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10/25/2005 12:03 PM Deputy: KLJ

OFFICIAL RECORD

Requested By:

D C/COMMUNITY DEVELOPMENT

Douglas County - NV  
Werner Christen - Recorder

Page: 1 Of 17 Fee: 0.00  
BK-1005 PG-11651 RPTT: 0.00



Assessor's Parcel Number: N/A

Date: OCTOBER 25, 2005

Recording Requested By:

✓ Name: LYNDA TEGLIA/COMMUNITY DEVELOPMENT

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Real Property Transfer Tax: \$ N/A

\_\_\_\_\_

GRANT AGREEMENT #2005.217

(Title of Document)

FILED

2005.217

GRANTS FOR WATER CONSERVATION and CAPITAL IMPROVEMENTS

2005 OCT 25 AM 9:31

"08-05-H4a" DOUGLAS COUNTY SHERIDAN ACRES WATER SYSTEM PROJECT

BARBARA REED

CLERK

*[Signature]*

This amended agreement is made and entered into between the State of Nevada, acting by and through its Board for Financing Water Projects (Board), hereinafter referred to as "STATE," and Douglas County hereinafter referred to as "GRANTEE." This Agreement is effective upon the signature of all parties to the Agreement. This Agreement is entered into pursuant to the authority contained in NRS 349.980 through NRS 349.987, inclusive and the 08-05-H4a Douglas County Sheridan Acres Water System Improvement Project Grant Award Resolution that was passed and adopted by the Board on August 4, 2005.

WHEREAS, the STATE will fund and administer this grant-in-aid awarded to the GRANTEE in an amount not to exceed sixty-nine point nine percent (69.9%) of the eligible project costs, or \$1,258,933.56 to assist in the Douglas County Sheridan Acres Water System Improvements Project which has an estimated eligible project cost of \$1,801,049.45 for a 5 year time period during which the STATE will continue to administer the grant as long as the GRANTEE continues to make progress on the project. The minimum Grantee share required for this grant is thirty point one percent (30.1%) of the eligible project costs for a total of \$542,115.89.

A. NOW, THEREFORE, the GRANTEE in undertaking this project agrees to:

1. Duly and faithfully comply with the terms and conditions of this Agreement, all applicable Federal and State laws, to the maximum extent possible the provisions of NAC 349.554 through 349.574, and all directives issued by the

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STATE relating to the performance of this agreement. The GRANTEE is responsible for the administration of this grant, the settlement and satisfaction of all contractual and administrative issues arising out of contracts entered into under the grant. The GRANTEE will act in accordance with sound business judgment, good administrative practice, appropriate cost principles, generally accepted accounting principles and complete, current and accurate cost and pricing data. The GRANTEE may retain an individual or firm to perform these functions for the GRANTEE.

2. At all times during regular business hours and as often as the STATE requires, allow authorized representatives of the STATE full and free access to the project and to the accounts, records, and books of the GRANTEE relative hereto, including the right to make copies from such accounts, records, and books. Such accounts, records and books must be retained for three (3) years after the completion of the project.
3. To the extent authorized by law, the GRANTEE agrees to indemnify and hold the State of Nevada, its agents and employees harmless from all suits, actions and proceedings of every name or description, including reasonable attorney's fees and expenses in defending same, in law or equity, on account of any loss, damage, liability, cost or expense to the person or property of another which was caused by the negligence of the GRANTEE, its officers, employees and agents under this agreement.

