



Rural Development

May 4, 2020

Delaware/Maryland  
State Office

The Honorable Wayne L. Tome, Sr.  
The Town of Port Deposit  
64 South Main Street  
Port Deposit, MD 21904

Community Programs

1221 College Park  
Drive, Dover, DE  
19904

Voice: (302) 857-3625  
Fax: (855) 389-2243

**SUBJECT:** Recipient Name: The Town of Port Deposit  
Project Name: Stormwater Drainage  
Storm Wastewater Application  
CFDA NUMBER – 10.760

Loan:	\$245,000
Grant:	\$572,000
SEARCH:	\$ 30,000
CDBG:	\$800,000

Dear Mayor Tome:

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 six 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 five (5) 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 and 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, Form RD 1940-1 will be provided to you for your signature. After you sign and return the form to the Agency, the request will be processed, and loan and grant funds will be approved and obligated.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at [www.rd.usda.gov](http://www.rd.usda.gov).

The conditions are as follows:

**SECTION I - PROJECT DETAIL**

**1.1 Project Description** – Funds will be used to address stormwater in an area in The Town of Port Deposit. The project site area is located on portions of Race Street, Granite Avenue and Rock Run Road, on the northwest side of the Town of Port Deposit. The site consists of a road that runs roughly parallel to an unnamed perennial stream that drains into Rock Run, a larger perennial stream. Rock Run flows south-westward and drains into Susquehanna River. This proposed project will intercept and divert surface water that has historically encroached onto private properties, reduce future erosion and water damage to these affected properties, and maintain the current high-water quality in the study area streams.

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.

**1.2 Project Funding** – The Agency is offering the following funding for your project:

Agency Loan -	\$ 245,000
Agency Grant -	\$ 572,000
Agency SEARCH Grant -	\$ 30,000

This offer is based upon the following additional funding being obtained.

CDBG -	\$ 800,000
TOTAL PROJECT COST -	\$1,647,000

This funding is offered based on the amounts stated above. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. 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.

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

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Construction	\$1,127,421
Contingency	\$ 89,755
Engineering Fees	\$ 340,218
Includes:	
Preliminary Engineering Report	\$ 20,000
Environmental Report	\$ 10,000
Design	\$105,022
Construction Administration	\$
Resident Project Representation (Inspection)	\$ 97,827
Topographic survey	\$ 80,572
Additional Services	\$ 26,797
Interest – Interim	\$ 61,900
Legal Fees - Local Attorney	\$ 11,706
Legal Fees - Bond Counsel	\$ 16,000
 TOTAL	 \$1,647,000

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**

**2.1 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 40 years. Payments will be equal quarterly amortized installments, beginning three months after closing. For planning purposes, use a 1.375% interest rate and an amortization factor of 8.14, which provides for a quarterly payment of \$1,995. The precise payment amount will be based on the interest rate at which the loan is closed and may be different than the one above.

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.

**2.2 Security** – The loan will be secured by a General Obligation bond in the amount of \$245,000. The bond will be fully registered as to both principal and interest in the name of the United States of America, Acting through the United States Department of Agriculture.

The Borrower should be aware that a recognized Bond Counsel must be employed to prepare all bond documents. The Bond Counsel should be instructed to provide the RUS Loan Specialist with two copies of the following, prior to the start of any construction:

1. Form of the Bond.
2. Form of the Bond Resolution specifying the details of the bond.
3. Form of the Bond Counsel's Opinion regarding the validity of the bond and its exemption from Federal and State income taxation. The draft opinion must disclose the name of the recognized Bond Counsel.

The Bond Counsel should be instructed to prepare all documents in accordance with RUS Instruction 1780.80 through 1780.95. Two copies of the complete bond transcript must be given to RUS at the time the bond is issued.

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 loan closing. The Grant Agreement must be fully executed prior to the first disbursement of grant funds.

**2.3 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.

**2.4 Construction Completion Timeframe** - All projects must be completed, and all funds disbursed within five years of obligation. Construction of projects should begin within a year of obligation and be completed within 3 years for all but the most complicated projects. 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 decision.

**2.5 Disbursement of Agency Funds** - You will need to submit an Account Summary once every 30-days. The Account Summary will include the project expenses incurred for a 30-day period.

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 executed, 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.

**2.6 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 \$3,700 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**

**3.1 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 [Month] [Day], [Year], the following [action is / actions are] required for successful completion of the project and must be adhered to during project design and construction:

None

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.

