

The Law Office of
BRENDON D. MILLER

First National Bank Building
1128 Main Street
Jackson, Kentucky 41339
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October 18, 2006

Ms. Beth O'Donnell
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602

RECEIVED

OCT 19 2006

PUBLIC SERVICE
COMMISSION

RE: Breathitt County Water District
Case No. 2006=00437

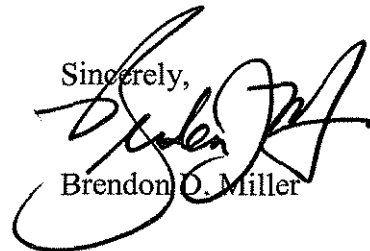
Dear Ms. O'Donnell:

Enclosed please find the original and ten (10) copies of the Application of the Breathitt County Water District for a Certificate of Public Convenience and Necessity to construct and finance pursuant to KRS 278.023(2).

Also enclosed are eleven (11) copies of the exhibits required pursuant to 807 KAR 5.069.

If you need any additional information or documentation, please let us know.

Sincerely,



Brendon D. Miller

Enclosures
CC: Distribution List

DISTRIBUTION LIST

Case No. 2006-00437

Re: Breathitt County Water District Application

Project Administrator

Mr. Bryan Kirby

WJL/CEDA

P.O. Box 855

Richmond, Kentucky 40476

Telephone: (859) 624-3396

Fax: (859) 624-3396

District Officials

Mr. John L. Smith, Chairperson

Mr. Shannon Moore, Manager

Breathitt County Water District

1137 Main Street

Jackson, Kentucky 41339

Telephone: (606) 666-3800

Fax: (606) 666-2860

Engineer

Mr. Ora C. Main, PE

Nesbitt Engineering, Inc.

227 North Upper Street

Lexington, Kentucky 40507

Telephone: (859) 233-3111

Fax: (859) 259-2717

Local Counsel

Hon. Brendon D. Miller

Breathitt county Attorney

1137 Main Street

Jackson, Kentucky 41339

Telephone: (859) 666-3800

Fax: (859) 666-3817

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2006-00437

RECEIVED

OCT 19 2006

In the Matter of:

THE APPLICATION OF THE BREATHITT COUNTY WATER DISTRICT OF
BREATHITT COUNTY, KENTUCKY, FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO CONSTRUCT AND FINANCE,
PURSUANT TO KRS 278.023(2).

PUBLIC SERVICE
COMMISSION

APPLICATION

This Application of the Breathitt County Water District ("Applicant") of Breathitt County, Kentucky, respectfully shows:

1. That the Applicant is a water district of Breathitt County, Kentucky, created and existing under and by virtue of Chapter 74 of the Kentucky Revised Statutes.
2. That the post office address of the Applicant is:
Breathitt County Water District
1137 Main Street
Jackson, Kentucky 41339
3. That Applicant pursuant to the provisions of KRS 278.020 and 278.023, seeks (i) a Certificate of Public Convenience and Necessity, permitting Applicant to construct a waterworks construction project, consisting of extensions, additions, and improvements (the "Project") to the existing waterworks system of Applicant; and (ii) approval of the proposed plan of financing said project.
4. That the KY 541 & KY 205 project consists of the construction and installation of approximately 52,000 linear feet of 8 inch water line; 10,700 feet of 6 inch water line; 7,000 linear feet of 4 inch water line; and 1,100 linear feet of 3 inch water line and appurtenances.
5. That Applicant proposes to finance the construction of the Project through (i) a Kentucky Coal Bond Fund (06-07) Grant; (ii) a Coal Severance Single County Grant (carry over); and (iii) a U.S. Housing and Urban Development Community Development Block Grant (carry over). Applicant has a commitment from CDBG for funds that will be used on this project filed herewith as an exhibit.
6. That Applicant does not contemplate having the project constructed with any deviation from minimum construction standards of this Public Service Commission.
7. That Applicant files herewith the following Exhibits pursuant to 807 KAR 5:069 in support of this Application:

- A. Copy of CDBG Grant Agreement attached as Appendix "A-2" of the Final Engineering Report.
- B. Copy of Engineer's Concurrence in Bid Award attached as Appendix "C" of Final Engineering Report.
- C. Copy of Preliminary Engineering Report Amended to the Final Engineering Report, based on bids received on September 19, 2006.
- D. Certified statement from the Chairperson of the Applicant, based upon statements of the Engineers for Applicant, concerning the following:
 - (1) The proposed plans and specifications for the Project have been designated to meet the minimum construction and operating requirements set out in 807 KAR 5:066, Section 4(3) and (4); Section 5 (1); Sections 6 and 7; Section 8 (1) through (3); Section 9 (1) and Section 10, attached as Appendix "E" of the Final Engineering Report.
 - (2) All other state approvals have already been obtained, including the approval of the Kentucky Division of Water, attached as Appendix "D" of the Final Engineering Report.
 - (3) The Existing rates of Applicant shall produce the total revenue requirements set out in the engineering reports, therefore no rate increase is necessary, and
 - (4) Setting out the date of November 2006 when it is anticipated that construction will begin and June 2007 when it is anticipated to end.

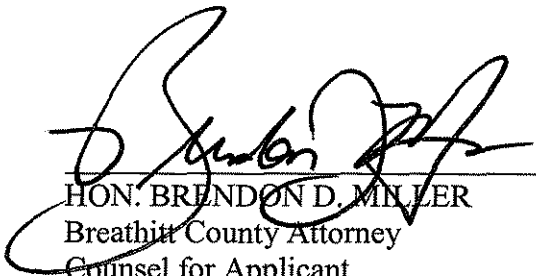
8. That the foregoing constitutes the documents necessary to obtain the approval of the Kentucky Public Service Commission in accordance with Section 278.023 of the Kentucky Revised Statutes and in accordance with the "Filing Requirements" specified in 807 KAR 5:609, Section 1.