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4. Provide, erect and maintain a project sign of a size and format specified, and location approved, by the STATE prior to submittal of the first pay request.
5. Provide the STATE with a periodic progress report, periodic cash flow projection (future grant payment requests), periodic fiscal report, and any pay request in a format prescribed by the STATE, and other documentation as required. A final completion report for the project, or any component project, funded by this grant agreement shall be submitted by the GRANTEE to the STATE within sixty (60) days of final acceptance of the project by the GRANTEE per NAC 349.574.
6. Maintain:
  - a. An accurate record of all cash and in-kind expenditures related to the project. Records must be supported by source documentation. All in-kind services claimed as non-State share must be documented through time cards or records signed by both the employee and project supervisor. The GRANTEE must demonstrate that the in-kind services are not normal functions or ordinary operating expenses of the GRANTEE and more economical than procured services or emergency circumstances dictated their use.
  - b. **A separate account for the project must be set up, if not already existing, so that check numbers along with copies of canceled checks for all expenditures can be submitted as well as an exact**

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**itemization of project expenditures, copies of itemized invoices, and properly documented time sheets**

- c. A dedicated capital replacement projects fund. Appropriate projects include replacement of functionally obsolete and worn out facilities. Funds deposited to this account may not be used for ordinary repairs, maintenance of inventory, tools or other expendables. Similarly, this fund may not be used to construct new facilities where none have previously existed.
7. Notify the STATE immediately in writing of problems, claims made against the GRANTEE or any person or contractor associated with the project, or changes in scope of work, budget, product, and performance. Contract modifications (changes) shall be submitted to the STATE for review and acceptance prior to execution by the GRANTEE. Each proposed contract modification (change) shall include a justification and engineer's estimate and, if appropriate, the contractor's offer and record of negotiation. However, prior STATE acceptance is not required for contract modifications to correct minor errors, minor modifications, or emergency modifications. These modifications, including their cost, must be justified and submitted to the STATE within thirty days. The STATE reserves the right to withhold payment until acceptance of the change.
8. Submit all plans and specifications to the appropriate state agencies having jurisdiction for review and approval prior to solicitation for construction.

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Submit all plans and specifications to the Technical Assistant to the Board for Financing Water Projects prior to solicitation for construction for review for conformance with the grant award. Solicitation for construction shall be based upon plans, specifications and contract documents that the engineer certifies have been subjected to a life-cycle cost analysis, bid ability, contractibility, operability and environmental reviews if required, are 100% complete and a final engineer's estimate of the cost of construction. Review or approval of project plans, specifications and contract documents, including change orders, by or for the STATE is for administrative purposes only and does not relieve the GRANTEE of its responsibility to design, construct, operate and maintain the water conservation project described in the grant application and this agreement. Provide the STATE an invitation with 7 days notice prior to all pre-construction conferences held between the GRANTEE and any contractor.

9. Submit proof to the STATE, prior to construction, that all required permits; easements, rights and approvals have been obtained. Construction shall not commence until the STATE has issued a Notice to Proceed.

B. FURTHER, THEREFORE, the parties to this Agreement acknowledge and will comply with the following general terms:

1. Disbursement of grant funds shall be made upon compliance with the terms of the Agreement, including but not limited to:
  - a. Submission of periodic progress reports following an inspection by the

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- GRANTEE or the GRANTEE'S designated representative certifying that construction work to-date has been completed in accordance with STATE approved plans, specifications and contract documents.
- b. Requests for payment are to be on the form prescribed by the STATE and must be signed by the GRANTEE or the GRANTEE'S designated representative. Such payments shall not exceed the full value of the grant, consistent with the terms and conditions of this agreement.
  - c. Proof of GRANTEE's timely payment of contractor, legal, administrative, supplier, engineering and other costs must be included with each periodic progress report.
  - d. Payments by the STATE are contingent upon the availability of proceeds from the sale of bonds by the STATE for this purpose. The GRANTEE'S costs of interim financing, incurred after the execution of the Funding Agreement, in order to make timely payment of contractor, legal, administrative, supplier, engineering and other costs will be eligible for payment by the STATE. (The costs of interim financing will generally be made out of the project's "contingency" budget item.)
  - e. The making by the STATE of any payment shall not constitute nor be construed as a waiver by the STATE of any breach of covenant, or impair or prejudice any right or remedy at law or equity available to the STATE.
  - f. The STATE shall not be responsible for increased costs due to errors

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and omissions in the preliminary engineering report, grant application, plans, specifications and contract documents; defective specifications; failure to meet the project's performance standards; failure of the GRANTEE to exercise sound business judgment and good administrative practice, including grant and contract management; change orders not accepted by the STATE; and unmeritorious contractor claims.

