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October 10, 2019

~~Via CMRRR # 7017 1450 0001 7341 4618
and Electronic Submission~~

~~The Honorable Ken Paxton
The Office of the Attorney General of Texas
Open Records Division
P.O. Box 12548
Austin, TX 78711~~

Re: Request for Attorney General's Opinion pursuant to Chapter 552, Texas Government Code (the "Texas Public Information Act" or the "Act"); Request for Public Information dated September 23, 2019 by Robert Montoya (the "Request"); TRWD Requests 19.111

Dear General Paxton:

We serve as general counsel to the Tarrant Regional Water District, a Water Control and Improvement District (the "District"), which was created, exists and operates pursuant to Article 16, Section 59 of the Texas Constitution and as general counsel to Trinity River Vision Authority ("TRVA"), a Texas nonprofit organization created by the District. Hereinafter, the District and TRVA are collectively referred to herein as the "District." The District hereby requests an Attorney General's opinion under Sections 552.301 & 552.305 of the Texas Public Information Act [Tex. Gov't Code §§ 552.301 & 552.305].

On October 4, 2019, the undersigned, on behalf of the District, sent a letter to the Attorney General advising that a decision from your office is sought pursuant to Texas Government Code § 552.301 and § 552.305 as to whether the District must produce documents in response to the Request that are excepted from disclosure – October 4, 2019 being the date that we certify said letter was sent. A copy of the October 4, 2019 letter to the Attorney General is attached as Tab "1."

The District also certifies that on October 4, 2019, the Requestor was also sent a letter notifying him of the District's request for a ruling from the Attorney General and provided a copy of the request to the Attorney General to the Requestor. A copy of the October 4, 2019 letter to the Requestor is attached as Exhibit "B" under Tab "1."

By electronic and emailed submission dated September 23, 2019, copies of which we attach collectively as Exhibit "A" under "Tab 1." a duplicate written request for information was made under the Texas Public Information Act, Texas Government Code, Chapter 552 (the "Act") to the District. We certify that September 23, 2019 was the date the District received the Request. We are submitting this request

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within fifteen (15) business days following receipt of the Request. Therefore, this request is timely submitted pursuant to Sections 552.301(b) and 552.305 of the Act.

The Request seeks certain documents submitted by the District and Trinity River Vision Authority to the District and TRVA's hired outside consultant, Riveron. Riveron is a business advisory firm that was hired by TRVA to conduct a programmatic review of the Trinity River Vision Authority to assist in determining what steps, if any, TRVA should take in implementing and carrying out its mission in coordinating, implementing, and managing aspects of the Trinity River Vision Central City Flood Control Project (the "TRV Project"). The final Riveron Report, which has been made public, references documents provided by the District and TRVA to Riveron, but did not include nor describe the substance of the documents in the final released report. The TRV Project is a flood control public works project in Fort Worth, Tarrant County, Texas as amended and defined by the Final Supplement No. 1 to the Final Environmental Impact State for the Central City Project, Upper Trinity River, Texas released by the U.S. Army Corps of Engineers – Fort Worth District and dated March 2008 and is planned and implemented through a collaboration between and among the District, the United States Army Corps of Engineers ("USACE"), the City of Fort Worth, Texas ("COFW"), Tarrant County, Texas ("County"), the Texas Department of Transportation ("TxDOT"), and Streams and Valleys, Inc. ("Streams & Valleys") (collectively, the District, USACE, COFW, County, TxDOT and Streams & Valleys are referred to as "Project Participants"). TRVA was created to educate the public about the TRV Project; to publish educational materials about the TRV Project; to assist in the coordination, implementation, and management of the TRV Project among the constituents of and contributors to the TRV Project, including municipal, county, state and federal authorities and local community organizations; and to perform such other public activities and purposes as permitted by applicable law and authorized by the District; and is subject to the continuing review and supervision of the District's Board of Directors. The public improvements of this project include flood protection and related infrastructure.

