

Munzer Alsarraj

From: Erich Morales
Sent: Tuesday, September 20, 2011 11:19 AM
To: Munzer Alsarraj
Cc: Josefina Vasquez
Subject: kk-11-454 Grant Resolution Authorization

COUNTY LEGAL REVIEW FORM

KK-11-454

Contract Description

USDA Grant Resolution Authorization

COUNTY ATTORNEY ACTION**

**Requested Amendments/Clarifications: We assume you have submitted any questions or comments you have regarding the terms of the contract, as well as any specific provisions to which you object, or which you want to have changed.

☒ Approved as to Form as Submitted
☐ Approved as to Form with Amendments/Modifications/Reservations Noted Below*
☐ Not Approved

This document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

Erich A. Morales
Assistant County Attorney

Erich A. Morales
Assistant County Attorney
General Counsel Division
Office of the El Paso County Attorney

GRANT RESOLUTION

WHEREAS, the **COUNTY OF EL PASO, TEXAS** deems it necessary and

Proper to apply for grant assistance under the Rules and Regulations of Rural Utilities Services, a department of the United States Department of Agriculture;

NOW, THEREFORE, BE IT PROVIDED by the above-named Applicant that

VERONICA ESCOBAR, COUNTY JUDGE, as the Signatory Agent of the Applicant, or

the successor of said Agent, is hereby authorize and directed to make application for grant assistance under Rules and regulation of Rural Utilities Service, a department of the United States Department of Agriculture; and to sign the acceptance of the grant assistance, when made, and any other documents required to complete the project, on behalf of the above-named Applicant.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2011.

Veronica Escobar, County Judge

(SEAL)

ATTEST:

Delia Briones, Count Clerk



**United States Department of Agriculture
Rural Development
El Paso Area Office**

JUL 19 2010

The Honorable Anthony Cobos
El Paso County
500 E. San Antonio Avenue, Suite 301
El Paso, TX 79901-2427

RE: Schuman Sub-Division Water Project

Dear Judge Cobos:

This letter establishes conditions which must be understood and agreed to before further consideration may be given to this application. These conditions must be met before grant closing or start of construction. State and Local Office staff of USDA Rural Development will administer the grant on behalf of the Rural Utilities Service (RUS). Any changes in project cost, source of funds, scope of services, or any other significant change in the project or applicant must be reported to and approved by USDA Rural Development by written amendment to this letter. If significant changes are made without obtaining such approval, USDA Rural Development may discontinue processing the application.

This letter does not constitute grant approval, nor does it ensure that funds are or will be available for the project. The docket may be completed on the basis of a 306C "Colonia" grant not to exceed \$1,150,000.

The grant will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to the County.

11940 Don Haskins Drive • Suite E1 • El Paso, TX 79936
Phone: (915) 855-1229 • Fax: (915) 857-3647 • TDD: (254) 742-9712 • Web: <http://www.rurdev.usda.gov>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."

To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

Following are the conditions that must be understood, agreed to, and met:

1. PROJECT COSTS

Funding from all sources has been budgeted for the estimated expenditures as follows:

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Development	\$ 870,100
Contingencies	43,505
Land & Rights	10,000
Engineering Fees	
Preliminary Engineering Report	\$25,000
Environmental Report	10,000
Basic Engineering Services	<u>117,000</u>
Resident Inspection	50,000
Surveying	96,000
Geotechnical	15,000
Impact Connection Fee to PSB (61 x \$800)	48,800
Legal Services	<u>54,400</u>
TOTAL PROJECT COST	\$1,339,805
<i>Less Contribution:</i>	<u>189,805</u>
TOTAL USDA FUNDING	\$1,150,000

2. USE OF FACILITY

A local ordinance must be adopted which requires mandatory use of the facilities by the residences of the Schuman and Brother Road areas as further described in the Preliminary Engineering Report dated June 2010. The applicant must agree in writing to enforce such ordinance. No free service or use of the facility will be permitted.

3. CONTRIBUTION AND USER VERIFICATION

- A. Any required contribution shall be considered as the first funds expended.
- B. The County will be required to contribute \$189,805 cash, which will be used as provided in the application under Cost Estimate and Financing Plan and the Preliminary Engineering Report.
- C. This Letter of Conditions is based upon 61 users that will use the facilities when service becomes initially available. The number of users will be verified by a USDA Rural Development official using RUS Bulletin-TX 1780-40, "Certification of Users by Rural Development Manager."

