDS AND (2) THE USE OF \$150,000 IN SURPLUS FUNDS FOR BAY COLONY WEST MUNICIPAL UTILITY DISTRICT

An application by Bay Colony West Municipal Utility District (the "District") of Galveston County was presented to the Executive Director of the Texas Commission on Environmental Quality (TCEQ) for consideration of approval pursuant to TEX. WATER CODE §§ 5.122 and 49.181. The District requested approval of an engineering project and issuance of \$6,370,000 in bonds and the use of \$150,000 in surplus funds to finance: proposed Bay Colony West recreational projects; Sedona Section 7 detention; Sedona Section 7 clearing and grubbing; land acquisition costs for detention serving Bay Colony West; and water distribution, wastewater collection, and drainage facilities serving single-family development within Sedona Section 7. The TCEQ has jurisdiction to consider this matter, and the following Findings of Fact and Conclusions of Law are appropriate after examining the application and supporting documentation.

FINDINGS OF FACT

1. The District filed an application with the TCEQ on February 3, 2025, for approval of a proposed engineering project and the issuance of \$6,370,000 in bonds, for recreation (\$2,800,000) and utilities (\$3,570,000), and the use of \$150,000 in surplus funds.
2. The Executive Director has investigated the District.
3. The application and accompanying documents have been examined. The project site was investigated by a member of the TCEQ's Districts Section on March 17, 2025. A memorandum was prepared on the project dated April 25, 2025, a copy of which is attached and made a part hereof.
4. The District's project and issuance of \$6,370,000 in bonds at a maximum net effective interest rate of 5.22% to finance the project should be approved. Further, direct the District that the bonds are to be sold only upon the District receiving an acceptable credit rating on the bonds as defined in 30 TEX. ADMIN. CODE § 293.47(b).
5. The request for an exemption from the 30% developer contribution requirement should be granted in accordance with 30 TEX. ADMIN. CODE § 293.47(a)(2), if the District obtains an acceptable credit rating on the bonds as defined in 30 TEX. ADMIN. CODE § 293.47(b).
6. The request for approval to use \$150,000 in surplus funds as shown in the summary of costs to reduce the bond issue requirement should be granted.
7. The District Board should be directed not to expend a total of \$2,175,000 for the proposed Bay Colony West recreational projects pending the District Board receipt of plans and specifications approved by all authorities having jurisdiction.

8. The District should be directed not to purchase facilities or assume facility contracts from the developer until either (a) the TCEQ's region office has inspected the project, and the District has received a region office report with no deficiencies noted, for which approval is valid for 120 days from the date of this Order; or, if a region office report indicates deficiencies, (b) the TCEQ's Districts Section has received a request from the District and a region office report, reviewed the contract administration, and given written authorization to finalize the purchase or assumption; either one in accordance with 30 TEX. ADMIN. CODE § 293.69.

9. The District's Board of Directors should be directed to review to its satisfaction the detailed calculations of the developer's interest to ensure that the costs are authorized District expenditures and in accordance with 30 TEX. ADMIN. CODE § 293.50 before reimbursement to the developer is made.

10. The District should be advised that the legal, fiscal agent, and engineering fees have not been evaluated to determine whether these fees are reasonable or competitive. These fees are included as presented in the engineering report.

11. The District should be directed that any surplus bond proceeds resulting from the sale of bonds at a lower interest rate than that proposed shall be shown as a contingency line item in the Official Statement and the use of such funds shall be subject to approval pursuant to TCEQ rules on surplus funds.

CONCLUSIONS OF LAW

1. The TCEQ has jurisdiction to consider the engineering report and bond application pursuant to TEX. WATER CODE § 49.181.

2. The Executive Director of the TCEQ has investigated the District, and the TCEQ has found it legally organized and feasible.

3. The Districts Section's memorandum dated April 25, 2025, on this engineering project and bond issue should be adopted as the written TCEQ project report in compliance with TEX. WATER CODE § 49.181(d).

