

# HEBER PUBLIC UTILITY DISTRICT

## REPORT TO BOARD OF DIRECTORS

**MEETING DATE:** September 21, 2017

**FROM:** Laura Fischer, General Manager

**SUBJECT:** Adopt Resolution Number 2017-10 Accepting Imperial County Community Benefit Program Funds Approving Grant Agreement and Authorizing the General Manager to Execute Agreement.

**ISSUE:**

Shall the Heber Public Utility District Board of Directors Adopt Resolution Number 2017-10 Accepting Imperial County Community Benefit Program Funds Approving Grant Agreement and Authorizing the General Manager to Execute Agreement?

**GENERAL MANAGER RECOMMENDATION:**

Adopt Resolution Number 2017-10 Accepting Imperial County Community Benefit Program Funds Approving Grant Agreement and Authorizing the General Manager to Execute Agreement.

**FISCAL IMPACT:**

\$10,000 grant funds to be used toward the construction of Athletic Field Lights at Margarito "Tito" Huerta Park.

**BACKGROUND:**

The Heber Public Utility District application to the County of Imperial Community Benefit Program was submitted on April 8<sup>th</sup>. The County Board of Supervisors approved partial funding of our request at their meeting on June 29, 2016. We applied for \$200,000 to construct athletic field lights at Tito Park. We were awarded \$10,000, which is 4% of the estimated project costs.

The County of Imperial submitted a checklist of items that must be submitted in order for the HPUD to secure the grant funds. I have attached this checklist to the report. They also require that we enter into a Grant Agreement.

**CONCLUSION:**

In order to be eligible to receive the \$10,000 grant from the County Community Benefit Program, the HPUD must enter into the Grant Agreement and provide the documents included on the checklist.

Staff recommends approving Resolution Number 2017-10 as presented.

Respectfully Submitted,

Laura Fischer, General Manager  
Attachment: Grant Agreement  
Resolution 2017-10

RESOLUTION NO. 2017-10

RESOLUTION APPROVING A GRANT AGREEMENT WITH THE IMPERIAL COUNTY COMMUNITY BENEFIT PROGRAM AND AUTHORIZING THE GENERAL MANAGER TO SIGN ON BEHALF OF THE HEBER PUBLIC UTILITY DISTRICT

WHEREAS, the Heber Public Utility District applied to the County of Imperial Community Benefit Program for funding to construct athletic field lights at Margarito “Tito” Huerta, Jr. Park; and

WHEREAS, the County of Imperial Board of Supervisors approved Community Benefit Program Funding in the amount of \$10,000 to be used toward the construction of athletic field lights at Margarito “Tito” Huerta, Jr. Park; and

WHEREAS, the Heber Public Utility District accepts the Community Benefit Program Funding; and

WHEREAS, Heber Public Utility District and the County of Imperial desire to enter into a Grant Agreement, a copy of which is attached hereto and made a part hereof; and

NOW, THEREFORE, HEBER PUBLIC UTILITY DISTRICT RESOLVES THAT:

1. The Heber Public Utility District accepts the Grant Funds from the County of Imperial Community Benefit Program in the amount of \$10,000.
2. Consent is given to enter into the Grant Agreement as attached and described therein as Exhibit A.
3. The General Manager is authorized to execute the Grant Agreement and other documents as may be needed to meet the terms and conditions of the Agreement.

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Heber Public Utility District held on the 21<sup>st</sup> day of September, 2017.

AYES:

NOES:

ABSENT:

**HEBER PUBLIC UTILITY DISTRICT**

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Diahna Garcia-Ruiz, Board President

**APPROVED AS TO FORM:**

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Steven M. Walker, General Counsel

**ATTEST:**

I, Raquel R. Carrillo, Secretary to 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 21<sup>st</sup> day of September, 2017.