4. MULTIPLE ADVANCES

- A. In accordance with RUS Instruction 1780, Section 1780.45 (b) (1), multiple advances may be used.
- B. The Debt Collection Improvement Act (DCIA) of 1996 requires that, effective January 1999, all Federal payments must be made by Electronic Funds Transfer/Automated Clearing House (EFT/ACH). A benefit of receiving payments by EFT/ACH is that funds are directly deposited to the County's account at a financial institution and are available on the date of payment.
- C. The County will complete Form SF-3881, "Electronic Funds Transfer Payment Enrollment Form," for each account where funds will be electronically received. The completed form(s) must be received by USDA Rural Development at least thirty (30) days prior to loan closing.
- D. The grant will be closed with no funds being exchanged. This includes the signing of necessary documents. After closing, USDA Rural Development personnel will request fund disbursement through EFT/ACH system. The funds are to be placed in the County's account two (2) business days from the date of request.
- E. Cash advances should coincide with cash needs. If RUS grant funds are not disbursed immediately upon receipt, excess funds must be deposited into an interest bearing account, if possible. Interest earned of \$100 or more per year must be returned to USDA Rural Development at least quarterly.
- F. Attached is a copy of RUS Bulletin 1780-12, "Water and Waste System Grant Agreement." A completed form must be executed on or before grant closing.

5. REMAINING FUNDS

After providing for all authorized costs, any remaining RUS project funds will be considered to be RUS grant funds and refunded to USDA Rural Development.

6. ORGANIZATION

- A. A complete list of elected officials, type of organization (whether City, township, water control and improvement district, authority, or special purpose), and the authority under which the County is organized, should be furnished to USDA Rural Development.
- B. The applicant must adopt a Grant Resolution authorizing the Judge to execute the grant agreement.

7. BUSINESS OPERATIONS

- A. Operating & Maintenance (O&M) expenses must be properly budgeted to determine the financial viability of any operation. For planning purposes, we have projected O&M expenses based on the information provided in the preliminary engineering report or most recent audit which should be representative of a typical year. This information is utilized to determine loan repayment and is reflected in the operating budget. It is expected that O&M will change over each successive year and user rates will need to be adjusted for the need.
- B. You will be required to submit a copy of your proposed annual operating budget and rate analysis to this office which supports the proposed loan repayment prior to this agency giving you written authorization to proceed with the bidding phase. The operating budget should be based on a typical year cash flow subject to completion of this project in the first full year of operation. The rate analysis will be required to show the number of users, their average consumption based on a twelve month consecutive average, and rate structure to support the necessary revenue to make the operating budget cash flow. Form RD 442-7, "Operating Budget," or similar form may be utilized for this purpose.
- C. The facilities will be operated by the governing body in accordance with State laws. During the first full year of operation, the County will furnish to USDA Rural Development quarterly, or monthly if the need arises, a summary of its operations. Form RD 442-2, "Statement of Budget, Income and Equity," will be provided for this purpose. Audits are to be performed in accordance with generally accepted government auditing standards (GAGAS). In addition, the audits are to be performed in accordance with various Office of Management and Budget (OMB) circulars. Annual reports and audits are to be furnished as set forth in RUS Instruction 1780, Section 1780-47.

A supplemental report is required annually containing:

- a. Total gallons of water purchased and/or produced,
 - b. Total gallons of water sold,
 - c. Total number of customers,
 - d. Percentage of water loss,
 - e. List of current governing body names, addresses, and telephone numbers.
- D. All water shall be metered by meters to be furnished and installed by the County. The meter and/or connection is for the sole use of the member or customer.
 - E. The grant is subject to the provisions of the Federal Civil Rights and Equal Opportunity laws. The County must agree to comply with these requirements by executing Forms RD 400-4, "Assurance Agreement," and RD 400-1, "Equal Opportunity Agreement."

