



September 11, 2019

June Smith, Supervisor
Town of Sterling
1290 State Route 104A

SUBJECT: Recipient Name: Town of Sterling
Project Name: Water District #2
Letter of Conditions Water Application
CFDA NUMBER - 10.760

Dear Ms. Smith:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development, both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. If significant changes are made without obtaining such concurrence, the Agency may discontinue processing of the application.

All conditions set forth under Section III – Requirements Prior to Advertising for Bids must be met within 6 months of the date of this letter. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 7 days:

Form RD 1942-46, “Letter of Intent to Meet Conditions”
Form RD 1940-1, “Request for Obligation of Funds”
RUS Bulletin 1780-12, “Water and Waste System Grant Agreement”

The loan/grant will be considered approved on the date Form RD 1940-1, “Request for Obligation of Funds,” is signed by the approving official. Thus, this letter in itself does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. When funds are available, the Form 1940-1 will be provided to

Rural Development • Syracuse State Office
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If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

you for your signature. After you sign and return the form to the Agency, the request will be processed and loan/grant funds will be approved and obligated.

You may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. Project Description – Funds will be used to construct Water District #2 which will provide municipal water to 254 residents in the town of Sterling. The project includes the installation of a new municipal drinking water system including distribution mains, hydrants, valves, services, a new water tower, a new well supply, and other necessary appurtenances.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) as concurred with by the Agency.

2. Project Funding – The Agency is offering the following funding for your project:

Agency Loan -	<u>\$2,008,000</u>
Agency Grant -	<u>\$3,323,000</u>
TOTAL PROJECT COST -	\$5,331,000

This funding is offered based on the amounts stated above.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. If you have not done so already, please notify the Agency immediately if you intend to pursue additional funding sources not detailed above.

If additional funds are received from other funding sources after commitment of Agency funds – or if a hardship or eligibility determination letter is received, the addition of these funds could jeopardize Agency funding and be grounds for the de-obligation of grant and/or loan. Any additional costs or conditions associated with these additional funds are not eligible and will be the responsibility of the applicant.

Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of applicant contributions and approval of other funding sources. This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. **Project Budget** – Funding from all sources has been budgeted for the estimated expenditures as follows:

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Legal Fees - Local Attorney	\$ 20,000
Legal Fees - Bond Counsel	\$ 10,000
Interest - Interim	\$ 60,400
Fiscal Coordination	\$ 2,000
Single Audit	\$ 8,000
Engineering Fees	\$ 635,000
Includes:	
Preliminary Engineering Report	\$ 22,000
Design	\$363,000
Construction Administration	\$ 80,000
Resident Project Representation	\$120,000
Additional Services	\$ 50,000
Construction	\$4,114,100
Miscellaneous	\$ 70,000
Contingency	\$ 411,500
TOTAL	\$5,331,000

Obligated loan or grant funds not needed to complete the proposed project will be deobligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget.

SECTION II – LOAN AND GRANT TERMS

4. **Repayment** – The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount.

Your loan will be scheduled for repayment over a period of 38 years. Payments will be determined by bond counsel with semi-annual payments of interest and annual payments of principal. The interest will be the rate of **2.125%**. The precise payment amount will be based on the interest rate at which the loan is closed.

The payment due date will be established as the day that the loan closes. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided.

5. **Security** – The loan will be secured by a General Obligation Bond with first lien position in the amount of **\$2,008,000**. The bond will be fully registered as to both principal and interest in the name of the United States of America, Acting through Rural Utilities Service, United States Department of Agriculture.

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or its authorizing

law. In particular, there must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

Additional security requirements are contained in RUS Bulletin 1780-12, "Water and Waste System Grant Agreement," and RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)." A draft of all security instruments, including draft bond resolution, must be reviewed and concurred in by the Agency prior to advertising for bids. The Bond Resolution and Loan Resolution must be duly adopted and executed prior to start of construction or loan closing, whichever occurs first. The Grant Agreement must be fully executed prior to the first disbursement of grant funds.

6. Electronic Payments – Payments will be made on the day your payment is due through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28, "Authorization Agreement for Preauthorized Payments," for all new and existing indebtedness to the Agency prior to loan closing. It will allow for your payment to be electronically debited from your account on the day your payment is due.