NOW THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that the Districts Section's memorandum dated April 25, 2025, on this engineering project and bond issue is adopted as the written TCEQ project report. Pursuant to TEX. WATER CODE § 49.181, the engineering project for Bay Colony West Municipal Utility District is hereby approved together with the issuance of \$6,370,000 in bonds, for recreation (\$2,800,000) and utilities (\$3,570,000), at a maximum net effective interest rate of 5.22%. Further, the District is directed that the bonds are to be sold only upon the District receiving an acceptable credit rating on the bonds as defined in 30 TEX. ADMIN. CODE § 293.47(b). The request for an exemption from the 30% developer contribution requirement associated with the bond issue is granted in accordance with 30 TEX. ADMIN. CODE § 293.47(a)(2) if the District obtains an acceptable credit rating on the bonds as defined in 30 TEX. ADMIN. CODE § 293.47(b). The request to use \$150,000 in surplus funds as shown in the summary of costs to reduce the bond issue requirement is granted. The District Board is directed not to expend a total of \$2,175,000 for the proposed Bay Colony West recreational projects pending the District Board receipt of plans and specifications approved by all authorities having jurisdiction. The District is directed not to purchase facilities or assume facility contracts from the developer until either (1) the TCEQ's region office has inspected the project, and the District has received a region office report with no deficiencies noted, for which approval is valid for 120 days from the date of this Order; or, if a region office

report indicates deficiencies, (2) the TCEQ's Districts Section has received a request from the District and a region office report, reviewed the contract administration, and given written authorization to finalize the purchase or assumption; either one in accordance with 30 TEX. ADMIN. CODE § 293.69. The District's Board of Directors is directed to review to its satisfaction the detailed calculations of the developer's interest to ensure that the costs are authorized District expenditures and in accordance with 30 TEX. ADMIN. CODE § 293.50 before reimbursement to the developer is made. The District is advised that the legal, fiscal agent, and engineering fees have not been evaluated to determine whether these fees are reasonable or competitive. These fees are included as presented in the engineering report. The District is directed that any surplus bond proceeds resulting from the sale of bonds at a lower interest rate than that proposed shall be shown as a contingency line item in the Official Statement and the use of such funds shall be subject to approval pursuant to TCEQ rules on surplus funds. The approval of the sale of these bonds herein shall be valid for one year from the date of this Order unless extended by written authorization of the TCEQ.

BE IT FURTHER ORDERED that pursuant to TEX. WATER CODE § 5.701, the District shall pay to the TCEQ 0.25% of the principal amount of bonds actually issued not later than the seventh (7th) business day after receipt of the bond proceeds. The fees shall be paid by check payable to the Texas Commission on Environmental Quality.

BE IT FURTHER ORDERED that to enable the TCEQ to carry out the responsibilities imposed by TEX. WATER CODE §§49.181-182, the District shall (1) furnish the TCEQ copies of all bond issue project construction documentation outlined under 30 TEX. ADMIN. CODE § 293.62, including detailed progress reports and as-built plans required by TEX. WATER CODE § 49.277(b), that has not already been submitted; (2) notify the TCEQ and obtain approval of the TCEQ for any substantial alterations in the engineering project approved herein before making such alterations; and (3) ensure, as required by TEX. WATER CODE § 49.277(b), that all construction financed with the proceeds from the sale of bonds is completed by the construction contractor according to the plans and specifications contracted.

BE IT FURTHER ORDERED that failure of said District to comply with all applicable laws and with provisions of this Order shall subject the District and its directors to all penalties that are provided by law and shall further be considered by the TCEQ as grounds for refusal to approve other bonds of the District.

The Chief Clerk of the TCEQ is directed to forward the District a copy of this Order.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: **April 29, 2025**

A handwritten signature in black ink, appearing to read "K. Keel", is written above a horizontal line.

For the Commission