

MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Regular Meeting

May 25, 1944  
11:00 A.M.

Council Chamber, City Hall

The meeting was called to order, with Mayor Pro tem Bartholomew presiding.

Roll call

Present : Councilmen Alford, Bartholomew, Gillis - 3  
Absent : Mayor Miller and Councilman Wolf - 2

Present also: Walter E. Seaholm, Acting City Manager; J. E. Motheral, City Engineer; and R. D. Thorp, Chief of Police.

The minutes of the Regular Meeting of May 18, 1944, were read, and on motion of Councilman Alford were adopted, after correction, by the following vote:

Ayes : Councilman Alford, Mayor Pro tem Bartholomew, Councilman Gillis  
Noes : None  
Absent: Mayor Miller and Councilman Wolf

The application of LOUIS JOSEPH, 300 Congress Avenue, for a taxicab license covering a 4-door Chevrolet Sedan, 1940 Model, Motor No. 2718400, State License (1942) No. 187-797, State License (1944) No. FR3-630, to replace Taxicab Permit No. 68 cancelled by O. I. Leach, duly approved by the Acting City Manager, was submitted. Councilman Alford moved that the application be approved. The motion carried by the following vote:

Ayes : Councilman Alford, Mayor Pro tem Bartholomew, Councilman Gillis.  
Noes : None  
Absent: Mayor Miller and Councilman Wolf

HENRY PRYOR, colored, came before the Council and asked permission to construct a commercial driveway of white gravel instead of concrete on his property at 1168 Chestnut Street. The matter was referred to the Acting City Manager and the City Engineer for attention.

The appeal of FRED OREN BROWN, 602 Cedar Street, on his application for a taxicab driver's permit, which had been recommended for denial, was heard. Action on the matter deferred to the next regular meeting.

Mayor Pro tem Bartholomew offered the following resolution and moved its adoption:

## (RESOLUTION)

WHEREAS, there has been filed with the Federal Works Agency in behalf of CITY OF AUSTIN (herein called the "Owner"), an application for Federal assistance under the War Public Works program, and the UNITED STATES OF AMERICA, acting by and through the Federal Works Administrator, has transmitted to the Owner an Offer of Federal assistance in connection with the public works referred to in said application and described in said Offer; and

WHEREAS, said Offer has been duly read in open meeting, fully considered in accordance with all pertinent rules of procedure and legal requirements, and made a part of the Owner's public records; and

WHEREAS, it is deemed advisable and in the public interest that said Offer be accepted;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE OWNER:

THAT the said Offer, a true and correct copy of which, including the Terms and Conditions, is hereto attached, be and the same hereby is accepted without reservation or qualification.

## (OFFER)

UNITED STATES OF AMERICA

FEDERAL WORKS AGENCY

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GRANT OFFER

Washington, 25, D.C.  
Project No. Tex. 41-670-N  
Dated: May 22, 1944

CITY OF AUSTIN  
Austin, Texas

Subject to the Terms and Conditions (FWA Form No. W-100, dated October 15, 1943) attached hereto and made a part hereof, the United States of America (herein called the "Government") hereby offers to make you a Grant of \$30,500 to aid in financing the acquisition and construction of Public Works consisting of Nurses' Home and Training Facilities, including necessary land (herein called the "Project"), at the presently estimated cost to you of \$61,000; provided, however, that if the actual cost to you of the Project upon completion, as determined by the Federal Works Administrator, is less than the presently estimated cost specified above, the Grant shall be reduced to an amount which bears the same ratio to said actual cost as the amount of the Grant specified herein bears to the said estimated cost.

By the acceptance of this Offer you covenant that you will, at no cost to the Government, promptly furnish the necessary equipment for the Project.

Nothing herein shall be construed as vesting in any Department or

Agency of the United States power to exercise any supervision or control over such facilities, nor shall any of the provisions hereof be construed as prescribing or affecting your administration or personnel in the maintenance and operation of such facilities.