- F. As part of the docket, the County will present for USDA Rural Development review and approval a management plan, a facility maintenance plan, and a proposal for the maintenance of accounts and records and obtaining audit reports. Such plans should include written agreements for management, maintenance, accounting and auditor services.
- G. The County must adopt utility rates that will generate sufficient revenue to pay for operation and maintenance, and any necessary depreciation reserve. The rates must be approved by USDA Rural Development before beginning of construction.
- H. The grant is subject to the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794). It provides, in part, as follows:

“No handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
- I. Form AD-1047, “Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Cover Transactions,” must be executed to certify that the County is not debarred or suspended from Government assistance.
- J. For any contract in excess of \$25,000, Form AD-1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions,” must be executed by any person or entity the County does business with as a result of this Government assistance certifying that they are not debarred or suspended from Government assistance.
- K. The grant is subject to the provisions of the Drug Free Workplace Act of 1988. The County must certify to USDA Rural Development that it will provide a drug free workplace. As a prior condition of being awarded a grant, Form AD-1049, “Certification Regarding Drug-Free Workplace” must be executed to assure that the provisions of the Act will be complied with.
- L. The County must have an acceptable wholesale water supply contract from the City of El Paso, acting by and through its El Paso Water Utilities – Public Service Board (PSB). This contract must be approved by USDA Rural Development before closing or start of construction.
- M. An Interlocal Agreement between the County of El Paso and El Paso Water Utilities Public Service Board was approved by USDA Rural Development on December 2, 2008. A fully executed copy must be provided prior to start of construction.

8. INSURANCE AND BONDING

- A. The buildings and removable parts of the facility will be covered by insurance covering the usual hazards in the area in an amount approved by USDA Rural Development prior to the final inspection. Public Liability and Property Damage Insurance will be required according to recommendations of the consulting engineer and attorney. Workmen's Compensation Insurance will be carried as required by State law. Copies of all insurance policies will be obtained prior to grant closing and made part of the grant docket.
- B. Fidelity or employee dishonesty bonding coverage will be provided to USDA Rural Development for all persons who have access to funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of the coverage required will be no less than the total annual debt service requirement for all RUS loans. Form RD 440-24, "Position Fidelity Schedule Bond," may be used. A copy of the policy will be furnished to USDA Rural Development at grant closing or prior to beginning construction, whichever occurs first.

9. CONSTRUCTION - ENVIRONMENTAL MITIGATION MEASURES

- A. All construction will be on contract documents as outlined in RUS Instruction 1780, Subpart C. The consulting engineer, attorney, and USDA Rural Development will assist with this requirement.
- B. The consulting engineer will prepare construction contract documents and specifications using RUS Instruction 1780, Subpart C, and State supplements.
- C. After the final plans and specifications have been approved in writing by the Texas Commission on Environmental Quality (TCEQ) and the USDA Rural Development engineer, and closing instructions have been issued by the Office of General Counsel, construction bids may be received. USDA Rural Development must be represented at all bid openings and negotiations.
- D. Bids should not be received on any contract unless the contract can be awarded within sixty days.
- E. When bids have been received and it is determined that construction can be completed within the funds available, the successful bidder(s) must be advised that loan funds cannot be made available until all requirements of the closing instructions have been met. The contract will be awarded to the lowest responsive and responsible bidder unless approved by the USDA Rural Development State Office.
- F. Executed contracts and bonds are to be approved in writing by USDA Rural Development before any construction is started.

- G. In accordance with RUS Instruction 1780, Section 1780.76 (h), any changes in construction, addition and/or deletion will be made only on written change order, Form RD 1924-7, "Contract Change Order." Approval by the authorized County official(s), contractor, USDA Rural Development engineer, or USDA Rural Development official is required before any work is done. If any facility design or proposed construction activities deviate from those contained in the approved environmental documents, the County may be required to undertake additional environmental review activities.
- H. An authorized representative of the County will monitor and provide a report to USDA Rural Development on actual performance during construction. Full time inspection is required for all construction. A resume of qualifications of the resident inspector must be submitted for USDA Rural Development's acceptance. Daily inspection reports will be prepared in accordance with RUS Instruction 1780, Section 1780.76 (d). All estimates for payments to contractors may be made on Form RD 1924-18, "Partial Payment Estimate," prepared and certified by the consulting engineer, certified by the contractor, and approved by the appropriate County official(s) and USDA Rural Development.
- I. The contracts must contain a clause which states "If cultural materials are encountered during construction, work must cease in the immediate area of the discovery. Work may continue in those project locations outside of the discovery area, with written approval from USDA Rural Development. The contractor must immediately notify the consultant engineer, the Texas Historical Commission (512) 463-5867, and the USDA Rural Development State Environmental Coordinator (254) 742-9789."
- J. To avoid potential harm to the Texas Horned Lizard (THL), or the Mountain short-Horned Lizard (MSHL), the consulting engineering, the applicant and El Paso Water Utilities Public Services Board will be responsible for implementing the following measures:
 - 1. All construction personnel will be instructed to avoid killing, injuring, or any type harmful disturbance to the THL or MSHL during construction;
 - 2. Pipeline trenches which remain open overnight, and or for more than two daylight hours will be inspected for the presences of the THL or MSHL prior to backfilling;
 - 3. Texas Horned Lizards discovered in any open trench will be carefully removed and relocated safely away from the construction area;
 - 4. Any THL or MSHL relocation(s) by construction crews will be reported to the Consulting Engineer at (915) 533-4600, USDA State Environmental Coordinator at (254) 742-9789, and Mrs. Karen H. Clary, TPWD (512) 389-8054.