WHEREFORE, Applicant the Breathitt County Water District asks that the Public Service Commission of the Commonwealth of Kentucky grant to Applicant the following:

- a. A Certificate of Public Convenience and Necessity permitting Applicant to construct a waterworks project consisting of extensions, additions, and improvements to the existing waterworks system of Applicant.
- b. An Order approving the financing arrangements made by Applicant , viz. through (i) a Kentucky Coal Bond Fund (06-07) Grant; (ii) a Coal Severance Single County Grant (carry over); and (iii) a U.S. Housing and Urban Development Community Development Block Grant (carry over).

BREATHITT COUNTY WATER DISTRICT

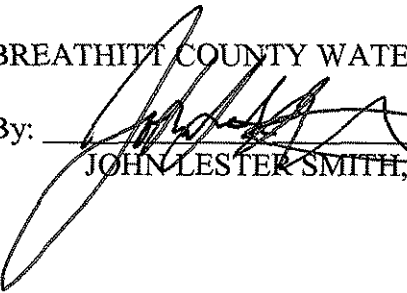
By:  _____
JOHN LESTER SMITH, Chairperson


HON. BRENDON D. MILLER
Breathitt County Attorney
Counsel for Applicant
1137 Main Street
Jackson, Kentucky 41339
(606) 666-3800 ext. 234

VERIFICATION


The undersigned, JOHN LESTER SMITH, being duly sworn, deposes and states that he is the Chairperson of the Board of Commissioners of the Breathitt County Water District, Applicant, in the above proceedings; that he has read the foregoing Application and has noted the contents thereof; that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, he believes same to be true.

IN TESTIMONY WHEREOF, witness the signature of the undersigned on this the 18th day of October, 2006

BREATHITT COUNTY WATER DISTRICT
By: 
JOHN LESTER SMITH, Chairperson

COMMONWEALTH OF KENTUCKY
COUNTY OF BREATHITT

The foregoing was subscribed and sworn to before me by John Lester Smith, Chairperson of the Board of Commissioners of the Breathitt County Water District, on this the 18th day of October, 2006.


NOTARY PUBLIC
Commission Expires: 11-19-09

CERTIFICATE OF CHAIRPERSON OF BREATHITT COUNTY
WATER DISTRICT, AS TO STATEMENT REQUIRED BY
SECTION 1 (5) OF 807 KAR 5:069

I, JOHN LESTER SMITH, hereby certify that I am the duly qualified and acting Chairperson of the Breathitt County Water District, and that said District is in the process of arranging to finance the construction of extensions, additions and improvements to the existing waterworks system of the District (the "Project"), in cooperation with Nesbitt Engineering, Inc., Lexington, Kentucky, the Engineers for the District (the "Engineers").

Based on information furnished to me by said Engineers for the District, I hereby certify as follows:

1. The proposed plans and specifications for the Project have been designated to meet the minimum construction and operating requirements set out in 807 KAR 5:066, Section 4 (3) and (4); Section 5 (1); Sections 6 and 7; Section 8 (1) through (3); Section 9 (1) and Section 10 as contained in Appendix "E" of the Final Engineering Report.
2. All other state approvals have already been obtained, including the approval of the Kentucky Division of Water, attached as Appendix "D" of the Final Engineering Report.
3. The Existing rates of the District filed with the Public Service Commission of Kentucky are contemplated to produce total revenue requirements set out in the Engineering Reports, prepared by the Engineers and filed with the Public Service Commission.
4. That it is now contemplated that construction of the Project will begin on or about November 15, 2006, and will end on or about June 15, 2007.

IN TESTIMONY WHEREOF, witness my signature this 18th day of October, 2006.


BREATHITT COUNTY WATER DISTRICT

By: 
JOHN LESTER SMITH, Chairperson

STATE OF KENTUCKY

COUNTY OF BREATHITT

Subscribed and sworn to before me by John Lester Smith, Chairperson of the Board of Commissioners of the Breathitt County Water District, on this the 18th day of October, 2006.


NOTARY PUBLIC
Commission Expires: 11-19-09

RECEIVED

OCT 19 2006

PUBLIC SERVICE
COMMISSION

CASE No. 2006-00437

Application Item 7 – A

Copy of CDBG Grant Agreement
Appendix “A-2”

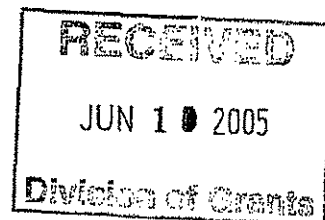
of
Final Engineering Report

GRANT INFORMATION AND IDENTIFICATION **RECEIVED**

OCT 19 2006

PUBLIC SERVICE
COMMISSION

Grant Agreement Number: 04-068
Subrecipient: Breathitt County
Project Name: KY 52/541 Waterline Project
Federal Agency: U.S. Department of Housing and Urban Development
Pass-Through Agency: Kentucky Governor's Office for Local Development
CFDA Title: Community Development Block Grant/State's Program
(State-Administered Small Cities Program)
CFDA Number: 14.228
Award Year: 2004



GRANT AGREEMENT

This Agreement is made and entered into this 12th day of July 2005, by and between Breathitt County, Kentucky, hereinafter referred to as Recipient and the Commonwealth of Kentucky, Governor's Office for Local Development, hereinafter referred to as the Commonwealth.

The purpose of this Agreement is to set forth the terms and conditions under which the Commonwealth agrees to dispense the sum of \$1,000,000 to the Recipient.

Recipient desires to use the funds for the KY 52/541 Waterline Project and the Recipient shall complete the project by June 30, 2007.