2. Procurement procedures shall not restrict or eliminate competition, and must be in accordance with the Nevada Revised Statutes and the Nevada State Administrative Code. The STATE is not a party to any contract, solicitation or request for proposals executed by the GRANTEE.
3. Any recipient of state grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts:
  - a. Contracts other than small purchases shall contain provisions or conditions that will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for the termination of the contract and any other such sanctions and penalties as may be appropriate.
  - b. All negotiated contracts (including negotiated contract modifications) except those awarded by small purchases procedures awarded by GRANTEE utilizing state grant funds shall include a provision to the effect that the STATE shall have access to any books, documents,

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papers, and records of the contractor directly pertinent to that specific contract, for the purpose of examination, audit and duplication. The GRANTEE shall require contractors to maintain all required records for three years after GRANTEE makes final agreement with contractors.

4. The STATE may terminate this Agreement for reason of default by the GRANTEE. Any of the following events shall constitute default:
- a. Failure by the GRANTEE to observe any of the covenants, conditions, or warranties of this Agreement and its incorporated provisions;
  - b. Failure by the GRANTEE to make progress on the project;
  - c. Unsatisfactory financial conditions of the GRANTEE which endanger the performance of the grant; and/or
  - d. Delinquency by the GRANTEE in payments to contractors, except for those payments to contractors that are being contested in good faith by the GRANTEE.

The STATE shall give notice to the GRANTEE if the GRANTEE is in default in the performance of any of the duties of the GRANTEE described in this agreement. The GRANTEE shall have 30 days from receipt of notice to remedy the default, and if the GRANTEE cannot remedy the default within such period of time, the STATE may terminate this agreement. The right of the STATE to terminate this agreement shall not impair any other rights or remedies at law or equity the STATE may have against the GRANTEE under this agreement or under the law. No waiver of any default by the

GRANTEE'S INITIALS KOK

GRANTOR under this contract shall be held to be a waiver of any other subsequent default by the GRANTEE. All remedies afforded under this contract are cumulative; this is in addition to every other remedy provided therein or under the law.

5. Upon default by the GRANTEE and subsequent failure to cure, the STATE may withhold further payments and may take the following additional actions as appropriate:
  - a. Terminate all or any part of the balance of the grant.
  - b. Demand immediate repayment of all or part of any payment made to the GRANTEE.
6. If the GRANTEE fails to comply with any of the terms of this Agreement, the STATE shall have the right to file suit, in law or equity. The purpose of the suit shall be to cause the GRANTEE to cure said violation or to obtain the return of funds granted to the GRANTEE by the STATE. Such suit may be brought in the District Court of the county in which the property is located in.
7. An audit of compliance with the grant application and this agreement, including applicable Federal and State laws, to the maximum extent possible to the provisions of NAC 349.554 through 349.574 and directives issued by the STATE relating to the performance of this agreement, is required by the STATE within 365 days of the completion of the capital improvements or water conservation project. Such audit shall be at the expense of the GRANTEE.

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- a. The GRANTEE must submit copies of the audit reports to the STATE along with comments on the findings and recommendations in the audit report, including a plan for corrective action taken or planned and comments on the status of corrective actions taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not necessary should accompany the audit report. The report shall be sent within thirty (30) days after the completion of the audit.
  - b. If the GRANTEE submits in-kind contributions for consideration as matching funds for the grant, an audit of all in-kind costs charged to the project must be provided to the STATE within 180 days of the completion of the project.
8. This funding Agreement shall be construed and interpreted according to the laws of the State of Nevada.
  9. This Agreement, including exhibits attached hereto and made a part hereof, shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
  10. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing, signed by each party or an authorized representative of each party.