The majority of the responsive information has already been released to the Requestor. However, the District believes a portion of the responsive documents provided to its hired consultant may be withheld under the Act. A copy of the responsive information subject to the Attorney General's review is included under Tab "2." Document(s) subject to §552.305 of the Act are provided under Tab "3." Additional documentation not subject to the Attorney General's review will also be released to the Requestor with this correspondence, which we have received confirmation is not subject to §552.305. As such, the District is seeks a decision pursuant to §552.305 as to the documents included herein under Tab "3."

Below, the District has identified the exception to disclosure that apply, and the information to which it applies.

§ 552.104. Exception: Information Related to Competition or Bidding

The District believes the entirety of the responsive information under Tab "2" is excepted from disclosure by Section 552.104 (Exception: Information Relating to Competition or Bidding) of the Act, which provides, in pertinent part, that "[i]nformation is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder." TEX. GOV'T CODE ANN. § 552.104.

In accordance with § 552.301(e)(1)(d) of the Act, included under Tab "2," are [REDACTED]

[REDACTED] Several aspects of the TRV Project have not been bid out yet for the construction, including construction of the bypass channels and canals to be constructed as part of the TRV Project. "The purpose of section 552.104 is to protect the...interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers." Tex. Atty Gen. OR 2009-17592 citing Tex. Atty. Gen Op. 592 (1991).

Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. See Open Records Decision No. 463 (1987) see Op. Tex. Att'y Gen. No. OR2013-18010 (2013). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015); see also Tex. Att'y Gen. Op. OR2016-16453 (2016).

The first document included under Tab "2" under placeholder "2A" is a [REDACTED]

[REDACTED] Releasing ongoing cost estimates and the reasoning behind those cost estimates, [REDACTED] would give bidders a competitive advantage in creating their bids to match the Project Participants' internal cost estimate and undercutting the estimates to obtain a more favorable bid, even if it is not based on the most accurate data. Releasing the [REDACTED] would give a significant advantage to future bidders on the TRV Project.

The next two documents were prepared by [REDACTED]

[REDACTED] within the boundaries of the TRV Project. Both of these documents relate to portions of the TRV Project that have yet to be bid out and still in the design phase. Bidders could easily manipulate this [REDACTED]

The last document under Tab "2" and placeholder "2E" is a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] This would result in all of the Project Participants receiving less competitive bids as the construction progresses on each line item listed in the schedule.

These [REDACTED] for the TRV Project and all of the portions of the TRV Project yet to be completed, including the bypass channels, design components and other listed items encompassing key construction components of the TRV Project which are still very much in the design phase and have not been sent out to bid. The attached documents included under Tab "2" include [REDACTED]. Releasing this information would give bidders for the construction and building the canal and other portions of a distinct advantage in how to bid construction costs as they could use the information to [REDACTED]. As such, the release of this information would present a clear threat to USACE's and the District's ability to obtain the lowest price and most qualified bid possible for any future related bidding processes for the TRV Project. Not only does the information show [REDACTED] [REDACTED] are still a work in progress as the document reflects ongoing changes based on ongoing work with the TRV Project. This information would severely harm the District and USACE's competitive bidding processes in the future if forced to release as bidders could [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Release of the responsive information included under Tab "2" will also put the District at a disadvantage in lobbying for federal funding going forward against competing federal projects. The TRV Project was initially authorized in the early 2000s, but federal funding will be allocated, along with other federally funded projects pursuant to the Water Infrastructure Improvements for the Nation Act of 2016 ("WIIN"), which approved funding for over twenty project across the United States. See WATER INFRASTRUCTURE IMPROVEMENTS FOR THE NATION ACT, PL 114-322, December 16, 2016, 130 Stat 1628. "The purpose of section 552.104 is to protect the...interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers." Tex. Atty Gen. OR 2009-17592 citing Tex. Atty. Gen Op. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. See Open Records Decision No. 463 (1987) see Op. Tex. Atty Gen. No. OR2013-18010 (2013). Release [REDACTED] may affect the TRV Project's ability to obtain federal funding and would put the District in a competitive disadvantage in receiving funds under WIIN against other competing projects as the documents show perceived shortcomings and projected cost escalations of the TRV Project and the Project Participants. As the TRV Project will be competing for funds on a yearly basis through completion of the TRV Project, which is not scheduled for completion until the late 2020s,