7. Construction Completion Timeframe - All projects must be completed and all funds disbursed within five years of obligation. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances beyond your control. Requests for waivers beyond the initial extension will be submitted to the Assistant Administrator for concurrence.

8. Disbursement of Agency Funds - Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

Any applicant contribution will be the first funds expended, followed by other funding sources. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached with all other funding sources on how funds are to be disbursed prior to start of construction or loan closing, whichever occurs first. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. The Grant Agreement must not be closed and funds must not be disbursed prior to loan funds except as specified in RUS Instruction 1780.45(d). In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

Grant funds are to be deposited in an interest-bearing account (exception provided below) in accordance with 2 CFR Part 200 and interest in excess of \$500 per year remitted to the Agency. The funds should be disbursed by the recipient immediately upon receipt and there should be little interest accrual on the Federal funds. Recipients shall maintain advances of Federal funds in interest-bearing accounts, unless:

- a. The recipient receives less than \$120,000 in Federal awards per year.
- b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.

- c. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
 - d. A foreign government or banking system prohibits or precludes interest-bearing accounts.
9. **Reserves** – Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs and assist with debt service should the need arise. The following reserves are required to be established as a condition of this loan:
- a. **Short-Lived Asset Reserve** – You must establish a short-lived asset reserve fund. Based on the preliminary engineering report, you must deposit at least **\$7,167** into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

Current assets can also be used to establish and maintain reserves for expected expenses, including but not limited to operation and maintenance, deferred interest during the construction period, and an asset management program.

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. **Environmental Requirements** – At the conclusion of the proposal's environmental review process, specific action(s) were determined necessary to avoid or minimize adverse environmental impacts. As outlined in the Environmental Report dated July 2019 the following actions are required for successful completion of the project and must be adhered to during project design and construction:

Applicable erosion and sedimentation control practices outlined in the "New York State Standards and Specifications for Erosion and Sediment Control" will be implemented during construction to minimize potential environmental consequences, including obtaining a NYS SPDES general permit for stormwater discharges from construction activities.

Utility lines will cross areas designated as floodplains but there will be no effect on flood flows or flood elevations incurred by this project. The project will be completed in compliance with Town flood control ordinances.

Actual wetland boundaries must be field verified by a qualified wetland professional along the project site. Permits will be obtained, as needed, from the New York State Department of Environmental Conservation and/or the U.S. Army Corps of Engineers for work in any streams, waterways, waterbodies, wetlands, coastal areas, and sources of water.

The Town will comply with the provisions of Section 305(4) and complete the Notice process needed for the authorization of the Department of Agriculture and Markets.

Any required tree removal will be performed during the period: October 1 to March 31. Water main installation will be within existing, cleared public ROWs, with no impacts to Bog Turtle. Until the proposed project is complete the USFWS website at: <http://www.fws.gov/northeast/nyfo/es/Section7.htm> should be checked every 90 days to ensure that listed species presence/absence information for the proposed project is current.

Permits shall be obtained from the NYSDEC for the backup well construction, including any updates needed to the Village of Fairhaven Water Supply Permit.

The specifications for construction shall include a standard USDA RD inadvertent discovery provision, developed in accordance with 36 CFR § 800.13(b) and (c), as a condition of obligation in order to address any historic properties which might be inadvertently discovered or affected during project construction.

The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and or permits may apply or be required. If the project or any project element deviates from or is modified from the originally-approved project, additional environmental review may be required.

11. Engineering Services – You are required to complete an Agreement for Engineering Services, using the Engineers Joint Contract Documents Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance,” or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids and must approve any modifications to this agreement.

12. Contract Documents, Final Plans, and Specifications

- a. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.
- b. The contract documents, final plans, and specifications must comply with RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, and must be submitted to the Agency for concurrence prior to advertising for bids along with an updated cost estimate. The Agency may require another updated cost estimate if a significant amount of time elapses between the original submission and advertising for bids.
- c. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.