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Raquel Carrillo, Secretary of the Heber Public Utility District Board

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- (b) Work performed prior to the effective date of this Agreement or after **December 30, 2017**, shall **not** be funded. All awarded Grant funds shall be requested from County no later than **December 15, 2017**. Grant funds awarded under this Agreement shall not be expended after the termination date of this Agreement. It is the responsibility of the Grantee to monitor the Project and timeliness of draws within the specified dates. Disbursement and administration of the Grant funds shall be according to the provisions outlined in Section 3.2.
- (c) Grantee shall take all necessary actions and pay such necessary expenses for completion of the Project specified in **Exhibit A** in accordance with the schedule for completion set forth therein and the terms and conditions of this Agreement.

**Article III.  
Budget Detail and Payment Provisions**

**Section 3.1. Allowable Use of Grant Funds.**

- (a) Grant funds shall be used **exclusively** for the Project approved by County, which has been determined by the County to further a public purpose and to meet the Goals and Objectives of the Community Benefit Program.
- (b) Incidental expenses shall **not** be paid using Grant funds unless they are **directly** related to the construction or acquisition of an eligible capital asset. Such expenses shall include, but are not limited to costs associated with planning, engineering, construction management, environmental impact reports, appraisals, site acquisitions, or necessary easements.
- (c) Grant funds shall **not** be expended for administrative costs of persons directly employed by the Grantee or for other "soft" costs not **directly** related to the construction, rehabilitation, or acquisition of capital assets.

**Section 3.2. Disbursement of Grant Funds.**

- (a) Prior to disbursement of Grant funds, the Grantee shall, except as the Parties may otherwise agree in writing, furnish to County, an acceptable resolution from Grantee's governing body authorizing the exact Grant award amount encumbered by this Agreement.
- (b) The Grantee shall make any and all request(s) for disbursement no earlier than ninety (90) calendar days from the anticipated need for the funds, using the forms provided by the County, copies of which are attached hereto as **Exhibit B** and are also available at the County Executive Office located at 940 Main Street, Suite 208, El Centro, California 92243. The Grantee shall expend Grant funds within ninety (90) calendar days from the date of receipt from County, or by the termination date of this Agreement, whichever occurs first, and provide County with subsequent supporting documentation.
- (c) Failure to expend Grant funds in a timely manner may affect future funding.
- (d) Grantee shall deposit Grant funds in a separate, segregated, interest bearing checking or savings account, in an institution whose deposits are insured by the federal or state government. Any interest earned from the deposit of Grant funds shall **only** be used for allowable Project purposes, and shall be accounted for and reported to the County. All Grant funds not expended within ninety (90) calendar days of receipt, or by the termination date of this Agreement, as applicable, shall be returned to County with accrued interest.
- (e) The Grantee shall make a good faith effort to minimize the number of disbursement requests to the County by anticipating costs and requesting in advance the maximum amount of Grant funds that can be expended within the ninety (90) calendar day time frame.

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- (f) The Grantee shall inform the County within a reasonable amount of time in the event that Project expenditures are less than the total amount of Grant funds awarded. The Grantee may expend the balance of Grant funds on additional capital assets projects, upon prior written approval of County. Grantee shall provide the County with a letter of request that describes any additional project(s) to be funded.
- (g) The Grantee shall inform the County, no later than **September 30, 2017**, if the Grantee anticipates it will not be able to expend all Grant funds by the termination date of this Agreement.
- (h) The Grantee is responsible for maintaining records which fully disclose the activities funded by the Grant. Detailed documentation of each transaction shall be maintained to allow for the determination, through an audit if requested by the County, of the accuracy of the records and the allowability of expenditures charged to Grant funds. If the allowability of expenditure cannot be determined because records or documentation are inadequate, the expenditure may be disallowed, and the County shall determine the reimbursement method for the amount disallowed. Any determination of the allowability of an expense shall be final and at County's discretion.
- (i) Any unexpended Grant funds remaining as of the termination date of this Agreement must be returned to the County with accrued interest. Checks shall be made payable to the County of Imperial and shall be mailed to the County Contract Coordinator no later than **January 1, 2018**.
- (j) The Grantee shall comply with Conflict, Equal Employment Opportunity, and Labor Requirements set forth in **Exhibit C**.