GRANT AGREEMENT

1. GENERAL PROVISIONS

A. Contents of Agreement

This agreement shall consist of the following documents which are incorporated by reference as if fully set out herein: (1) the Grant Agreement and all exhibits to which this agreement refers; (2) the application, including the Statement of Assurances, and all State and Federal Law requirements to which the application and this agreement refer or apply; (3) the Kentucky Community Development Block Grant Manual currently in effect, plus any advisories; (4) any applicable administrative regulations; and (5) any amendments or modifications to any of the above referenced requirements.

B. General Definitions

Unless specifically provided otherwise or the context otherwise requires, when used in this Grant Agreement:

(1) "Act" means the Housing and Community Development Act of 1974, Pub. L. No. 93-383, as amended.

(2) "Application" means the Commonwealth Small Cities Community Development Block Grant (CDBG) Application, and such other submittals, as are specified in Exhibit A of this Grant Agreement.

(3) "Default" means any default set forth in Section 6-A to this Grant Agreement.

(4) "Eligible Costs" means costs for the activities specified in Exhibit B of this Grant Agreement for which grant funds are budgeted as specified in Exhibit C of this Grant Agreement, provided that such costs (i) are incurred in connection with any activity which is eligible under Section 105A of Title I of the Act, and (ii) conform to the requirements of Attachment B of Office of Management and Budget Circular A-87 (Cost Principles Applicable to Grants and Contracts with State and Local Government), as may be amended from time to time. For purposes of determining the conformity of costs to said Attachment B, all costs set forth in Section C thereof may be considered eligible without prior approval of the Commonwealth.

(5) "Environmental Conditions" means the condition imposed by law, particularly 24 CFR Part 58, and the provisions of the Grant Agreement which prohibit or limit the commitment and use of grant funds until certain procedural requirements have been completed.

(6) "Environmental Requirements" means the requirements described in 24 CFR Part 58.

(7) "Environmental Studies" means all eligible activities necessary to produce an "environmental document", as that term is defined at Section 1508.10 of 40 CFR Part 1508, or to comply with the requirements of 24 CFR Part 58.

(8) "Grant Funds" means those funds to be provided by the Commonwealth to Recipient pursuant to the terms of this Grant Agreement, as specified in Exhibit A of this Grant Agreement.

(9) "HUD" means the United States Department of Housing and Urban Development.

(10) "Program Income" means the CDBG portion of: (i) any income earned by Recipient, or an agent or agency of Recipient, from the disposition of real or personal property acquired in whole or in part with grant funds; (ii) the repayment proceeds (including principal and interest) of any loan made in whole or part with grant funds; (iii) any other revenues defined as program income in 24 CFR Part 570, Subpart J. The "CDBG portion" means an amount computed by applying the percentage of participation of CDBG funds (i) in the acquisition cost of the property to the total income from the disposition of such property, (ii) in the amount of the loan to the total repayment proceeds of such loan, or, (iii) in the cost of an activity to the total income from such activity.

(11) "Participating Party" means any person, firm, corporation or funding source identified as such in Exhibit A and/or B of this Grant Agreement.

(12) "Project" means the activities described in the Application and in Exhibits B and C of this Grant Agreement which are to be carried out to meet the objectives of the CDBG Program.

(13) "Recipient" means the local governmental entity receiving grant funds pursuant to this Grant Agreement, as more particularly identified on the cover page of this Grant Agreement.

(14) "Recipient Activities" means those activities of the Project to be carried out by the Recipient, its agent or agency, which activities are described in Exhibit B of this Grant Agreement and further defined in the Application.

(15) "CDBG" means a grant guided by Title I of the Housing and Community Development Act of 1974, as amended and those regulations set forth in 24 CFR Part 570, Subpart I, as may be amended from time to time and all other applicable Federal and State regulations and laws and assurances signed by Recipient at the time the Recipient's Application was submitted.

(16) "Commonwealth" when not used to designate the territory of the Commonwealth of Kentucky shall mean the Commissioner of the Governor's Office for Local Development or any other person to whom the Commissioner has delegated authority to act with respect to matters covered by this Grant Agreement.

2. AMOUNT AND AUTHORIZED USES OF GRANT FUNDS

A. Grant Assistance Provided

In consideration of the various obligations undertaken by the Recipient pursuant to this Grant Agreement, as represented by the Recipient in the Application, the Commonwealth agrees, subject to the terms and conditions set forth herein, to provide the Recipient with grant funds in the amount specified in Exhibit A of this Grant Agreement.

B. Authorized Uses of Grant Funds

The grant funds provided to the Recipient pursuant to this Grant Agreement shall be used only for the specific purposes described in Exhibit B of this Grant Agreement and in the amounts budgeted in Exhibit C of this Grant Agreement, subject to the project amendments provisions of the Commonwealth CDBG program.

C. Adjustments to Grant Funds

(1) The amount of grant funds which the Commonwealth has agreed to provide to the Recipient under this Grant Agreement has been determined by the Commonwealth in reliance upon the cost estimates of the Recipient with respect to the activities set forth in the Application. The Commonwealth reserves the right to reduce the grant amount (i) to conform to any revision to which the Recipient and the Commonwealth may agree with respect to Exhibits B or C of this Grant Agreement, (ii) if the actual costs for activities are lower than those set forth in Exhibits B or C of this Grant Agreement, or (iii) if the investment by Participating Parties is less than the amount specified in Exhibits B, C or D.

(2) The parties understand that funding pursuant to this agreement may be discontinued by the General Assembly in subsequent budgets.

D. Recipient's Use of Program Income

(1) All Program Income which is received by the Recipient, prior to completion of all Recipient Activities shall be used prior to, and in place of, any draw of grant funds to the extent adequate to pay costs so incurred.