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releasing items responsive to the Request particularly while policy discussions are still occurring regarding which [REDACTED] give competing flood and Corps of Engineers projects advance knowledge of the District's internal information and could undermine the District's proposal in the lobby, political, and negotiation process, which would result in less competition and less funding for the District's TRV Project. Federal funds are allocated in each year's President's Fiscal Budget for the U.S. Army Corps of Engineers Civil Works Program and the allocation of funds to each project is highly competitive. As the TRV Project will be competing for funds on a yearly basis through completion of the Project, release of any information about internal cost estimates that are a work in progress and constantly in flux based on progress for various points of the TRV Project would put the District at a disadvantage as other federally funded projects could use that information to attempt to put their respective project in a better competitive light. Even though the TRV Project has been fully authorized, the District competes for an allocation of the USACE's budget each fiscal year against every other authorized federal project.

In total, release of the responsive information would provide a clear threat of harm to the District's ability to obtain federal funding on the TRV Project and the TRV Project's ability to effectively compete with other federally funded projects for funding as competing project [REDACTED]

[REDACTED] The responsive information [REDACTED]

[REDACTED] The District certifies it has not publicly released the documents included with this correspondence and is seeking an opinion that relate to portions of the TRV Project that relate to ongoing competitive situations involving the District.

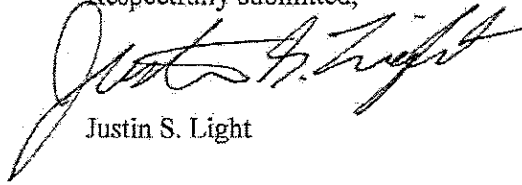
The District hereby certifies that the factual statements made herein are true and correct. For the foregoing reasons, the District respectfully requests that the Attorney General issue his opinion ruling that the information at issue herein is excepted from disclosure and that the District may withhold the information.

As required by Texas Government Code § 552.301(e)(1)(D), the responsive information is attached hereto collectively at Tab "2." The listed exceptions apply to all of the information included at Tab "2," as argued herein. We are including the information subject to § 552.305 of the Act under Tab "3" and have notified the Corps of Engineers of the Request as the document under Tab "3" includes a case under Section 552.101, 552.104, 552.110, or 552.114 regarding the rights of the Department of the Army, Fort Worth District, Corps of Engineers. Notice was given to the third party by separate correspondence along with a copy of the Request as required by Section 552.305 of the Act. A copy of the District's October 4, 2019 letter to the third party is enclosed as Exhibit "C" under Tab "1."

Pursuant to § 552.301(e-1) of the Act, we are providing to the Requestor on this date a redacted copy of this letter, which partially discloses the substance of the information requested, a copy of which (w/o exhibits) is enclosed as Tab "4". Also pursuant to § 552.301(e-1), the copy of this letter being provided to the Requestor does not have included the information found at Tab "2" and Tab "3", which are excepted from disclosure.

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Respectfully submitted,



Justin S. Light

Enclosures

P:\TRWD\Public Info Requests\Montoya, Robert (Riveron Documents)\Attorney General 10-10-2019 (Arguments to Attorney General).docx

cc: Tarrant Regional Water District
Trinity River Vision Authority

(Redacted; w/o Tabs 2 & 3)

✓ Mr. Robert Montoya

PO Box 700981

Dallas, Texas 75370

(Via CMRRR #7017 1450 0001 7341 4625 and email rmontoya@empowertexans.com)