- d. Seismic Requirements - All new above-ground structures, fully or partially enclosed, used or intended for sheltering persons or property, shall be designed with the appropriate seismic safety provisions in compliance with the 2016 New York State Uniform Fire Prevention and Building Code (the 2015 International Building Code with the 2016 New York State Supplement, collectively referred to as the 2016 NYS Building Code) and Rural Development implementing regulations for seismic safety (7 CFR Part 1792, Subpart C). For each applicable structure, borrowers and grant recipients must provide Rural Development a written acknowledgment from a registered architect or engineer, licensed in the State where the structure is being built and responsible for the design, stating that seismic provisions pursuant to Section 1792.103(b) and the 2016 NYS Building Code have been used in the design of the structure. This acknowledgement shall include the date of the model code or standards used for the seismic design of the project, the seismic use group, and the seismic factor for each structure.
- e. Other Code Requirements - All new structures in the State of New York shall meet the requirements of the 2015 International Energy Conservation Code and the 2016 Supplement to the New York State Energy Conservation Construction Code (collectively referred to as the 2016 NYS Energy Code). The applicant is responsible for providing the required certifications and Building Permits.
- f. All Rural Development funded construction projects require prevailing New York State Wage Rates. Any construction contract requiring Federal Wage Rates (For ARC, HUD, or EDA, etc.) must include the Labor Standards Provision 29 CFR 5.5.
- g. Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference applies a new American Iron and Steel (AIS) requirement to obligations made after May 5th, 2017:
 - (1) No Federal funds made available for this fiscal year for the rural water, waste water, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all of the iron and steel products used in the project are produced in the United States.
 - (2) The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
 - (3) The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the “Secretary”) or the designee of the Secretary finds that—
 - (a) applying the requirement would be inconsistent with the public interest;
 - (b) iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

(c) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Owners are ultimately responsible for compliance with AIS requirements and will be responsible for the following:

(a) **Signing** loan resolutions, grant agreements and letters of intent to meet conditions which include AIS language, accepting AIS requirements in those documents and in the letter of conditions.

(b) **Signing** change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby **acknowledging** responsibility for compliance with American and Iron Steel requirements.

(c) **Obtaining** the certification letters from the consulting engineer upon substantial completion of the project and **maintaining** this documentation for the life of the loan.

(d) Where the owner provides their own engineering and/or construction services, **providing** copies of engineers', contractors', and manufacturers' certification letters (as applicable) to the Agency to insert into the Agency file. All certification letters must be kept in the engineer's project file and on site during construction. For Owner Construction (Force Account), all clauses from Section 17 must be included in the Agreement for Engineering Services.

(e) Where the owner directly procures AIS products, **including** AIS clauses in the procurement contracts and obtaining manufacturers' certification letters and **providing** copies to consulting engineers and contractors.

13. Legal Services – You are required to execute a legal services agreement with your attorney and bond counsel, if applicable, for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a “not to exceed” amount for the services, including reimbursable expenses. RUS Bulletin 1780-7, “Legal Services Agreement,” or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

14. Property Rights - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such control over the lands and rights will be evidenced by the following:

a. Right-of-Way Map – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.

- b. **Form RD 442-21, “Right-of-Way Certificate”** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
- c. **Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.
- d. **Certificate as to Title to Project Site** - Title to land essential to the successful operation of facilities or title to facilities being purchased, must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. The Certificate must be completed by your Attorney and submitted to the local office for review.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

You are responsible for the acquisition of all property rights necessary for the project and for determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee in order to validate the price to be paid.

15. System Policies, Procedures, Contracts, and Agreements – The facility must be operated on a sound business plan. You must adopt policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system. Mandatory connection policies should be used where enforceable. The policies, procedures, and/or ordinances must contain an effective collection policy for accounts not paid in full within a specified number of days after the date of billing. They should include appropriate late fees, specified timeframes for disconnection of service, and reconnection fees. A draft of these policies, procedures, and/or ordinances must be submitted for Agency review and concurrence, along with the documents below, before closing instructions may be issued unless otherwise stated.

- a. **Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place an up-to-date written policy on conflict of interest. The policy will include, at a minimum: (1) a requirement for those with a conflict or potential conflict to disclose the conflict/potential conflict; (2) a clause that prohibits interested members of the applicant’s governing body from voting on any matter in which there is a conflict, and (3) a description of the specific process by which the governing body will manage identified or potential conflicts.

You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant’s official. A negative disclosure in the same format is required if no conflicts are anticipated.

Sample conflict of interest policies may be found at the National Council of Nonprofits website, <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at <http://www.irs.gov/pub/irs-pdf/i1023.pdf>. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Assistance in developing a conflict of interest policy is available through Agency-contracted technical assistance providers if desired.