UNITED STATES OF AMERICA

FEDERAL WORKS ADMINISTRATOR

By (Sgd.) Baird Snyder  
Assistant Administrator "

TERMS AND CONDITIONS

1. CONDITIONS OF GOVERNMENT'S OBLIGATION . - The United States of America (hereinafter referred to as the "Government") may elect to terminate all or any of its obligations under these terms and conditions and the Government's Offer (hereinafter collectively referred to as the "Offer") to which they appertain:

(a) Representations. - If any representation of the applicant to which the Offer is made (hereinafter referred to as the "Applicant") in its application for Federal assistance, as amended or supplemented (hereinafter referred to as the "Application"); or in any document submitted to the Government by the Applicant, shall be incorrect or incomplete in any material respect;

(b) Financial Condition. - If, in case the Government has offered to purchase bonds or other securities of the Applicant (hereinafter referred to as "Bonds"), the financial condition of the Applicant shall have changed unfavorably in a material degree from its condition as theretofore represented to the Government;

(c) Financing of Project. - If the Applicant will not be able, in the opinion of the Government, or fails to provide when needed, or to demonstrate to the satisfaction of the Government that it can and will provide when needed, funds sufficient, with the funds made available by the Government under the Offer, to pay the cost of the public works described in the Offer (such public works being hereinafter referred to as the "Project"), or if, in case the Government has offered to purchase Bonds, the Applicant shall not furnish a bond transcript satisfactory to the Government showing that the Bonds are valid and binding obligations;

(d) Prosecution of Project. - If the Applicant will not be able, in the opinion of the Government, to construct the Project as originally planned, whether such inability is due to technical causes, the unavailability of labor, equipment or materials, the failure to obtain necessary permits or authorizations, or to any other cause; or if the Applicant shall fail to commence or proceed with the construction of the Project with dispatch, in a sound, economical and efficient manner, in accordance with plans and specifications theretofore submitted to and approved by the Government, and in compliance with applicable Federal Statutes and the Offer; or if the Applicant shall fail otherwise in the performance or fulfillment of any of its obligations to be performed or fulfilled under the Offer;

(e) Documents to be Submitted. - If the Applicant shall fail to submit or cause to be submitted to the Government such records, statements, reports, data, plans, drawings, specifications, contracts, work orders, assignments, bid tabulations, contract awards, estimates, certificates or other documents affecting the Project, as may be requested by the Government, or if the Applicant shall proceed with the construction of the Project or take other action on the basis of any of the foregoing documents which are required to be submitted to the Government before the Government has advised the Applicant that, in its opinion, such documents comply with applicable Federal statutes and the Offer;

(f) Architectural or Engineering Supervision and Inspection. If the Applicant shall fail to provide and maintain competent and adequate architectural or engineering supervision and inspection of the construction of the Project;

(g) Bonus or Commission. - If it shall be determined by the Government at any time that the Applicant has paid or agreed to pay, whether directly or indirectly, a bonus, commission or fee to any person, firm or corporation for attempting to procure an approval of the Application, or for alleged services in procuring or in attempting to procure such approval, or for activities of the nature commonly known as lobbying performed or agreed to be performed in connection with the Application.

2. GOVERNMENT NOT OBLIGATED TO THIRD PARTIES. - The Government shall not be obligated or liable hereunder to any party other than the Applicant.

3. INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS. - No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of the agreement or contract resulting from the Applicant's acceptance of the Offer or in any benefit arising therefrom.

4. OTHER PROHIBITED INTERESTS. - No official of the Applicant who is authorized in such capacity and on behalf of the Applicant to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in any such contract. No official, employee, architect, attorney, engineer or inspector of or for the Applicant who is authorized in such capacity and on behalf of the Applicant to exercise any legislative, executive, supervisory or other functions in connection with the construction of the Project, shall become directly or indirectly interested personally in any construction contract, material supply contract, subcontract, insurance contract, or any other contract, pertaining to the Project. The Applicant shall be responsible for enforcement of the foregoing provisions of this paragraph.

5. EXPENSES PRIOR TO DATE OF OFFER. - In determining the amount of Federal assistance to be paid to the Applicant under the Offer, the Government will exclude from consideration all Project costs incurred by the Applicant prior to the date of the Offer unless such costs have been included in the estimate of cost of the Project incorporated in the Application and, in the opinion of the Government, were incurred by the Applicant in anticipation of Federal assistance for defense public works.

6. GRANT ADVANCES AND PAYMENTS. - The Applicant may requisition advances or payments on account of the grant provided in the Offer at any time after receipt of the Offer but not later than six months following the completion,

abandonment or termination of the Project. Such requisitions shall be accompanied by such supporting data as the Government may require. After the Applicant's acceptance of the Offer and subject to the provisions of the Offer, the Government will honor such requisitions in amounts and at times deemed by it to be proper to insure the expeditious prosecution and payment of the costs of the Project. Payment on account of the grant may be made in cash or by cancellation of Bonds or other obligations owing by the Applicant to the Government, or partially in cash and partially by cancellation, at the option of the Government. No request for review of a determination of the Government affecting the grant payable under the Offer will be considered unless such request is received by the Government not later than three months following notice to the Applicant of such determination.

