

HEBER PUBLIC UTILITY DISTRICT

REPORT TO BOARD OF DIRECTORS

MEETING DATE: August 15, 2024

FROM: Madeline Dessert, General Manager

SUBJECT: USDA Resolution Report

Background:

On September 21, 2022 the Heber Public Utility District (HPUD) entered into a mutual agreement with the United States Department of Agriculture (USDA) for the HPUD Maintenance Equipment Project. This agreement identified the financial commitment of each party involved within this agreement. USDA committed an amount not to exceed \$200,000 of the overall total of \$285,254. HPUD would be match the remaining 25% of this total, not to exceed \$85,254.

On November 17, 2022 HPUD's Board of Directors approved Resolution 2022-21 during its regular scheduled meeting. After careful review it was determined that a clerical error was made on this resolution. Resolution 2022-21 listed HPUD's match as \$71,314 instead of the approved amount of \$85,254.

Requested Action:

The General Manager humbly requests approval of Resolution 2024-11 as presented, replacing Resolution 2022-21 to reflect the correct amount of \$85,254. Staff needs this resolution corrected in order to submit the Request For Funds [RFF] to USDA for reimbursement of the project costs.

Madeline Dessert

General Manager

RESOLUTION NO. 2024-11

A RESOLUTION OF THE HEBER PUBLIC UTILITY DISTRICT APPROVING THE AMENDMENT OF RESOLUTION 2022-21 REGARDING THE LETTER OF COMMITTEMENT BY AND BETWEEN U.S. DEPARTMENT OF AGRICULTURE- RURAL DEVELOPMENT AND HPUD UNDER THE COMMUNITY FACILITIES LOAN AND GRANT PROGRAM FOR FY 2024-2025

Be It Resolved by the Board of Directors of the Heber Public Utility District as follows:

SECTION 1

The Board of Directors has reviewed and hereby approves the amendment of Resolution 2022-21 approving the letter of commitment by and between the U.S. Department of Agriculture-Rural Development and the Heber Public Utility District for the Community Facilities Loan and Grant Program not to exceed \$285,254.00.

SECTION 2

Where as the Board of Directors authorized the amendment to the commitment of \$85,254.00 of non-federal dollars as matching funds for the project in leu of the previously approved amount of \$71,314.00.

Where as the Board of Directors authorized the Heber Public Utility District to utilize account 6500 labeled as Plant Equipment Outlay for the commitment of non-federal dollars not to exceed \$85,254.00.

SECTION 3

The Board of Directors of the Heber Public Utility District hereby authorized and direct the General Manager, or designee (s) to execute, in the name of the Heber Public Utility District any grant agreements, amendments thereto, and any and all other documents necessary or required by USDA-Rural Development to participate in the loan and grant program.

PASSED AND ADOPTED THIS 15th day of August 2024.

Delfino Matus, President
Board of Directors

ATTEST:

APPROVE AS TO FORM:

Jacob Bermudez,
Clerk of the Board

Steve M. Walker,
General Counsel

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
HEBER PUBLIC UTILITY)
DISTRICT)

I, Jacob Bermudez, Clerk of the Board of the Heber Public Utility District, County of Imperial, State of California, DO HEREBY CERTIFY that the foregoing resolution was dully passed, approved and adopted by the Board of Directors of the Heber Public Utility District at its regularly scheduled meeting held on the 15th day of August, 2024.

By: _____

Jacob Bermudez,
Clerk of The Board



September 21, 2022

Laura Fischer
Heber Public Utility District
1078 Dogwood Road #103
Heber, CA 92249

Subject: Letter of Conditions for a Community Facilities Program Grant to
2022 HPUD Maintenance Equipment Project

Dear Ms. Fischer,

This letter, with attachments, establishes conditions that must be understood and agreed to by the applicant before further consideration may be given to their application. Any changes in project cost, source of funds, scope of services, or any other significant changes (this includes significant changes in the applicant's financial condition, operation, organizational structure or executive leadership) in the project or applicant must be reported to and approved by USDA Rural Development by written amendment to this letter. Any change not approved by USDA Rural Development will be cause for discontinuing processing of the application.

This letter is not to be considered as grant approval or as representation to the availability of funds. The application can be processed on the basis of a USDA Rural Development grant not to exceed \$200,000. Funds for this project are provided by the Rural Housing Service (RHS).

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," and Form RD 1940-1, "Request for Obligation of Funds," within the next ten (10) days, if you desire that we give further consideration to your application. The execution of these and all other documents required by USDA Rural Development must be authorized by appropriate resolutions of the applicant's governing body.

The grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is mailed by USDA Rural Development.

Project Budget—Based on Standard Form 424, “Application for Federal Assistance,” the project cost and funding will be as follows:

a.	<u>Project Cost</u>	<u>Total</u>	<u>USDA Grant</u>	<u>Applicant Injection</u>
	Equipment	\$285,254	\$200,000	\$85,254
	TOTAL:	<u>\$285,254</u>	<u>\$200,000</u>	<u>\$85,254</u>
b.	<u>Source of Funds</u>			
	Applicant Injection (cost share)	\$85,254		
	USDA Grant	\$200,000		
	TOTAL:	\$285,254		

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the borrower may be necessary.

Section I of the attached conditions (Items 1—8) must be satisfied prior to grant closing or before procurement begins, whichever occurs first, in either case not later than six (6) months [non-construction projects] from the date of this letter. **In the event the project has not advanced to the point of procurement within twelve (12) months, USDA Rural Development reserves the right to discontinue the processing of the application.**

The applicant should not make any announcement on being selected for this funding until this selection has been announced by the Agency. If a prior announcement is necessary, approval from the Agency will be obtained.

In addition to the conditions in Sections I-III, the applicant must fully comply with all requirements on Form RD 3570-3, Community Facilities Grant Agreement. The Agency reserves the right to cancel funds if the applicant does not fully comply with all requirements as presented or subsequently modified, as needed.

If you have any questions, feel free to contact this office.

Sincerely,

Roberto E Palomino
Loan Specialist

cc: Lisa Butler, Community Facilities Programs Director, USDA Rural Development
Sally Tripp, Loan Specialist, USDA Rural Development

ATTACHMENT TO LETTER OF CONDITIONS

SECTION I. CONDITIONS TO BE SATISFIED PRIOR TO GRANT CLOSING OR BEFORE PROCUREMENT BEGINS, WHICHEVER OCCURS FIRST

1. Disbursement of Funds

- a. The applicant will provide evidence that funds from other sources will be made available for the project cost in the amount of \$85,254. This evidence should include a copy of the loan/grant award that addresses how funds will be disbursed.
- b. The applicant’s contribution of funds toward the project cost shall be considered the first funds expended except (insert appropriate exceptions if funds from other sources make an exception necessary) and must be deposited in its project account before procurement is started. After providing for all authorized costs, any remaining RHS project funds will be considered RHS grant funds and refunded to RHS.
- c. Agency funds will not be used to pre-finance funds committed to the project from other sources

2. Security Requirements

- a. The applicant will be required to complete and execute Form RD 3570-03, “Community Facilities Grant Agreement” before grant funds are disbursed.
- b. The grantee understands that any property improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 in effect at this time and as may be subsequently modified.
- c. The grantee understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 in effect at this time and as may be subsequently modified.

- 3. Insurance and Bonding Requirements**—The applicant must provide evidence of adequate insurance and fidelity bond coverage by grant closing or start of procurement, whichever occurs first. Adequate coverage, in accordance with USDA Rural Development’s regulations, must then be maintained for the life of the grant. It is the responsibility of the applicant and not that of USDA Rural Development to assure that adequate insurance and fidelity bond coverage is maintained. Applicants are encouraged to review coverage amounts and deductible provisions with their attorney, consulting engineer, and/or insurance provider(s).

-
- a. Property Insurance—Fire and extended coverage will be required on all above-ground structures, including applicant-owned equipment and machinery housed therein. Provide USDA Rural Development with proof of coverage.
 - b. Workers’ Compensation Insurance—The applicant will be required to carry workers’ compensation insurance for all employees in accordance with California law. Provide USDA Rural Development with proof of coverage.
 - c. General liability and vehicular coverage must be maintained—Provide USDA Rural Development with proof of coverage.
4. **Civil Rights & Equal Opportunity**— The grantee has received an award of Federal funding and is required to comply with U.S. statutory and public policy requirements, including but not limited to:
- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), 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 Agency financial assistance. The Standard for compliance is the Architectural Barriers Act Accessibility Standards (ABAAS).
 - b. **Civil Rights Act of 1964** – All recipients are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
 - c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
 - d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
 - e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of

charge. The recipient must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information the recipient provides. These protections are pursuant to Executive Order 13166 entitled, “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005, “Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA.”