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11. Wherever in this agreement it shall be required or permitted that notice be given by either party to the other, such notice must be in writing and must be given personally, or forwarded by certified mail addressed as follows:

Division of Environmental Protection  
Board for Financing Water Projects  
ATTN: Technical Assistant  
333 W. Nye Lane  
Carson City, Nevada 89706

Douglas County Community Development  
Attn: Carl Ruschmeyer  
1594 Esmeralda Avenue  
Minden, NV 89423

12. Upon receipt of engineer's certificate of completion, the STATE shall execute a release only of its rights under the contract to seek repayment of the grant based on default. The release shall specifically state that the GRANTEE has performed the required duties under the contract and the STATE releases its rights to seek repayment of the grant or any portion thereof. The GRANTEE shall at the same time, execute and deliver to the STATE a discharge from all claims or demands growing out of or connected with this contract.

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Sheridan Acres  
08-05-H4a Douglas County Sheridan Acres Water System Project

IN WITNESS the following hereby acknowledge and have read the foregoing agreement. The parties hereto have caused this funding agreement to be signed and intend to be legally bound thereby.

GRANTEE: Kelly D. Rite  
Signature

9/13/05  
DATE

Print: Kelly D. Rite

Attest: Synda K Teglia

9-13-05  
DATE

DEPARTMENT OF CONSERVATION AND  
NATURAL RESOURCES:

Allen Biaggi  
Allen Biaggi  
Director

DATE

10/11/05

Adele Basham  
Adele Basham  
Technical Assistant to the Board  
for Financing Water Projects

10/3/05  
DATE

REVIEWED AS TO FORM ONLY:

Brian Sandoval  
Attorney General

BY:

Bryan L. Stockton  
Bryan L. Stockton  
Deputy Attorney General

28 Sep 2005  
DATE

Attachments

GRANTEE'S INITIALS KDR

**ATTACHMENT A**  
**PROJECT SCOPE AND BUDGET**

**1. SCOPE**

The scope of this project is to install, develop, and equip one new well, construct one new water storage tank, install water meters, and install water treatment for the Sheridan Acres Subdivision.

**2. BUDGET**

ITEM	DESCRIPTION	ELIGIBLE COST	AB 198 GRANT (69.9%)
1	Construction	\$1,279,991.25	\$894,713.88
2	Engineering, Permitting, Construction Inspection, Admin.	\$270,753.36	\$189,256.60
3	Construction Contingency	\$200,304.84	\$140,013.08
4	Land Acquisition	\$50,000.00	\$34,950.00
<b>Total</b>		<b>1,801,049.45</b>	<b>\$1,258,933.56</b>

Requests, with justification, for use of the contingency shall be submitted to the STATE for review and acceptance prior to being encumbered by the GRANTEE. However, prior STATE acceptance is not required for use of the contingency to correct minor errors, minor changes, emergency changes or in order to accept the lowest responsive, responsible offer for construction. These uses must be justified and submitted to the STATE within 30 days.

**SUMMARY OF BUDGET**

**BOARD APPROVED STATE GRANT SHARE**  
 (69.9% OF ELIGIBLE COSTS) ..... \$1,258,933.56  
**GRANTEE SHARE**  
 (30.1% OF ELIGIBLE COSTS) ..... \$542,115.89

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## ATTACHMENT B - CONDITIONS

**The Board for Financing Water Projects hereby approves a grant award for subject to the following provisions and conditions:**

1. The award of grant funds is contingent upon the availability of grant funds, which may be dependent upon the issuance of additional bonds. While the Board will use best efforts in selling any necessary bonds for the funding of this grant, approval of this grant does not imply or guarantee that any monies have been set aside for this project.
2. The State may enter into a funding agreement with the Grantee for the grant funds subject to the following conditions:
  - a. Bond funds sufficient to fund the project are projected to be available. The Grantee's costs of obtaining interim financing and the interest thereon, obtained after the execution of the Funding Agreement, will be eligible for grant reimbursement.
  - b. In order for the financing to be considered committed to the project, the Grantee must show evidence that existing funds or financing have been secured for the portion of this project which is not grant funded.
  - c. Per NRS 445A.920, the project's plans and specifications must be submitted to the Nevada Division of Environmental Protection for review and approval prior to construction.
  - d. An application fee of \$1000 has been paid to the State by the Grantee.
  - e. A water rate that conforms to the Board's "Policy on Reasonable Water Rates & Depreciation," dated March 4, 1998, must be implemented prior to the execution of the project's Funding Agreement to assure that all drinking water users pay for operations, maintenance, debt service and (AB 198/AB 237) depreciation.
  - f. The Grantee must create a dedicated capital replacement projects fund prior to the execution of the Funding Agreement. The Grantee must adhere to the depreciation provisions of the "Policy on Reasonable Water Rates & Depreciation" as adopted by the Board for Financing Water Projects and dated March 4, 1998.

