

Agenda Item: 7.

Memorandum

To: Programs, Projects, and Operations Subcommittee
From: Brian L. Henkel, Groundwater Management Engineer
Date: February 07, 2014
Re: Review and Recommendation on the Intergovernmental Agreement Between the District and the Nebraska Department of Environmental Quality

The Nebraska Department of Environmental Quality (NDEQ) was awarded a grant from the US Environmental Protection Agency for the installation of groundwater quality monitoring wells. District staff coordinated with NDEQ to get five monitor well locations constructed for the District to expand its groundwater quality monitoring network. As part of the monitor well installation, the District will be responsible for purchasing and installing sampling pumps in three wells and the purchase of one pump controller. The cost of the purchase and installation will be reimbursed by NDEQ from grant funds in an amount not to exceed \$10,892. The included intergovernmental agreement provides the details of the arrangement between the District and NDEQ.

Management recommends that the Subcommittee recommend to the Board of Directors that the proposed Intergovernmental Agreement for pumping equipment for water quality monitoring wells, in a not exceed amount of \$10,892, be adopted by the Board subject to changes deemed necessary by the General Manager and approval as to form by District legal counsel.

INTERGOVERNMENTAL AGREEMENT
Between the
Nebraska Department of Environmental Quality
and the
Papio-Missouri River Natural Resources District
Regarding the implementation of the monitoring project:

Pumping Equipment for Water Quality Monitoring Wells

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into by and between the Nebraska Department of Environmental Quality (NDEQ) and the Papio-Missouri River Natural Resources District (P-MRNRD).

WHEREAS, the P-MRNRD and NDEQ agree to utilize funds which have been made available to NDEQ from the Region VII Office of the U.S. Environmental Protection Agency (EPA); and

WHEREAS, grant funds in an amount not to exceed **\$10,892 (Ten Thousand Eight Hundred Ninety-Two Dollars)**.

NOW, THEREFORE, the parties do hereby agree to the terms and conditions of this Agreement as follows:

I. TERM OF AGREEMENT

This Agreement will be in effect from February 1, 2014 until August 31, 2014, unless terminated under §IV-A-11 of this AGREEMENT or extended by amendment.

II. CONDITIONS OF AGREEMENT

A. Scope of Work

Funds shall only be used for the purchase of pumps, generators, pump controls, and associated tubing/wiring. The P-MRNRD agrees to purchase at least three (3) pumps, one (1) pump control and associated tubing/wiring for groundwater monitoring wells.

B. General Conditions

1. The P-MRNRD shall install all pumps and tubing into dedicated monitoring wells by August 31, 2014.

2. All equipment purchased under this contract shall have an expected useful life of at least ten (10) years.
3. The P-MRNRD agrees to perform all maintenance and repairs of the equipment purchased with this contract.
4. The P-MRNRD agrees to sample each well at least annually for ten (10) years following appropriate quality assurance and standard operating procedures. The P-MRNRD agrees to provide the water quality data to the Quality-Assessed Agrichemical Contaminant Database for Nebraska Ground Water within 60 days of receipt of sample results.
5. No later than August 31, 2014, the P-MRNRD agrees to report to NDEQ(?) the amount of non-federal match dollars spent on installation or other costs associated with this agreement.

III. FINANCIAL REQUIREMENTS

A. Statement of Costs

Final payment to P-MRNRD will be made upon receipt of a statement of costs from the P-MRNRD. This payment is subject to receipt of all required reports.

B. Disbursements

1. All requests for reimbursement of costs incurred by the P-MRNRD shall be reviewed pursuant to the provisions of the Nebraska Prompt Payment Act.
2. The total amount of final payment under this Agreement shall not exceed **\$10,892 (Ten Thousand Eight Hundred Ninety-Two Dollars)**.
3. P-MRNRD shall provide vendor invoices with any reimbursement requests showing the actual purchase cost of the equipment procured under this contract.
4. Payment will be contingent on required reports provided to NDEQ including annual MBE/WBE reports being current.

IV. REQUIREMENTS

A. State Requirements

The following grant conditions shall be complied with by all recipients of federal grant funds.

1. Amendments

This agreement may be amended in writing at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law or requirements of the EPA or NDEQ.

2. Forfeiture, Repayment and Delays in Disbursement of Funds

NDEQ may recover from the P-MRNRD any costs, which result from violation of any of the conditions of this Agreement by the P-MRNRD, including any amendments thereto which have been properly approved.

3. Remedies Not Exclusive

The use by either the P-MRNRD or the NDEQ of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party from using such remedy, or limit the application of any other remedy provided by law.

4. Hold Harmless

The P-MRNRD agrees to hold NDEQ harmless for loss or damage sustained by any person as a direct result of the negligent or willful acts by the P-MRNRD, its employees, subcontractors, or agents in the performance of this agreement including all associated costs of any defending action.

5. Assignment

No assignment or transfer of this agreement or any part hereof, rights hereunder, or interest herein by the P-MRNRD shall be valid unless and until it is approved by the NDEQ and made subject to such reasonable terms and conditions as the NDEQ may impose.