- K. To comply with the Migratory Bird Treaty Act; 1) Vegetation disturbances must either avoid the general nesting period of March 1st through August 31st, or 2) that areas proposed for disturbance must be inspected for nesting birds immediately prior to construction activities, in order to avoid the inadvertent destruction of nests, eggs, etc. Any nests discovered which may be disturbed or destroyed should be reported to the U.S. Fish and Wildlife Service for further guidance.
- L. In accordance with Executive Order 13112 on Invasive Species and the Executive Memorandum on Beneficial Landscaping, reseeding landscaping would be limited to seeding and replanting with native species, where possible. A mixture of grasses and forbs appropriate to address potential erosion problems and long-term cover would be planted when seed is reasonably available.

10. RESTRICTION ON LOBBYING

- A. Federal law requires that each recipient who requests or receives a Federal contract, grant, loan, or a Federal commitment to guarantee a loan disclose the expenditure of any funds for lobbying activities. RD Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants, and Loans" must be executed prior to loan and/or grant approval if the loan request exceeds \$150,000 and/or the grant request exceeds \$100,000.
- B. Any person who requests or receives a contract, subcontract, or subgrant (consulting engineers, construction contractors, etc.) in excess of \$100,000 must complete RD Instruction 1940-Q, Exhibit A-1 "Certification for Contracts, Grants, and Loans".
- C. Standard Form (SF) LLL, "Disclosure of Lobbying Activities," will be completed by any recipient requesting or receiving a USDA Rural Development contract where the grant exceeds \$100,000, or loan exceeds \$150,000, and has made or has agreed to make any payment using funds other than appropriated funds to influence or attempt to influence a decision in connection with this specific award.

11. PUBLIC INFORMATION REQUIREMENTS

The general public must be informed regarding the development of this project. A public meeting must be held prior to loan approval to give the citizenry an opportunity to become acquainted with the project and to comment on such items as economic and environmental impact, service area, and alternatives to the project. At least ten (10) days prior to the meeting, the County will be required to publish a notice of the meeting in a newspaper of general circulation in the service area, to post a public notice at the applicant's principal office, and to notify USDA Rural Development. A copy of the published notice and minutes of the public meeting must be provided to USDA Rural Development.

12. HOMELAND SECURITY INITIATIVE

The County must comply with USDA Rural Development's Homeland Security Initiative by preparing a Vulnerability Assessment (VA) and Emergency Response Plan (ERP) to ensure public safety. The County will be required to have an ERP at the start of operations, and a VA within one year. USDA Rural Development may assist your organization with preparing VA's and ERP's through the use of technical assistance providers. The County must provide **certification** to USDA Rural Development of these requirements. (Do not provide a copy of the actual VA or ERP documents.)

The County will also be required to provide a **certification** that the VA and ERP are current every three years after the start of operations. Rural Development does not need or want a copy of the VA or ERP. The requested certification will be sufficient to meet our needs. Technical assistance providers are available to provide onsite assistance.

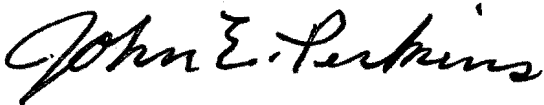
Closing instructions issued by USDA Rural Development must be complied with.

Attached please find two additional copies of this letter and attachments. One copy should be furnished to the consulting engineer and one to the attorney. I want to meet with the governing board, the consulting engineer, and attorney so that we may discuss the contents of this letter.

Please complete and return the attached Form RD 1942-46, "Letter of Intent To Meet Conditions," if the County desires that further consideration be given to this funding request.

If the conditions set forth in this letter are not met within 180 days from the date hereof, USDA Rural Development reserves the right to discontinue the processing of this application.

Sincerely,



JOHN E. PERKINS
Area Director

Attachments