(2) Unless otherwise specifically stated in Exhibit B of this Grant Agreement, all Program Income received by the Recipient, after completion of all Recipient Activities shall be used by the Recipient, for community or economic development activities eligible for assistance under Title I of the Act as specified in the Commonwealth Eligible Activities Policy Statement.

3. DISBURSEMENT OF GRANT FUNDS

A. Authorization

(1) Promptly after the Commonwealth has received from the Recipient two (2) fully executed copies of this Grant Agreement and has approved evidentiary materials required by Exhibit D of this Grant Agreement that would allow a draw of grant funds pursuant to

the terms of Exhibits B and C of this Grant Agreement, the Commonwealth shall authorize the amount of grant funds specified in Exhibit A of this Grant Agreement.

(2) The Recipient is authorized to draw grant funds only in accordance with the provisions of this Grant Agreement and the procedures established by the Commonwealth. No payment by the Commonwealth of an improper or unauthorized draw to the Recipient shall constitute a waiver of the right of the Commonwealth to challenge the validity of said draw, to enforce all rights and remedies set forth in the Grant Agreement, or take corrective or remedial administrative action, which action may include, without limitation, suspension or termination of the Recipient's funding under this Grant Agreement.

(3) The disposition of any grant funds that remain available following completion of the Project, termination of this Grant Agreement by the Commonwealth, or termination of the Project for any cause, shall be in accordance with closeout procedures then in effect or established by the Commonwealth including provisions of OMB Circular A-133, and the Recipient shall not have any rights to such grant funds.

B. Incurring Costs for Project Activities

(1) The use of grant funds is conditioned upon the Recipient incurring costs to be paid in accordance with this Grant Agreement or as otherwise approved by the Commonwealth in writing. Except as permitted by 24 CFR Part 58, no costs to be paid out of project funds may be incurred by the Recipient until all Environmental Conditions of 24 CFR Part 58 have been fully satisfied and the Commonwealth has issued the environmental clearance required by 24 CFR Part 58.

(2) The authorization to incur costs in subsection (1) above is not an authorization to reimburse those costs and does not mean or imply that such costs will be reimbursed out of grant funds. The Recipient may voluntarily, at his own risk, and upon his own credit and expense, incur costs as authorized in subsection (1) above, but his authority to reimburse or to be reimbursed out of grant funds shall be governed by the provisions of this Grant Agreement applicable to the payment of costs and the release of funds by the Commonwealth.

(3) Prior to the issuance by the Commonwealth of the environmental releases required by 24 CFR Part 58, the Recipient may not use any funds, including local funds, to take any action with respect to the Project where such action might have an adverse environmental effect, would limit choices among competing alternatives, or might alter the environmental premises on which the pending clearance is based in such a fashion that the validity of the conclusions to be reached would be affected.

C. Authorization by the Commonwealth for the Recipient to Draw Grant Funds

Recipient's draw of grant funds can occur only after the following has occurred:

(1) The Commonwealth has issued the environmental clearance required by 24 CFR Part 58,

(2) The Commonwealth has approved, the required evidentiary materials specified in Exhibit D of the Grant Agreement,

(3) The Commonwealth has authorized, per the executed Notice of Approval of Evidentiary Materials and Release of Funds, the Recipient's ability to draw grant funds,

(4) Recipient shall have submitted all certifications and materials required as conditions precedent to Recipient's authority to pay costs out of grant funds,

(5) If authorized by Exhibit D herein and if the Commonwealth finds Recipient has timely and acceptably submitted the evidentiary materials in Exhibit D herein, approved same, and if no default has occurred, as defined in Section 6-A herein, and

(6) Recipient has not been served by Commonwealth with notice of Recipient's suspension of authority to so draw the grant funds nor is in breach of its obligation to report a default.

4. REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

A. Recipient's Representations and Warranties

The Recipient has, by and through consultations among all appropriate members of the Recipient's governing body and its officers, examined each of the following and by its execution of this Grant Agreement the Recipient does, upon information and belief, represent and warrant to the Commonwealth that:

(1) The Recipient is duly organized and validly existing under the laws of the Commonwealth, and has all the requisite power and authority to enter into this Grant Agreement and to assume the responsibilities for compliance with all Federal and State laws and regulations.

(2) A resolution, motion, order or ordinance has been duly adopted, passed or enacted as an official act of the Recipient's governing body, authorizing the execution and delivery of this Grant Agreement by the Recipient and authorizing and directing the person executing this Grant Agreement to do so for and on behalf of the Recipient, said acts being done in such manner and form as to comply with all applicable laws to make this Grant Agreement the valid and legally binding act and agreement of the Recipient.

(3) There is no action, proceeding, or investigation now pending, nor any basis therefore, known or believed by the Recipient to exist, which (i) questions the validity of this Grant Agreement, or any action taken or to be taken under it, or (ii) is likely to result in any material adverse changes in the authorities, properties, assets, liabilities, or conditions (financial or otherwise) of the Recipient which would materially and substantially impair the Recipient's ability to perform any of the obligations imposed upon the Recipient by this Grant Agreement.

(4) The representations, statements, and other matters contained in the Application were true and complete in all material respects as of the date of filing. The Recipient is aware of no event which would require any amendment to the Application (other than an amendment which has been filed with and approved by the Commonwealth) which would make such representations, statements, and other matters true and complete in all material respects and not misleading in any material respect. The Recipient is aware of no event or other fact which should have been, and has not been, reported in the Application as material information.

(5) The Recipient has obtained or has reasonable assurances that it will obtain all Federal, State and local government approvals and reviews required by law to be obtained by the Recipient for the Project.