- b. Water Purchase Contract** – You propose to purchase water services from the Village of Fair Haven. This purchase arrangement must be evidenced by a water purchase contract. A draft of the proposed contract must be submitted to the Agency for review and concurrence prior to advertising for bids. The draft contract must meet the requirements of RUS Instruction 1780.62.
- c. Contracts for Other Services/Lease Agreement** – Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.
- d. Other agreements** with governments or other entities regarding joint operation of facilities, granting authority to Agency borrower for providing service within another entity's service area, etc. The draft agreement must receive Agency concurrence prior to advertising for bids.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements must be submitted prior to loan closing, with the exception of the conflict of interest policy, which must be in place prior to obligation of funds.

16. Closing Instructions – The Agency will prepare closing instructions as soon as the requirements of the previous paragraphs are complete, as well as a draft of the security instrument(s). Closing instructions must be obtained prior to advertising for bids. The applicant must retain the services of a recognized bond counsel to prepare bonding documents and issue the required opinions.

- a. Preliminary Opinion** – Bond Counsel must issue a preliminary opinion that the applicant is legally organized and that all requirements of New York Law have been complied with to date. The opinion must be accompanied by the proposed form of the bond, proposed form of details resolution, a copy of the Bond Resolution, and the proposed form of final approving opinion. Rural Development must receive written closing instructions from the Office of the General Counsel, USDA, prior to the award of contracts or commencement of construction.
- b. Final Opinion** – Bond Counsel will be required to prepare final closing documents, including final draft of the bond, proposed maturity schedule, final draft of details resolution, and final approving opinion for authorization by Rural Development to

close. The final opinion must be an unqualified opinion on the legality of the bonds to be issued.

- c. **Closing** – The loan will be closed by the municipal attorney using instructions issued by Bond Counsel, OGC, and USDA Rural Development.

17. Interim Financing – For all loans exceeding \$500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.

18. Construction Account – You must establish a construction account for all funds related to the project. Construction funds will be deposited with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. A separate account will not be required for Federal funds and other funds; however, the recipient must be able to separately identify, report, and account for all Federal funds, including the receipt, obligation and expenditure of funds. Financial institutions or depositories accepting deposits of public funds and providing other financial agency services to the Federal Government are required to pledge adequate, acceptable securities as collateral, in accordance with 31 CFR Part 202. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the construction account at any one time. Your financial institution can provide additional guidance on collateral pledge requirements.

Agency funds will be disbursed into the borrower’s depository account through an electronic transfer system. SF 3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” must be completed and submitted to the Agency prior to advertising for bids.

19. System Users – This letter of conditions is based upon your indication at application that there will be at least 94 residential users, 0 non-residential users, and 0 bulk / wholesale users on the proposed system when construction is completed.

Before the Agency can agree to the project being advertised for construction bids, you must certify that the number of users indicated at application are currently using the system or signed up to use the system once it is operational.

If the actual number of existing and/or proposed users that have signed up for service is less than the number indicated at the time of application, you must provide the Agency with a written plan on how you will obtain the necessary revenue to adequately cash flow the expected operation, maintenance, debt service, and reserve requirements of the proposed project (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is cause to modify the anticipated flows or volumes presented following approval.

If you are relying on mandatory connection requirements, you must provide evidence of the authorizing ordinance or statute along with your user certification.

If you are not relying on mandatory connection requirements, the following items apply:

- a. **Positive Program to Encourage Connections** – You must provide a positive program to encourage connection by all users as soon as service is available. The program will be reviewed by the Agency prior to advertising for bids. A guide for developing your positive program is available from the Agency.
- b. **Water User Agreements** – Individual users outside of the municipality will be required to execute a Water Users Agreement prior to advertising for construction bids. The amount of cash contributions required will be set by you and concurred with by the Agency. Contributions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low income families and have a deadline for the contribution to be used or forfeited. RUS Bulletin 1780-9, “Water Users Agreement,” or similar agreement may be used.
- c. **Service Declination Statement** – Each potential user who is located along planned lines and declines the offered service will be provided an opportunity to sign a “Service Declination Statement.”

20. Other Funding – Prior to advertising for bids, you must provide evidence of applicant contributions and approval of other funding sources. This evidence should include a copy of the commitment letter from each source.