7. GRANT PAYABLE IN TANGIBLE PROPERTY. - The grant provided in the Offer may be paid in part with tangible property. The Government may transfer or rent to the Applicant, with its approval and upon mutually satisfactory terms, equipment or other tangible property deemed necessary for the Project or its construction, and such transfer or rental shall effect a reduction in the grant otherwise payable in money equal to the amount charged the Applicant for such property.

8. LOAN ADVANCES AND PAYMENTS . - The Applicant may requisition on account of the loan, if any, provided in the Offer, advances in anticipation of the issuance of the Bonds, or payments, at any time after receipt of the Offer, any such advance to bear interest from the date the Applicant receives such advance to the date of delivery of the Bonds at the same rate borne by the Bonds. Such requisitions shall be accompanied by such supporting data as the Government may require. After the Applicant's acceptance of the Offer, and subject to the provisions of the Offer, the Government will honor such requisitions in amounts and at times deemed by it to be proper. If, after advances have been made on account of the loan in anticipation of the issuance of the Bonds, the Applicant is unable, in the opinion of the Government, to issue the Bonds because of circumstances beyond the control of the Applicant's governing body, the Government may, at its election, treat such advances as a grant.

9. CONSTRUCTION ACCOUNT. - All funds, however provided, for the payment of the cost of the Project shall be deposited, promptly upon the receipt thereof, in a separate account or accounts (hereinafter collectively referred to as the "Construction Account"). Unless otherwise required by law, the Construction Account shall be set up in a bank or banks which are members of the Federal Deposit Insurance Corporation. Moneys in the Construction Account shall be expended only for costs of the Project and in accordance with such purposes as shall have been previously specified in the latest project control estimate approved for the Project, or, if any, the latest signed certificate of purposes filed with and as approved by the Government: Provided, That if any Bonds are held by the Government after all costs incurred in connection with the Project have been paid, all moneys then remaining in the Construction Account shall be used to repurchase Bonds or shall be transferred to a bond fund for the payment of interest on and principal of the Bonds.

10. ABANDONMENT OF PROJECT. - If the Project shall be abandoned prior to its completion or the completion of the Project becomes, in the opinion of the Government, impossible of accomplishment by the Applicant whether due to technical causes, the unavailability of labor, equipment or materials, the failure to obtain necessary permits or authorizations, or to any other causes:

(a) GRANT PAYABLE. - The Government shall thereupon be relieved of all of its obligations under the Offer with respect to payment of grant, except that if such abandonment is consented to or concurred in by the Government, or the Government determines that the completion of the Project is impossible of accomplishment due to no fault of the Applicant, the Government's obligation to the Applicant shall continue as to an amount of grant bearing the same ratio to expenditures theretofore made and costs incurred by the Applicant (in accordance with the provisions of the Offer and as approved by the Government) that the maximum grant provided by the Offer bears to the estimated cost of the Project upon which the Offer has been based;

(b) Purchase of Bonds. - The Government shall thereupon be relieved of all of its obligations under the Offer with respect to the purchase of Bonds thereunder, except that the Government shall have the right at its election to purchase such Bonds under the Offer as it shall deem necessary to assure payment of incurred Project costs, and to cause the Applicant to deliver Bonds on account of which the Government has theretofore made advances;

(c) Reimbursement for Funds Advanced. - The Applicant shall forthwith cause to be returned to the Government the portion of all advances or payments made to the Applicant under the Offer not theretofore expended on the Project in accordance with the Offer, except that an amount thereof equal to the principal of the Bonds purchased by the Government and then outstanding, together with accrued interest thereon, may be transferred by the Applicant to a bond fund for the payment of such principal and accrued interest: Provided, That only so much of the expenditures on the Project shall be considered as having been made from advances or payments made to the Applicant under the Offer as shall be determined by applying the ratio which such advances or payments at the time of expenditure bore to the total funds then available in cash for the making of such expenditures;

(d) Completion by the Government. - If the Government determines to take over and complete the Project, there shall be applied on the acquisition cost of the completed portion thereof so much of the advances or payments made by the Government under the Offer as shall not have been returned by the Applicant to the Government, less the amount, if any, transferred by the Applicant to the bond fund pursuant to the provisions of subparagraph (c) hereof.

(e) Return of Grant Payments. - Nothing herein shall be construed to waive any right which the Government may have to the return of the whole or any part of the advances or payments made under the Offer in addition to the advances or payments above provided to be repaid, or any other right which the Government may have, if the Applicant shall have abandoned the Project prior to its completion without the consent of the Government or shall have acted in bad faith or made any misrepresentations concerning the completion of the Project or the use of such advances or payments.