**Article IV.  
General Terms and Conditions**

**Section 4.1. Termination.**

- (a) Grantee acknowledges that County may immediately suspend or terminate this Agreement without cause by giving written notice to Grantee. County may terminate this Agreement at any time for violation of any federal, state, or local laws, rules, regulations, policies, or procedures, or for breach of any terms or conditions contained in this Agreement, or any unapproved deviation from the Grant Application.
- (b) In the event that this Agreement is terminated by County, Grantee shall be responsible for returning any unexpended Grant funds, including any accrued interest, as of the date of termination.

**Section 4.2. Indemnity.**

To the greatest extent permitted by law, Grantee agrees to indemnify, defend, protect and hold harmless County and its representatives, officers, directors, designees, employees, successors and assigns from and against any and all claims, actions, demands, liabilities, damages, losses, and expenses of whatever kind, accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the Project, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by Grantee in the performance of any activities related to the Project, even though such claims may be groundless, false, or fraudulent, by any willful misconduct or negligence, whether active or passive of Grantee, or anyone acting under its direction in connection with or incident to the Grant funding provided hereunder.

**Section 4.3. Reporting Requirements.**

During the term of this Agreement, the Grantee shall submit the following reports by the deadlines specified, or as otherwise required at the discretion of the County:

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- (a) Upon execution of the Agreement by both Parties, Grantee shall submit quarterly progress reports, on forms provided by County, every ninety (90) calendar days throughout the term of this Agreement, until all Grant funds have been expended. Copies of said forms are attached hereto as **Exhibit D**. The Quarterly Report shall contain: (1) the progress the Grantee has made in completing the approved Project, including a description of the public purpose and community benefit; (2) the amount of Grant funds drawn and expended to date; and (3) a description of the work completed.
- (b) Upon complete expenditure of the Grant funds, the Grantee shall submit a final report in a manner satisfactory to the County ("Final Report"). The Final Report shall be submitted to the County by **January 30, 2018** or within sixty (60) calendar days of the termination of this Agreement, whichever occurs first. The Final Report shall contain: (1) a description of the final capital assets constructed or purchased with the Grant funds; or (2) a description of all services provided under the terms of this Agreement. The Grantee shall use the forms provided by the County Contract Coordinator, copies of which are attached hereto as **Exhibit E**.

Section 4.4. Point of Contact.

All notices, reports, or other communication shall be in writing and shall be given by first class mail addressed as follows, or at such other address or to such person the parties may from time to time designate in writing:

COUNTY

Contract Coordinator:  
 Rosa C. Lopez-Solis  
 County Executive Office  
 940 Main Street, Suite 208  
 El Centro, CA 92243  
 (442) 265-1001  
 rosalopez@co.imperial.ca.us

GRANTEE

Contact Person:  
 Laura Fischer  
 Heber Public Utility District  
 1078 Dogwood Road, Suite 103  
 Heber, CA 92249  
 (760) 482-2440  
 lfischer@heber.ca.gov

Section 4.5. Audit/Retention and Inspection of Records.

- (a) Grantee agrees that the County or its designee will have the right to review, obtain, and copy all records pertaining to performance of this Agreement. Grantee agrees to provide the County or its designee with any relevant information requested and shall permit the County or its designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with the California Public Contract Code Section 10115 et seq., the California Government Code Section 8546.7 and Title 2, California Code of Regulations, Section 1896.60 et seq. Grantee further agrees to maintain such records for a period of three (3) years after final payment under this Agreement. Grantee shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in the California Public Contract Code Section 10115.10.
- (b) Grantee shall maintain Project accounts in accordance with generally accepted accounting principles. Grantee shall comply with the following conditions:
  - (1) Establish an official file for the Project, which shall adequately document all significant actions relative to the Project;
  - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all Grant funds received under this Agreement;

- (3) Establish separate accounts that will adequately depict all income received that is attributable to the Project, including but not limited to any income attributable to Grant funds disbursed under this Agreement; and
- (4) Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs.