21. Proposed Operating Budget – You must establish and/or maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance (O&M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency which supports the operation, maintenance, debt service, and reserves, as well as your proposed rate schedule. The operating budget should be based on a typical year cash flow after completion of the construction phase and should be signed by the appropriate official of your organization. Form RD 442-7, “Operating Budget,” or similar format may be utilized for this purpose. It is expected that O&M will change over each successive year and user rates will need to be adjusted on a regular basis.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested, please contact our office for information.

22. Permits –The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

A copy of the NYS Department of Health approval of the final plans and specifications must be provided to the Agency. This approval must state that the system, as improved, will comply with the requirements of USEPA PL93-523 and Part 5 of the NYS Sanitary

Code. If the proposal is to develop or enlarge a source of water, the applicant must obtain approval of NYS DEC under ECL Article 15.

23. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. Borrowers with existing systems must provide a certification that a VA/ERP has been completed prior to advertising for bids. The VA/ERP documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

For new systems, see Section V of this letter of conditions. For VA/ERP requirements throughout the life of the loan, see Section VII. Technical assistance at no cost is available in preparing these documents.

24. Bid Authorization - Once all the conditions outlined in Section III of this letter have been met, the Agency will authorize you to advertise the project for construction bids. Such advertisement must be in accordance with applicable State statutes.

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

25. Bid Tabulation – Immediately after bid opening, you must provide the Agency with the bid tabulation and your engineer’s evaluation of bids and recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the requirements of Section III of this letter have been satisfied, the Agency will authorize you to issue the Notice of Award.

- a. **Cost Overruns** - If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.
- b. **Excess Funds** - If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and letter of conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

26. Contract Review – Your attorney will certify that the executed contract documents, including performance and payment, if required, are adequate and that the persons executing these documents have been properly authorized to do so in accordance with RUS Instruction 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for its concurrence. The Notice to Proceed cannot be issued until the Agency has concurred with the construction contracts.

27. Final Rights-of-Way – If any of the rights-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed. For projects involving the acquisition of land, you must provide evidence that you have clear title to the land prior to the issuance of the Notice to Proceed.

28. Insurance and Bonding Requirements - Prior to the start of construction or loan closing, whichever occurs first, you must acquire and submit to the Agency proof of the types of insurance and bond coverage for the applicant shown below. The use of deductibles may be allowed, providing you have the financial resources to cover potential claims requiring payment of the deductible. The Agency strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of the Agency to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained.

- a. **General Liability Insurance** – Include vehicular coverage.
- b. **Workers' Compensation** – In accordance with appropriate State laws.
- c. **Fidelity or Employee Dishonesty Bonds** – Include coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through blanket coverage providing protection for all appropriate workers. During construction, each position should be bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The coverage may be increased during construction based on the anticipated monthly advances. After construction and throughout the life of the loan, the amount of coverage must be for at least the total annual debt service of all outstanding Agency loans. The Agency will be identified in the fidelity bond for receipt of notices. Form RD 440-24, "Position Fidelity Schedule Bond," or similar format may be used. The Agency has determined this amount is **\$78,000** for each position to be bonded. This amount only applies to this project. If you have other outstanding loan commitments to the Agency, the required amount of coverage is cumulative and will need to be increased accordingly.
- d. **National Flood Insurance** - If the project involves acquisition or construction in designated special flood or mudslide prone areas, you must purchase a flood insurance policy at the time of loan closing.
- e. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the

value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

29. Form AD-3031 (non-profits only) – You are required to complete and submit Form AD-3031 “Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants.”

30. Initial Compliance Review – The Agency will conduct an initial compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E.

SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING

Interim financing is being used. Loan closing will occur near the end of construction when interim funds are about to be completely disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing. In addition, the following items are required prior to closing:

31. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operation, and a certification that a VA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that a VA and ERP are completed prior to authorization to advertise for bids. The VA/ERP documents are not submitted to the Agency. Technical assistance is available in preparing these documents at no cost to you. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

32. Other Requirements – All requirements contained in the Agency’s closing instructions, as well as any requirements of your bond counsel and/or attorney, must be met prior to loan closing.

System for Award Management. You will be required to maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be done on-line at: <http://sam.gov>. This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended. See Appendix A.

To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the activation date, commonly referred to as the expiration date. The registration process may take up to 10 business days. (See 2 CFR Part 25 and the “Help” section at <http://sam.gov>).