11. SALE OF BONDS TO OTHERS. - If the Offer provided for a loan, the Applicant may, with the prior consent of the Government, sell all or any part of the Bonds to purchasers other than the Government.

12. CONSTRUCTION OF THE PROJECT. - (a) Unless the Government shall consent to the use of a different method in the construction and equipment of the Project, or to the award of contracts on a basis other than that herein provided, the contract method shall be used in the construction and equipment of the Project, and all construction, material and equipment contracts shall be awarded to the lowest responsible bidder and, except as to contracts estimated to cost not more than \$1,000, upon free, open and competitive bidding

after advertisement for bids sufficient to insure adequate competition; Provided, That no contract on a cost plus a percentage of cost basis shall be made: Provided, further, That no contract on a cost plus a fixed fee basis shall provide for a fixed fee in excess of 6 per centum of the estimated cost.

(b) The applicant shall require that, where a general contract is let for the work, specialty subcontractors shall be utilized for the performance of such parts of the work as, under normal contract practices, are performed by specialty subcontractors, unless (1) the general contractor has theretofore customarily performed such specialty work with his own organization and is then equipped to do so, or (2) in the opinion of the Applicant, concurred in by the Government, the performance of specialty work by specialty subcontractors will result in materially increased costs or inordinate delays.

13. CONTRACT SECURITY. - The Applicant shall require that each construction contractor shall furnish a bond or bonds of such type and in an amount or amounts adequate to secure the faithful performance of his contract.

14. CONTRACTORS' AND SUBCONTRACTORS' INSURANCE. - The Applicant shall require that there be maintained adequate compensation insurance for all contractors' and subcontractors' employees engaged in work on the Project.

15. QUALIFICATIONS FOR EMPLOYMENT. - The Applicant shall require that (a) in the employment of laborers and mechanics for work on the Project, preference shall be given to qualified local residents; (b) no person under the age of sixteen (16) years shall be employed on the Project; (c) no person currently serving sentence in a penal or correctional institution and no inmate of an institution for mental defectives shall be employed on the Project; and (d) no person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health or safety of others shall be employed on the Project: Provided, That this shall not operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform.

16. NON-DISCRIMINATION. - The Applicant shall require that there shall be no discrimination by reason of race, creed, color, national origin or political affiliations in the employment of persons qualified by training and experience for work on the Project.

17. COLLECTIVE BARGAINING. - The Applicant shall require that the legal rights of all workers on the Project to organize and to bargain collectively, to be protected from the requirement to join a company union, and to enjoy freedom of expression and action with respect to wages, hours and conditions of labor shall not be infringed.

18. LABOR REGISTRATION. - The Applicant shall require that, at the election of the Government, workers on the Project must register at such times and places and in such manner as the Government shall direct.

19. WAGE RATES. - The Applicant shall cause minimum wage rates for the various classes of laborers and mechanics engaged in work on the Project to be determined in accordance with applicable law. In the absence of such law, the Applicant shall determine, and submit to the Government for its concurrence, such minimum wage rates, and in so doing shall give consideration to the rates prevailing for the corresponding classes of laborers and mechanics employed upon projects of a character similar to the Project work in the

area from which labor for the Project must be drawn, and to new wage rates, negotiated and concluded through bona fide collective bargaining processes, to become effective at a later date. The Applicant shall require that a complete schedule of all such minimum wage rates (whether determined by the Applicant with the concurrence of the Government, or as required by law) shall be set forth in each construction contract prior to inviting bids for such contract, and that the wages paid to such laborers and mechanics be not less than the minimum rates so determined therefor. The Applicant shall also require that all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned shall be posted at appropriate conspicuous points at the site of the Project. Unless otherwise required by law, wage rates need not be established for non-manual workers, including executive, supervisory, administrative and clerical employees.

20. **COMPUTATION OF WAGES ON 8-HOUR DAY.** - The Applicant shall require (a) that the wages of every laborer and mechanic engaged in work on the Project shall be computed on a basic day rate of eight hours per day, eight hours of continuous employment, except for lunch periods, constituting a day's work when a single shift is employed, and seven and one-half hours of continuous employment, except for lunch periods, constituting a day's work when two or more shifts are employed; and (b) that work in excess of eight hours per day shall be permitted upon compensation, when a single shift is employed, at one and one-half times the basic rate of pay for all hours worked in excess of eight hours on any one day, or at any time during the interval from 5 P. M. Friday to 7 A. M. Monday, or on holidays, and when two or more shifts are employed, at one and one-half times the basic rate of pay for all hours worked in excess of seven and one-half hours on any one day or at any time during the interval from Friday midnight to Sunday midnight.