**Funds deposited to this account may be used only for capital replacement projects. Appropriate projects include replacement of functionally obsolete and worn out facilities. Examples of appropriate projects**

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**include: replacement of whole sections of pipeline, valves and fire hydrants; meter replacement; replacement of wells, and storage tanks or pressure regulating facilities. Facilities to be replaced under this fund need not meet the eligibility requirements of the AB 198 or AB 237 grant program.**

**Funds deposited to this account may not be used for ordinary repairs, maintenance of inventory, tools or other expendables. Similarly, this fund may not be used to construct new facilities where none have previously existed. This fund must not be used to extend new lines into areas previously unserved. This fund is not to be used to subsidize the cost of new services or to otherwise reduce the cost of normal operations.**

- g. Provide proof of ownership, easements or agreements, showing that the Grantee holds or can acquire all lands, other than public lands, interest therein and water rights necessary for the construction of the proposed capital improvements prior to the execution of the Funding Agreement.
- h. Demonstrate the receipt of all permits, easements and rights-of-way necessary to complete the project, or the authority to proceed, prior to the execution of the Funding Agreement as required by NAC 349.500(d) and 349.515, to assure that there are no foreseeable conditions threatening the feasibility of the proposed capital improvement.
- i. The Grantee is subject to the provisions of NAC 349.554 through 349.574 regarding the administration of this grant.
- j. Prior to the execution of the Funding Agreement, the Grantee must provide an estimate of the monthly disbursement of money, by the State, pursuant to the grant and provide monthly updates.
- k. Prior to the execution of the Funding Agreement, the Grantee must provide copies of the current documents prepared by or on behalf of the applicant pursuant to NRS 350.0035, which depict the effect of the proposed capital improvement on the financial capacity of the grantee as required by NAC 349.500 1. (n).
- l. Prior to the execution of the Funding Agreement, a Water Conservation Plan must be approved by the Division of Water Resources and adopted by the Grantee in accordance with NRS 540.131, .141 and .151.
- m. If a grant is awarded to Douglas County for Sheridan Acres, Douglas County must submit monthly progress reports to the Engineer to the Board for

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Financing Water Projects, starting when the Funding Agreement is signed. (per NAC 349.2)

- n. If a grant is awarded to Douglas County for Sheridan Acres, Douglas County must submit quarterly financial reports to the Engineer to the Board for Financing Water Projects, starting when the Funding Agreement is signed. (per NAC 349.3)
- o. Prior to submitting the last request for payment Douglas County shall submit to the Division the following per NAC 349.574
  - 1. A final engineering report that includes a certificate of completion executed by the engineer that indicates that the capital improvement project was completed in accordance with the funding agreement and that the capital improvement has been tested and satisfies the objectives for which it was designed and performs the functions for which it was intended.
  - 2. As built drawings of the capital improvement project.
- p. Douglas County must submit a copy of their annual audited financial statement with the depreciation account clearly indicated at the completion of the project.
- q. Douglas County must submit a request for payment at least once every six months.
- r. When submitting a "request for payment" to the Division, Douglas County shall indicate which payment category (construction, engineering, or contingency) each charge is to be charged to. Contingency funds may be used only with written permission from the Division.

**SEAL**

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: October 25 2005

B. Reed Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas.

By Christine M. Hulse Deputy

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