(6) Insofar as the capacity of the Recipient to carry out any obligation under this Grant Agreement is concerned, (i) the Recipient is not in material violation of its Charter, or any mortgage, indenture, agreement, instrument, judgement, decree, order, statute, rule or regulation and (ii) the execution and performance of this Grant Agreement will not result in any such violation.

(7) Except for approved eligible administrative and personnel costs, none of the recipient's designees, agents, members, officers, employees, consultants or members of its governing body in which the program is situated, and no other public official of the recipients of such locality or localities who exercises or who has exercised any functions or responsibilities with respect to the project during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the project, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the project or in any activity, or benefit therefrom, which is part of this project at anytime during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the Kentucky Governor's Office for Local Development and the Kentucky Governor's Office for Local Development has approved such exception.

The procedures for requesting, documenting, and submitting a request for an exception from the Conflict of Interest provisions shall include the applicable procedures delineated in 24 CFR 570.489(h)(4); KRS 99.350(8); KRS 61.252(1); KRS 65.003; and the local community ethics code.

This Conflict of Interest provision shall be in addition to the requirements in the "Common Rule," 24 CFR Part 85, 24 CFR 570.489(h), A-110, KRS 45A.340, KRS 61.210, KRS 61.220 and KRS 61.250 et. seq.

B. Obligation to Complete Recipient Activities as Scheduled

(1) The Recipient shall use its best efforts to assure the completion of the Recipient Activities described in Exhibit B of the Grant Agreement and further defined in the Application.

(2) The Recipient agrees that the foregoing undertaking and assurance means that Recipient shall, to the maximum extent permitted by law, use and apply all of its governmental and proprietary powers for such completion, including but not limited to those powers governing taxes, other revenues, credit, eminent domain and appropriations, if necessary, for the purpose of providing any shortfall between funds available under the grant and funds necessary to complete all of the Recipient Activities described in Exhibit B of this Grant Agreement.

C. Commonwealth Approval of Amendments

The Commonwealth will consider program amendments initiated by the Recipient or by the Commonwealth. The Commonwealth defines a program amendment as a request for

change in an approved program which (i) is a new activity in the program, (ii) significantly alters the scope, location, or objective of the approved activities or beneficiaries, and/or (iii) results in a change or cumulative changes of the approved budget. Any amendments will be made in accordance with the procedures set forth in the Kentucky Community Development Block Grant Manual established by the Commonwealth.

D. Notification and Action Upon Default

(1) The Recipient shall promptly give written notice to the Commonwealth upon the discovery by the Recipient of any default involving any Participating Party, as defined in Section 6-A of this Grant Agreement.

(2) Promptly, upon the discovery of any default involving any Participating Party, the Recipient shall vigorously pursue, to the fullest extent possible, all remedies available to Recipient to remove or cure such default, or to seek redress or relief from its effects, including reimbursement for any grant funds expended on the Project, and to prevent or mitigate any adverse effects on the Project. Recipient shall keep the Commonwealth fully informed as to the status of such actions.

5. INSPECTION AND REVIEW

A. Duty to Maintain and Rights to Inspect and Copy, Books, Records and Documents

(1) The Recipient agrees that the Commonwealth, the Finance and Administration Cabinet, The Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the Commonwealth, the Finance and Administration Cabinet, The Auditor of Public Accounts, and the Legislative Research Commission which directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1) (c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information, which would otherwise be subject to public release if a state government agency were providing the services.

(2) The Recipient shall keep and maintain such books, records and other documents as shall be required under rules and regulations now or hereafter applicable to grants made under the CDBG Program, and as may be reasonably necessary to reflect and fully disclose the amount and disposition of the grant funds, the total cost of the activities paid for in whole or in part with grant funds, and the amount and nature of all investments relative to such activities which are supplied or to be supplied by other sources.

(3) All such books, records and other documents shall be available at the office of the Recipient (except that books, records and other documents of a Participating Party which are subject to this Section 5-A may be maintained at the office of such Participating Party) for inspection, copying, audit and examination at all reasonable times by any duly authorized

representative of the Commonwealth, HUD, the General Accounting Office and the Inspector General of the United States.

B. Site Visits

Any duly authorized representative of the Commonwealth or HUD shall, at all reasonable times, have access to all portions of the Project until completion of all closeout procedures and final settlement and conclusion of all issues arising from this grant.

C. Reports

The Recipient shall promptly furnish to the Commonwealth all reports required to be filed in accordance with any directives of the Commonwealth or any statute, rule or regulation of HUD.

6. DEFAULTS AND REMEDIES

A. Defaults

A default shall consist of any use of grant funds for any purpose other than as authorized in Exhibits B and C of this Grant Agreement; or any breach of any covenant, agreement, provision, or warranty (i) the Recipient made in the Grant Agreement; (ii) the Recipient made in any agreement entered into between the Recipient and any Participating Party relating to the Project; (iii) any Participating Party made in any agreement specified in Exhibit D of this Grant Agreement, or; (iv) of the time frame specified in Exhibit B of the Grant Agreement.

B. Remedies Upon Default

(1) Upon occurrence of any default as described in Section 6-A, the Commonwealth may suspend the Recipient's authority to draw grant funds at any time by notice to the Recipient. If a default is not cured within thirty (30) consecutive days from notice of such default by the Commonwealth to the Recipient, the Commonwealth may continue such suspension or by delivery of notice terminate this Grant Agreement. In the event of a termination, the Recipient's authority to draw funds shall have terminated at the date of the notice of termination and the Recipient shall have no right, title or interest in or to any grant funds remaining.