- a. **Litigation.** You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.
- b. **Certified Operator.** Evidence must be provided that your system has or will have, as defined by applicable State or Federal requirements, a certified operator available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

33. **Resident Inspector(s)** – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must concur with the request. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the pre-construction conference.
34. **Preconstruction Conference** – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and will provide minutes of this meeting to the owner and Agency.
35. **Inspections** - The Agency requires a pre-construction conference, pre-final and final inspections, and a warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any warranty issues. The Agency will conduct an inspection with you of your records management system at the same time and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.
36. **Change Orders** – Prior Agency concurrence is required for all Change Orders.
37. **Payments** – Prior Agency concurrence is required for all Invoices and Partial Payment Estimates before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner’s written concurrence.

38. Use of Remaining Funds – Applicant contribution and connection or tap fees will be the first funds expended in the project, followed by non-Agency sources of funds. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

- a. Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.
- b. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 90 days of the date of the Certificate of Substantial Completion. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
- c. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

39. Technical, Managerial and Financial Capacity - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the particular individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for information.

40. Reporting Requirements Related to Expenditure of Funds

- a. **Financial Audit**– An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of your fiscal year end.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

- b. **Reporting Subawards and Executive Compensation** – You as a recipient of Federal funds and your first-tier contractors are required by 2 CFR Part 170 to report disbursements to subrecipients in accordance with Appendix B of this letter and www.fsrs.gov. Your Agency processing office can provide more information.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

41. **Prepayment and Extra Payments** - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.

42. **Graduation** - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you are able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

43. **Security/Operational Inspections** – The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

44. **Annual Financial Reporting/Audit Requirements** – You are required to submit an annual financial report at the end of each fiscal year. The annual report will be certified by the appropriate organization official and will consist of financial information and a rate schedule. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP) and must include at a minimum a balance sheet and income and expense statement. The annual report will include separate reporting for each water and waste disposal facility, and itemize cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available at no cost with preparing financial reports.

The type of financial information that must be submitted is specified below:

- a. **Audits** – An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal

funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of your fiscal year end.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit or financial statements to be completed, the time frame in which the audit or financial statements will be completed, what type of reports will be generated from the services provided, and how irregularities will be reported.

- b. Financial Statements** – If you expend less than \$750,000 in Federal financial assistance per fiscal year, you may submit financial statements in lieu of an audit which include at a minimum a balance sheet and an income and expense statement. You may use Form RD 442-2, “Statement of Budget, Income and Equity,” and 442-3, “Balance Sheet,” or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end.
- c. Quarterly Reports** – Quarterly Income and Expense Statements will be required until the processing office waives this requirement. You may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter’s end. The Agency will notify you in writing when the quarterly reports are no longer required.

45. Annual Budget and Projected Cash Flow - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. With the submission of the annual budget, you will be required to provide a current rate schedule, and a current listing of the Board or Council members and their terms. The budget must be signed by the appropriate borrower official. Form RD 442-2 or similar format may be used.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system, as well as completing the annual budget. If you are interested, please contact our office for information.

46. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – You will be required to submit a certification to the servicing office every three years that the VA/ERP

is current and covers all sites related to the facility. The documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

47. **Insurance.** You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

48. **Statutory and National Policy Requirements** – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 *et seq.*) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 *et seq.*) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the

USDA Departmental Regulation 4330-005, "Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA."

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

49. Compliance Reviews and Data Collection – The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

Non-compliance with the conditions in this letter or requirements of your security documents will be addressed under the provisions of 7 CFR 1782 and other applicable regulations, statutes, and policies.

Please forward copies of this letter to your attorney, bond counsel, engineer, fiscal advisor, and accountant. We look forward to continue working with you to complete this project and if you have any questions please contact Eric Johnson, Area Specialist at 315-221-5875 or by e-mail at eric.johnson@usda.gov.