#### Section 4.6. General Terms.

- (a) Authority. Grantee represents and warrants that the individual who executes this Agreement is duly authorized to do so by Grantee. Grantee warrants that it will possess all the necessary licenses and/or permits required in order to carry out the purposes of this Agreement.
- (b) Amendment. This Agreement may only be amended in writing by mutual agreement of the Parties and executed by County and Grantee. In no case shall Grantee materially alter the scope of the Project set forth in **Exhibit A**. The County reserves the right to add any special conditions to this Agreement it deems necessary to assure that the goals and objectives of the Community Benefit Program are achieved.
- (c) Limitation of Liability. In no event shall County be liable for any indirect, special, incidental or consequential damages or expenses for any negligence caused by Grantee, breach of contract or any other act arising out of or relating to this Agreement or the activities covered herein.
- (d) Attorneys' Fees. If either Party brings an action in a court of competent jurisdiction to enforce the terms of this Agreement, or declare rights hereunder, the prevailing Party in any such action shall be entitled to its reasonable attorneys' fees and court costs, which shall be paid by the losing Party as determined by the court.
- (e) Assignment. Grantee shall not assign or transfer any interest in this Agreement or in the Grant funds, either in whole or in part, without prior written consent of the County.
- (f) No Third-Party Rights. County and Grantee do not intend to create any rights or remedies for any third-party as a beneficiary of the Grant funds or the Project. There is no third-party beneficiary to this Agreement.
- (g) Severability. If any part of this Agreement is held to be invalid or unenforceable, the remaining parts of the Agreement shall continue to be valid and enforceable.
- (h) Governing Law. This Agreement shall be construed and the rights and obligations of the Parties shall be determined in accordance with the laws of the State of California. Any action arising out of this Agreement shall be heard in a court of competent jurisdiction within the County of Imperial, California.
- (i) Licensed Professionals. Grantee agrees that only licensed professionals will be used to perform services that are funded, in whole or in part, through Grant funds awarded under this Agreement.
- (j) Related Litigation. Under no circumstances may Grantee utilize Grant funds from any disbursement under this Agreement to pay for costs associated with any litigation between Grantee and the County.
- (k) Waiver. The waiver by either Party to this Agreement of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law, shall not be deemed to be a continuing waiver of such term, covenant, condition, or law, or of any subsequent breach of violation of the same, or of any other term, covenant, or ordinance of law.
- (l) Provision Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be read and enforced as though it were included herein.

If through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon application of either Party, this Agreement shall forthwith be physically amended to make such insertion or correction.

- (m) Grant Agreement Integrated. This Agreement represents the entire and integrated Agreement between the Parties and supersedes any and all other negotiations, representations, and/or agreements, either oral or in writing, between the Parties hereto with respect to the award of Grant funds and/or the Project. No other agreement, statement, or promise relating to the subject matter of this Agreement, which is not contained herein, shall be valid or binding. County and Grantee agree that the contents of the Guidelines and the Grantee's Application shall be incorporated herein by reference with the understanding that the terms and conditions of this Agreement take precedence over any conflicting provision in the Guidelines and Grantee's Application.

**IN WITNESS WHEREOF**, the County and Grantee have caused this Agreement to be executed as of the date first written above.

**COUNTY OF IMPERIAL**

**HEBER PUBLIC UTILITY DISTRICT**

By: \_\_\_\_\_  
Robin Hodgkin,  
Interim County Executive Officer

By: \_\_\_\_\_  
Diahna Garcia-Ruiz,  
Board President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

Katherine Turner,  
County Counsel

By: \_\_\_\_\_  
Raquel Young,  
Deputy County Counsel

Date: \_\_\_\_\_