(2) In addition to any other rights or remedies, if a default consists of the Recipient's failure to submit the evidentiary materials described in Exhibit D of this Grant Agreement or in other official written notification, the Commonwealth shall have the right to terminate this Grant Agreement and the award of grant funds to which this Grant Agreement relates by delivery of written notice to the Recipient. Upon such termination, all obligations of the Commonwealth pursuant to this Grant Agreement and such award shall cease and the Recipient shall neither have nor retain any rights whatsoever with respect to the grant funds provided under this Grant Agreement.

(3) The rights and remedies of the Commonwealth shall be deemed to be cumulative and shall be in addition to all those rights afforded the Commonwealth by law or

equity. Any election of any right or remedy shall not be deemed to be an election of that right or remedy to the exclusion of any other right or remedy.

(4) The rights and remedies available to the Commonwealth in the event of a suspension or termination of the Grant Agreement shall survive such suspension or termination.

7. EVIDENTIARY MATERIALS

A. Commitments of Participating Parties

(1) In selecting the Recipient for the award of this grant, the Commonwealth has relied, in material part, upon the representations of the Recipient and Participating Parties that the Recipient and the Participating Parties (i) will carry out certain activities connected with the Project; (ii) will complete those activities; (iii) have, or will have, the financial capability to assure the carrying out of the activities to the completion; and (iv) will invest, or cause to be invested, a specific value amount in the Project.

(2) Evidentiary materials submitted by the Recipient as Exhibit D which have been submitted to and approved by the Commonwealth shall not be amended in any material respect without prior written approval of the Commonwealth.

B. Form of Documentary Evidence

All documentary evidence of commitments submitted to the Commonwealth for approval shall be in the form of either (i) a duplicate original, or (ii) a photographic copy of the fully executed original, of the documents.

8. MISCELLANEOUS

A. Notice

(1) All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Grant Agreement shall be in writing.

(2) Any such communication shall be deemed effective for all purposes as of the date such communication is mailed, postage prepaid, by registered or certified mail, return receipt requested, to be delivered only to the office of the addressee, addressed as follows:

(a) Communications to the Commonwealth shall also be mailed to: Division of Grants, Governor's Office for Local Development, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601.

(b) Communications to the Recipient shall be addressed to the Recipient, at the address set forth in Exhibit A of this Grant Agreement, or such other address or representative as may be furnished by the Recipient to the Commonwealth.

(3) Payments pursuant to this agreement shall not be authorized for services rendered after Government Contract Review Committee disapproval, unless the decision of the

committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary.

B. Assignment

No right, benefit, or advantage inuring to the Recipient under this Grant Agreement and no burden imposed on the Recipient hereunder may be assigned without the prior written approval of the Commonwealth. An authorization by the Commonwealth for the transfer of grant funds by Recipient to a Participating Party shall not be deemed an authorization for an assignment, and such Participating Party shall not succeed to any rights, benefits or advantages of the Recipient hereunder.

C. Successors Bounds

This Grant Agreement shall bind, and the rights, benefits and advantages shall inure to, the Recipient's successors.

D. Remedies Not Impaired

No delay or omission of the Commonwealth in exercising any right or remedy available under this Grant Agreement shall impair any such right or remedy or constitute a waiver of any default, or an acquiescence therein.

E. Cumulative Remedies

All rights and remedies of the Commonwealth under this Grant Agreement shall be cumulative.

F. Severability

If any article, subsection, clause or provision of this Grant Agreement is held by any court to be unenforceable or prohibited by any law applicable to this Grant Agreement, the rights and obligations of the parties shall be construed and enforced with that part, term or provision limited so as to make it enforceable to the greatest extent allowed by law, or, if it is totally unenforceable, as if this Grant Agreement did not contain that particular part, term or provision.

G. Entire Agreement

This Grant Agreement constitutes the entire agreement between the Commonwealth and the Recipient and supersedes all prior oral and written agreements between the parties hereto with respect to the subject grant. Notwithstanding the provisions of Section 1-A of this Grant Agreement and anything contained in the Application, the provisions of this Grant Agreement shall prevail.

H. Table of Contents: Titles and Headings

Any table of contents and the headings of the sections and subsections set forth herein are not a part of this Grant Agreement and shall not be deemed to affect the meaning or construction of any of its provisions.

I. Amendment of this Grant Agreement

This Grant Agreement, or any part hereof, may be amended as previously described in Section 4-C from time to time hereafter only in writing executed by the Commonwealth and the Recipient.

J. Governing Law

This Grant Agreement as it may affect the rights, remedies, duties, and obligations of the Commonwealth shall be governed by and construed in accordance with Federal and State law. Insofar as Federal law does not apply, the provisions of this Grant Agreement shall be governed by and construed in accordance with the laws of the Commonwealth.

K. Waiver by the Commonwealth

The Commonwealth reserves and shall have the exclusive right to waive, at the sole discretion of the Commonwealth, and to the extent permitted by law, any requirement or provision under this Grant Agreement. No act by or on behalf of the Commonwealth shall be, or be deemed or construed to be, any waiver of any such requirement or provision, unless the same be in writing, signed by the Commonwealth, and expressly stated to constitute such waiver.

L. Effective Date

The Grant Agreement, as prepared by the Commonwealth and submitted to the Recipient, shall constitute an offer by the Commonwealth to the Recipient to make the within grant and to enter in this Grant Agreement. The Recipient shall promptly accept and execute, if at all, the Grant Agreement, which shall not be altered without the Commonwealth's approval. Upon execution of the Grant Agreement, the Recipient will return the Grant Agreement to the Commonwealth for final approval evidenced by the signature of the Commissioner of the Governor's Office for Local Development. The Grant Agreement shall be effective only upon approval by the Government Contract Review Committee of the Legislative Research Commission or, in the event of disapproval by the committee, upon override of the committee's action in accordance with KRS 45A.695(7). The Agreement shall continue in effect through June 30, 2007 unless terminated at an earlier date in accordance with the terms set forth herein.