21. **PAYMENT OF EMPLOYEES.** - The Applicant shall require that each construction contractor and subcontractor shall pay each of his employees engaged in work on the Project in full in cash and not less often than once each week, less legally required deductions and also deductions permitted by the regulations prescribed under the so-called "Kick-Back Statute" (48 Stat.948): Provided, That when circumstances render payment in cash infeasible or impracticable payment by check may be effected upon consideration that funds are made available in a local bank and checks may be cashed without charge, trade requirements or inconvenience to the worker.

22. **WAGE UNDERPAYMENT AND ADJUSTMENTS.** - The Applicant shall require that, in cases of underpayment of wages by any contractor, it shall withhold from such contractor out of payments due, an amount sufficient to pay workers employed on the work covered by his contract the difference between the wages required to be paid under the contract and the wages actually paid such workers for the total number of hours worked and may disburse such amounts so withheld by it for and on account of the contractor to the respective employees to whom they are due.

23. **"KICK-BACK" REGULATIONS.** The Applicant shall require the inclusion in all contracts with contractors or subcontractors for the construction or prosecution of the Project satisfactory provisions expressly binding the respective contractors or subcontractors to comply with such applicable regulations as are issued by the Secretary of Labor pursuant to the so-called "Kick-Back Statute" (48 Stat.948) approved June 13, 1934, as amended or supplemented by any other statute.

24. **APPRENTICES.** - Unless otherwise required by law the Applicant shall



321

require that the number of apprentices, in each trade or occupation, employed by each construction contractor or subcontractor, shall not exceed the number permitted by the applicable standards of the United States Department of Labor, or, in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employers' associations of the respective trades or occupations.

25. ACCIDENT PREVENTION. - The Applicant shall require that precaution shall be exercised at all times for the protection of persons (including employees) and property, and that hazardous conditions be guarded against or eliminated.

26. INSPECTION. - The Applicant shall require that the Federal Works Administrator and his authorized representatives and agents be permitted, and it will itself permit them, to inspect all work, materials, pay rolls, records of personnel, invoices of materials and other relevant data and records. The Applicant shall cause to be provided and maintained during the construction of the Project adequate facilities at the site thereof for the use of the Administrator's representatives or agents assigned to the Project.

27. REPORTS, RECORDS AND DATA. - The Applicant shall submit, and shall require each contractor and subcontractor on the Project to submit, to the Government such schedules of quantities and costs, progress schedules, pay-rolls, reports, estimates, records and miscellaneous data as may be required under applicable Federal statutes or rules and regulations promulgated thereunder.

28. PAYMENTS TO CONTRACTORS. - Not later than the fifteenth day of each calendar month the Applicant shall make a partial payment to each construction contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month by the particular contractor, but shall retain until final completion and acceptance of all work covered by the particular contract a reasonable amount, specified in the contract, sufficient to insure the proper performance of the contract.

29. NAMING PROJECT. - The Applicant shall not name the Project for any living person.

30. COMMEMORATIVE TABLETS AND CORNERSTONES. - Commemorative tablets and cornerstones for the Project must be satisfactory to the Government.

31. STATE OR TERRITORIAL LAW. - Anything in the Offer to the contrary notwithstanding, nothing in the Offer shall require the Applicant to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable State or Territorial Law; Provided, That if any of the provisions of the Offer violates any applicable State or Territorial Law, or if compliance with the provisions of the Offer would require the Applicant to violate any applicable State or Territorial Law, or if because of any other reason the Applicant cannot comply with any of such provisions, the Applicant will at once notify the Federal Works Administrator in writing in order that appropriate changes and modifications may be made by the Federal Works Administrator and the Applicant to the end that the Applicant may proceed as soon as possible with the construction of the Project.

32. WAIVER. - Any provision in the Offer and the Terms and Conditions may be waived in whole or in part (and subject to such conditions as may be

deemed desirable) with the consent of the Applicant and the written approval of the Government without the execution of a new or supplemental agreement.

Which motion, carrying with it the adoption of the resolution, prevailed by the following vote:

Ayes : Councilmen Alford, Mayor Pro tem Bartholomew, Councilman Gillis.

Noes : None

Absent: Councilman Wolf, Mayor Miller.

There being no further business, upon motion, seconded and carried, the meeting was recessed at 11:30 A. M., subject to call of the Mayor.

APPROVED:

Tom Miller  
MAYOR

ATTEST:

William Miller  
CITY CLERK