Sincerely,

HOWARD KUNZ
Digitally signed by HOWARD
KUNZ
Date: 2019.09.11 12:49:56 -04'00'

BRENDA L. SMITH by Howard Kunz, Acting Community Programs Director
Community Programs Director

cc: Eric Johnson, Area Specialist
Richard Mayfield, State Director
Scott Collins, Associate Director (e-mail)
Brian Murray, Area Director (e-mail)
Christina Cerio, Community Program Specialist (e-mail)
Howard Kunz, Community Program Specialist (e-mail)
Marcy Newman, P.E., State Engineer (e-mail)
John Helgren, P.E., State Engineer (e-mail)

Harry Nelson, N.Y.S. Environmental Facilities Corporation (e-mail)
Michael J. Montysko, N.Y.S. Department of Health (e-mail)
Chris Auer, P.E., N.Y.S. Department of Health (e-mail)
Charlie Phillion, NYS Homes & Community Renewal
Jamie Herman, New York Rural Water Association (e-mail)
Scott Mueller, RCAP Solutions (e-mail)
Robert C. Somers, PhD, N.Y.S. Dept. of Agriculture & Markets (e-mail)
Jennifer Wade, Office of the NYS Comptroller (e-mail)

ACRONYMS:

ABA - Architectural Barriers Act
ACH – Automated Clearing House
AD – Agriculture Department
ADA – Age Discrimination Act
CFDA – Catalog of Federal Domestic Assistance
CFR – Code of Federal Regulations
CPAP – Commercial Programs Application Processing
DUNS – Dun and Bradstreet Data Universal Numbering System
EJCDC – Engineers Joint Contract Documents Committee
ERP – Emergency Response Plan
GAAP – Generally Accepted Accounting Principles
LEP – Limited English Proficiency
OC – Owner Construction
OPS – Owner-Performed Services
O&M – Operation and Maintenance
PER – Preliminary Engineering Report
RD – Rural Development
RUS – Rural Utilities Service
SAM – System for Award Management
SF – Standard Form
UCC – Uniform Commercial Code
USC – United States Code
USDA – United States Department of Agriculture
VA – Vulnerability Assessment

FORMS and BULLETINS:

Form AD-3031 “Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants” – Item 29
Internal Revenue Service Form 1023, Appendix A, “Sample Conflict of Interest Policy” - Item 15
Form RD 440-22, “Promissory Note” – Item 5
Form RD 440-24, “Position Fidelity Schedule Bond” – Item 28
Form RD 442-2, “Statement of Budget, Income and Equity” – Items 44 and 45
Form RD 442-3, “Balance Sheet” – Item 44
Form RD 442-7, “Operating Budget” – Item 21
Form RD 442-20, “Right-of-Way Easement” – Item 14
Form RD 442-21, “Right-of-Way Certificate” – Item 14
Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way” – Item 14
Form RD 1927-9, “Preliminary Title Opinion” – Item 14
Form RD 1927-10, “Final Title Opinion” – Item 27
Form RD 1940-1, “Request for Obligation of Funds” – Pages 1 and 2
Form RD 1942-8, “Resolution of Members or Stockholders” – Item 5
Form RD 1942-46, “Letter of Intent to Meet Conditions” – Page 1
Form RD 3550-28, “Authorization Agreement for Preauthorized Payments” – Items 6 and 30
Form UCC-1, “Financing Statement” – Item 5
Form UCC-1Ad, “UCC Financing Statement Addendum” – Item 5
SF 3881, “ACH Vendor/Miscellaneous Payment Enrollment Form” – Items 8 and 18
RUS Bulletin 1780-7, “Legal Services Agreement” – Item 13
RUS Bulletin 1780-9, “Water Users Agreement” - Items 15 and 19
RUS Bulletin 1780-12, “Water and Waste System Grant Agreement” – Page 1 and Item 5
RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance” – Items 11 and 12
RUS Bulletin 1780-27, “Loan Resolution (Public Bodies)” – Item 5
RUS Bulletin 1780-28, “Loan Resolution Security Agreement” – Item 5

**SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL
IDENTIFIER REQUIREMENTS**

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another appendix.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this appendix) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this appendix:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this appendix, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

[75 FR 55673, Sept. 14, 2010, as amended at 79 FR 75879, Dec. 19, 2014; 80 FR 54407, Sept. 10, 2015]

Appendix B
2 CFR Part 170

Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this appendix, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this appendix).
2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this appendix to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action listed in the submission instructions posted at <http://www.fsrs.gov>.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this appendix:
 - i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. Reporting of Total Compensation of Subrecipient Executives.
1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this appendix, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
 2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this appendix:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the

month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this appendix:

1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax-qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

[75 FR 55669, Sept. 14, 2010, as amended at 79 FR 75879, Dec. 19, 2014]

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