6. Waiver of Rights

The P-MRNRD or NDEQ may from time to time waive any of their rights under this Agreement. However, any waiver of rights with respect to a default of any condition of this Agreement shall not be deemed to be a waiver with respect to any other default.

7. Inspection of Books, Records and Reports

The duly authorized representatives of both parties shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement or related matters during regular office hours. Each party shall maintain and make available for such inspection accurate records of all its costs, disbursements and receipts with respect to its activities under this Agreement. A single audit is required (OMB A133) if \$500,000 or more is provided by the federal funding in any one year period. Verification of completion of the single audit report shall be sent to NDEQ.

8. Independent Contractor

The P-MRNRD is and shall perform this Agreement as an independent contractor and as such shall have and maintain exclusive control over all of its employees, agents and operations. Neither the P-MRNRD nor any person employed by the P-MRNRD shall act, propose to act or be deemed the NDEQ's agent, representative or employee. The P-MRNRD assumes full and exclusive responsibility for the payment of all premiums, contributions, payroll taxes and other taxes now or hereafter required by any law or regulation and agrees to comply with all applicable laws, regulations and orders relating to social security, unemployment compensation, OSHA, affirmative action, equal employment opportunity and other laws, regulations and orders of like nature. For any work hereunder subject to the Veterans Readjustment Assistance Act of 1974, or the Rehabilitation Act of 1973, the parties hereto shall comply with all provisions thereof, together with all applicable rules, regulations and orders of the Department of Labor, and the notices required pursuant to 41 CFR 60-1.4, 60-250.4 and 60-741.4 which are hereby incorporated by reference into this Agreement.

9. Nondiscrimination

The Nebraska Fair Employment Practice Act prohibits contractors to the State of Nebraska and their subcontractors from discriminating against any employee, or applicant for employment in the performance of such contracts, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color,

religion, sex, disability or national origin. The P-MRNRD's signature hereon is a guarantee of compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The P-MRNRD shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.

10. Drug Free Workplace

The P-MRNRD, by executing this Agreement, certifies and assures that it operates a drug free workplace as addressed in the State of Nebraska Drug Free Workplace Policy of July 7, 1989.

11. Publication Rights

All parties shall have publication and reproduction rights for all reports and materials that are produced as a result of this Agreement.

12. Termination

This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

1. Not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and
2. An opportunity for consultation with the terminating party prior to termination.

13. New Employee Work Eligibility Status

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work

eligibility status of a newly hired employee. If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108

B. Federal Requirements

1. All recipients of federal grant funds shall comply with the following grant conditions. The P-MRNRD agrees to comply with all the following provisions, rules, and regulations copies of which may be obtained from NDEQ:
 1. Office of Management and Budget Circulars A-102, A-133, A-87 and 40 CFR Parts 31, 32, and 35 as they apply.
 2. Procurement standards of 40 CFR 31.32(g).
 3. Prohibitive lobbying 18 U.S.C. Section 1913, Section 607(a) of Public Law 96.74, or Section 319 of Public Law 101-121.
 4. Federal Register, Vol. 53, No. 102, Debarment and Suspension Under EPA, Assistance Loan and Benefit Programs.
 5. Rules governing "Fair Share" of federal funds to Minority Business Enterprises (MBEs), Women-Owned Business Enterprises (WBEs), Small Business Enterprises (SBEs), Small Disadvantaged Businesses (SDBs), and Small

Business in Rural Areas (SBRAs). Affirmative steps outlined in 40 CFR 30.44, or 40 CFR 33.240, or 40 CFR 35.6580, or Section 129 of Public Law 100-590, whichever is applicable. The Sponsor agrees to include in its bid specifications, and require all of its prime contractors to include in their bid specifications for subcontracts, a "Fair Share". The Sponsor agrees to document the official grant files with all efforts taken to achieve the "Fair Share" and to report annually to NDEQ all "Fair Share" procurement efforts regardless of the size of the sub-agreement.

6. Section 204 of the Demonstration Cities and Metropolitan Development Act of 1996 as amended (42 USC Section 3334).
7. Provisions of the American with Disabilities Act.
8. Hotel and Motel Fire Safety Act of 1990.
9. USEPA Order 1000.25 regulating the use of recycled paper.

2. Trafficking Victim Protection

Prohibition Statement-- You as the recipient, your employees, subrecipient under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

V. Project Managers

The Project Manager for each party to this agreement shall be as follows. The Project Manager may be changed by any agency upon written notification.

NDEQ
Jon Kenning PhD
Supervisor
Water Quality Assessment Section
402-471-4227
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P-MRNRD
Brian Henkel
Groundwater Management Engineer
Papio-Missouri River NRD
402- 444-6222
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VI. SIGNATURE PAGE

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: Thomas R. Lamberson

TITLE: Deputy Director

_____ DATE: _____

PAPIO-MISSOURI RIVER NATURAL RESOURCE DISTRICT

BY: John Winkler

TITLE: General Manager

_____ DATE: _____

FEDERAL TAX ID NUMBER: 47-0542469