The terms of this Agreement may be renewed or extended upon mutual written agreement duly executed by the parties.

The parties to the Grant Agreement understand that funding pursuant to this Grant Agreement may be discontinued by the General Assembly in subsequent budgets.

M. Termination of Grant Agreement

This Grant Agreement shall terminate upon the completion of all closeout procedures respecting this grant including provisions of the Single Audit Act, OMB Circular A-133 and the final settlement and conclusion between Recipient and the Commonwealth of all issues arising out of this grant. Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice. This notice, if tendered by the Commonwealth, may also include the notice to cure provided for in Section 6 B.(1). Upon termination of the agreement pursuant to this provision, the Recipient shall have no right to grant funds remaining to be disbursed. This provision shall in no way impair and shall be in addition to any additional remedies the Commonwealth may have upon a finding of default or other non-compliance according to the terms of this grant agreement. Upon termination of this Grant Agreement, GOLD may declare this Grant Agreement void from the beginning without further obligation to the recipient and may commence appropriate legal or equitable action to enforce its rights under this memorandum including action for recovery of funds expended hereunder.

N. Anti-Speculation Provisions-Sale of Real Property

(1) When, in Exhibit D of this Grant Agreement, a document is required to contain a provision for the prevention or discouragement of speculation in the purchase and sale of property by a beneficiary of grant funds, then, unless otherwise specified, such provision shall comply with this Section.

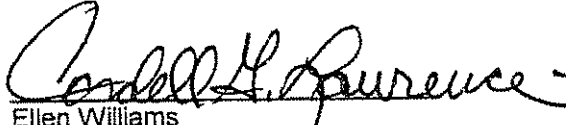
(2) The document shall prohibit the beneficiary of grant funds from selling or otherwise disposing of the property within a period specified in Exhibit D of this Grant Agreement after the date of the purchase, for an amount in excess of the purchase price paid, plus the actual costs of any improvements to the property by the beneficiary. The prohibition against sale shall have the same force and effect as a lis pendens, and shall specify that in the event of any attempted sale in violation of the provision, the Recipient shall be entitled to the ex-parte issuance of an injunction restraining such sale. The document shall be executed and authenticated in such manner and form as may be required under State law to authorize its recordation at the place of recordation of deeds, as if a lis pendens and the document shall be so recorded.

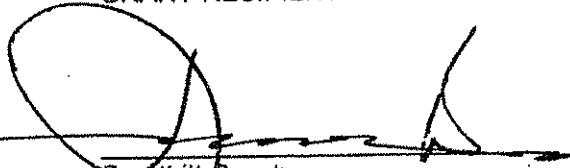
(3) The document may, in conjunction with the foregoing or in lieu thereof, describe a procedure whereunder, in the event of any sale of the property within the period specified in Exhibit D of the Grant Agreement, the amount of grant funds which benefited the beneficiary shall be repaid by the beneficiary to the Recipient. Such procedure may include a pro-rata reduction of the amount to be repaid, based upon the time elapsing between the date of the initial purchase of the property and its disposition by the beneficiary. The document must either specify the amount of the grant funds which benefited the beneficiary, or set forth a formula or agreed method for determining such amount. The document shall be executed and authenticated in such manner and form as may be required to authorize its recordation, as if a lis pendens and the document shall be so recorded.

EXECUTED BY THE PARTIES THIS 20th DAY OF June, 2005.

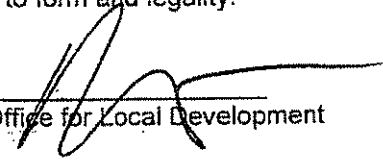
GOVERNOR'S OFFICE FOR
LOCAL DEVELOPMENT

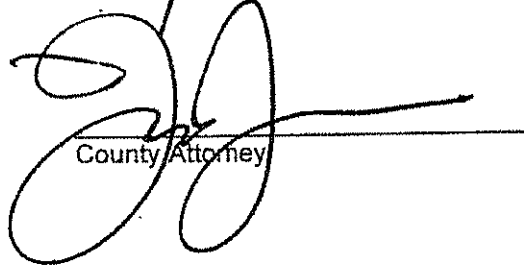
GRANT RECIPIENT


Ellen Williams
Commissioner


Breathitt County
Judge/Executive

Examined as to form and legality:


Governor's Office for Local Development
Attorney


County Attorney

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OCT 19 2006

PUBLIC SERVICE
COMMISSION

CASE No. 2006-00437

Application Item 7 – B

Copy of Engineer's Concurrence in Bid Award

Appendix "C"

of

Final Engineering Report



September 27, 2006

Mr. J. L. Smith, Chairman
Breathitt County Water District
1137 Main Street
Jackson, Kentucky 41339

RE: Award of Construction Contracts
Contract # 1: KY 541 / KY 205 Waterline Project
Contract # 2: KY 541 / KY 205 Water Storage Tanks

Dear Mr. Smith:

On September 19, 2006 at the Breathitt County Court House, five (5) bids were received for Contract # 1, and three (3) bids were received for Contract # 2. Certified bid tabulations were prepared by our office for each contract and then mailed to you and the bidders on September 20, 2006.

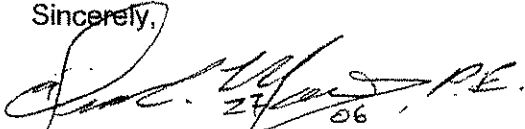
Several references, provided by the apparent low bidder of Contract # 1, Music Construction, Inc., from Mt Sterling, KY, were contacted. Based on this information, we conclude that this contractor, Music Construction, Inc., qualifies as responsive and responsible, and are unaware of any reason a construction contract should not be awarded to them. Therefore, Nesbitt Engineering, Inc. (NEI) recommends that Breathitt County Water District (BCWD) award Contract # 1 to Music Construction, Inc.