- f. **Title IX of the Education Amendments of 1972**—Title IX (20 U.S.C. Â§1681 et seq.) prohibits discrimination on the basis of sex in any Federally funded education program or activity. Title IX applies, with a few specific exceptions, to all aspects of Federally funded education programs or activities. In addition to traditional educational institutions such as colleges, universities, and elementary and secondary schools, Title IX also applies to any education or training program operated by a recipient of Federal financial assistance.

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. The recipient must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor the recipient’s compliance with these requirements during regular compliance reviews.

As a recipient of Rural Development funding, you are required to post a copy of the Non-Discrimination Statement listed below in your office and in include in full, on all materials produced for public information, public education, and public distribution both print and non-print.

Non-Discrimination Statement

“This institution is an equal opportunity provider and employer.”

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

If the material is too small to permit the full statement to be included, the material at a minimum includes the statement in print size no smaller than the text that “This institution is an equal opportunity provider and employer.”

5. **Environmental Reviews**— The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and or permits may apply or be required. During any stage of project development, including construction, should environmental issues develop which require mitigation measures, USDA Rural Development applicants are required to notify USDA Rural Development and comply with such mitigation measures. Failure by an applicant to implement mitigation measures may disqualify the project from Agency funding. Mitigation measures identified or prepared as part of the CEQA and NEPA environmental process must be implemented. If the project or any project element deviates from or is modified from the originally-approved project, additional environmental review may be required.

6. **Procurement Transactions** - All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method. Competitive negotiation, noncompetitive negotiation, design build and methods other than competitive sealed bids must be approved by the National Office prior to contract signing.

7. **Electronic Funds Transfer**—All grant funds will be transferred to grantees via Electronic Funds Transfer/Automated Clearinghouse Systems (EFT/ACH). Normal transfers will be ACH, with money being placed in the grantees account two business days after the USDA processing office approves the pay request. The applicant must submit the Electronic Funds Transfer Form containing the banking (ACH) information to the USDA Servicing Office at least 45 days prior to the date of grant closing. Failure to do so could delay grant closing.

8. **Central Contractor Registration and Universal Identifier Requirements**—You as the recipient must maintain the currency of your information in the Central Contractor Registration (CCR) until you submit the final financial report required under this award and all grants funds under this award have been disbursed or de-obligated, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term. Recipients can register on-line at (<https://www.sam.gov>) You as the recipient may not make a sub-award to an entity unless the entity has provided its Data Universal Numbering System (DUNS) number to you. Sub-recipients with sub-awards of \$25,000 or more must also have and maintain a current CCR registration.

SECTION II. CONDITIONS TO BE SATISFIED DURING PROCUREMENT

1. **Disbursement of Grant Funds**— USDA Rural Development funds will be disbursed as they are needed in the amount(s) necessary to cover the Rural Development proportionate share of obligation due and payable to the Grantee.
2. **Monthly Reporting**— The applicant must monitor and provide a monthly reports to USDA Rural Development on actual performance for each project financed, or to be financed, in whole or in part with USDA Rural Development funds. Form SF-270, “Request for Advance or Reimbursement,” will be submitted with paid invoices.
2. **Final Inspection**—A final inspection will be made by USDA Rural Development on the component USDA is financing before final payment is made.
3. **Excess Funds**—Any remaining funds must be utilized for approved purposes within 60 days following the final inspection or the funds will be canceled without further notification from USDA Rural Development.

SECTION III. - CONDITIONS / PROVISIONS IN THE GRANT AGREEMENT

FORM RD 3570-3

1. **Financial Statements**—To be submitted on an annual basis in accordance with the following:
 - a. An annual audit under the Single Audit Act is required if the recipient expends \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, Subpart F, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of the recipients fiscal year end.
 - b. For local governments and Indian tribes, an audit in accordance with State or local law or regulation or regulatory agency requirements must be submitted when you expend less than \$750,000 in Federal financial assistance per fiscal year. These audits shall be submitted to USDA no later than 150 days after the end of the borrower’s fiscal year.

- c. All borrowers exempt from USDA audit requirements and who do not otherwise have annual audits, will within 60 days following the end of the borrower’s fiscal year furnish USDA with annual financial statements, consisting of a verification of the organization’s balance sheet and statement of income and expenses. The recipient may use Form RD 442-2, “Statement of Budget, Income and Equity,” and 442-3, “Balance Sheet,” or similar format to provide the financial information.
2. **Audit agreement**—If you are required to obtain the services of a licensed Certified Public Accountant (CPA), you must enter into a written audit agreement with the auditor. The audit agreement may include terms and conditions that you and auditor deem appropriate.