As we have recent experience (KY 30, and KY 52) with the apparent low bidder of Contract # 2, Laurel Construction Company, Inc., additional references were not contacted. Based on this experience we conclude that Laurel Construction Company, Inc. qualifies as responsive and responsible, and are unaware of any reason a construction contract should not be awarded to them. Therefore, NEI recommends that BCWD award Contract # 2 to Laurel Construction Company, Inc.

Issuance of the "Notice of Award" for each Contract is recommended pending concurrence of the Kentucky Public Service Commission (30-day response period after submittal), and all other Funding Agencies.

Please feel free to call me if you have any questions. Thank you for your time and attention to this matter.

Sincerely,



Ora C. Main, PE, MBA
Project Manager

OCM:kr
Enclosures

c: Judge Lewis Warrix
Bryan Kirby, CEDA
Jim Music, Music Construction, Inc.
Demas Philpot, Laurel Construction Co., Inc.

P:\Breathitt\998-16\Bidding\JL Re Cont. Award 09-27-06.doc

CASE No. 2006-00437

Application Item 7 – C

Preliminary Engineering Report amended to Final Engineering Report
previously submitted by letter from
Engineer, Dated October 2, 2006

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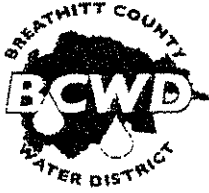
CASE No. 2006-00437

Application Item 7 – D (1)

Letters from Owner and Supplier supporting Project
designated to meet minimum construction
& operating requirements

Appendix "E"

of
Final Engineering Report



Breathitt County
Water District

Making Breathitt County

A Better Place One Drop at a Time.

August 16, 2006

Ms. Donna Marlin, P.E., Manager
Drinking Water Branch
Division of Water
14 Reilly Road
Frankfort, KY 40601

RE: Breathitt County Water District – KY205 Waterline Project Plans and Specifications

Dear Ms. Marlin:

BCWD approves the plans and specifications for the KY205 Waterline Extension and Storage Tank projects to be submitted to the Division of Water for review and approval. The BCWD further agrees to accept responsibility for the operation and maintenance of this new potable waterline.

Sincerely,

John Lester Smith, Chairman
Breathitt County Water District

Enclosures

c: Ora Main, PE, Project Manager, NEI



Michael D. Miller

Mayor, City of Jackson

333 Broadway

Jackson, KY 41339

Phone: (606) 666-7069 Fax: (606) 666-7046

August 16, 2006

Ms. Donna Marlin, PE
Drinking Water Branch
Division of Water
14 Reilly Road
Frankfort, KY 40601

RE: Breathitt County Water District
KY 205 Waterline Project

Dear Ms. Marlin:

The City of Jackson agrees to provide potable water sales to the Breathitt County Water District in anticipation of the construction of the new KY 205 water distribution main, and storage tanks in Breathitt County.

We estimate the ultimate future consumption to be approximately 57,000 gallons daily. Initially, we estimate the amount required will be 50% of this number.

Sincerely,

A handwritten signature in black ink that reads "Michael D. Miller".

Michael D. Miller, Mayor
City of Jackson, Kentucky

c: Lewis H. Warrix, Breathitt Co. Judge Executive
JL Smith, Breathitt Co. Water District
Connie Allen, PE City of Jackson Engineer, CDP Engineers
Ora C. Main, PE, Nesbitt Engineering, Inc.

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COMMISSION

CASE No. 2006-00437

Application Item 7 – D (2)

Approval of the KY Division of Water

Appendix “D”

of

Final Engineering Report



ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Ernie Fletcher
Governor

Frankfort Office Park
14 Reilly Road
Frankfort, Kentucky 40601
www.kentucky.gov
August 29, 2006

Lajuana S. Wilcher
Secretary

John Lester Smith, Chairman
Breathitt County Water District
1137 Main Street
Jackson, KY 41339

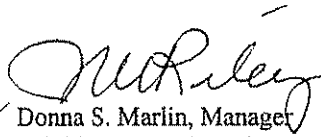
RE: Breathitt County
AI No: 45303
DW No: 0131012-06-001
KY 541 & KY 205 Water Line project
Activities ID: APE 20060001

Dear Mr. Smith:

We have reviewed the plans and specifications for the above referenced project. The plans include the construction of approximately 52,000 feet of 8-inch PVC, 10,700 feet of 6-inch PVC, and 7,000 feet of 4-inch PVC and 1,100 feet of 2-inch PVC water line. It also consists of a 130 gpm booster pump station and 48,000 gallon ground water storage tank on KY 541 and 88,000 gallon ground storage water tank on KY 205. This is to advise that plans and specifications for the above referenced project are APPROVED with respect to sanitary features of design, as of this date with the requirements contained in the attached construction permit.

If you have any questions concerning this project, please contact Solitha Dharman, P.E., at (502) 564-2225, extension 572.

Sincerely,

you 
Donna S. Marlin, Manager
Drinking Water Branch
Division of Water

DSM: SWD

Enclosures

C: Honorable Michael D. Miller, Mayor, City of Jackson
Lewis H. Warrix, County Judge Executive
Ora C. Main, P.E., Nesbitt Engineering Inc.
Brethitt County Health Department
Public service Commission

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CASE No. 2006-00437

Application Item 7 – D (3)

Existing rates of Applicant –
No rate increase required

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OCT 19 2006

CASE No. 2006-00437

PUBLIC SERVICE
COMMISSION

Application Item 7 – D (4)

Anticipated Construction to begin November 2006
and
Anticipated Construction for completion June 2007