**3.2 Engineering Services** – You have been required to complete an Agreement for Engineering Services, which should consist of 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. You must select an engineer using the process described in 7 CFR 1780.39(b), which is based on the requirements of the Qualifications Based Selection Process (QBS). This process involves public announcement (typically this involves a Request for Qualifications or RFQ) of all requirements for engineering services and negotiation of contracts on the basis of demonstrated competence and qualifications for the type of professional services required at a fair and reasonable price. The basis for determining whether a firm has demonstrated competence and qualifications should include the following:

- Is licensed to perform the required services in the State or jurisdiction
- Has a record of successful completion of similar projects
- Has the capacity to deliver products in a timely manner, and
- Has access to sufficient technical resources

If you obtained the services of an engineer prior to issuance of this Letter of Condition, we have the responsibility of determining if you have met the intent of procuring the engineering services properly. You will need to provide written documentation of the selection process.

Once the procurement process of the engineer has been completed, then an agreement should be prepared for the engineering services using EJCDC documents and our Bulletins 1780-26 and 1780-35. The Agency will provide concurrence prior to advertising for bids and must approve any modifications to this agreement.

**3.3 Positive Processing Schedule**: A positive processing schedule from the Borrower concerning advertisements and construction commencement must be submitted to the RUS within 30 days of being notified of the availability of funding.

### **3.4 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. RUS Bulletin 1780-34 provides Guidance for Using Competitive Sealed Bids Process for the Water and Waste Disposal Program.
- d. **American Iron and Steel Requirements.** 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 5, 2017:
  - (1) No Federal funds made available for this fiscal year for the rural water, wastewater, 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.
  - (4) 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.
- e. Affirmative steps shall be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall include the following:
- 1. Include qualified small and minority businesses on solicitation lists.
  - 2. Assure that small and minority businesses are solicited whenever they are potential sources.
  - 3. When economically feasible, divide total requirements into small tasks or quantities so as to permit maximum small and minority business participation.
  - 4. Where the requirement permits, establish delivery schedules, which will encourage participation by small and minority businesses.
  - 5. Use the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce.
  - 6. If any subcontracts are to be let, require the prime contractor to take the affirmative steps in the above paragraphs (a) through (e) of this section.
- f. Owners shall take similar appropriate affirmative action in support of women's businesses.
- g. Owners are encouraged to procure goods and services from labor surplus areas.
- h. Owners shall submit a written statement or other evidence to RUS of the steps taken to comply with the above paragraphs of this section.



**3.5 Legal Services** – You have been 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.

**3.6 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 442-20, “Right-of-Way Easement”** – This form may be used to obtain any necessary easements for the proposed project.
- c. **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.
- d. **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.
- e. **Preliminary Title Work**– When applicable, your attorney will provide a preliminary title opinion for any property related to the facility, currently owned and to be acquired, along with copies of deeds, contracts or options for purchasing said property. Form RD 1927-9, “Preliminary Title Opinion,” may be used.

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.

**3.7 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.

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.

**3.8 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.

**3.9 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.

**3.10 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.

**3.11 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.

**3.12 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.

**3.13 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.

**3.14 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.

**3.15 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**

**4.1 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.

**4.2 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. The Notice to Proceed is issued at the pre-construction conference.

**4.3 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.

**4.4 Final Title Work** - Your attorney must furnish a separate final title opinion on all existing real property related to the facility, now owned and to be acquired for this project, as of the day of loan closing or start of construction, whichever occurs first. Form RD 1927-10, “Final Title Opinion” may be used.

**4.5 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 borrower 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.
- 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.

**4.6 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**

**5.1** 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 RD 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:

**5.2 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.

**5.3 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.

- a. **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>).

- b. **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.

- c. **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**

**6.1 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.

**6.2 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.

**6.3 Monthly Construction Monitoring Reports** - The owner is required to provide a monthly construction monitoring report beginning the first month after Notice to Proceed is issued. This can be completed by the project engineer and signed by the owner. Submission should be made at or before the scheduled progress meeting. Use DE/MD E-1 Form.

**6.4 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.

**6.5 Change Orders** – Prior Agency concurrence is required for all Change Orders.

**6.6 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.

**6.7 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 30 days of final completion of project. 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.

**6.8 Technical, Managerial and Financial Capacity** - It is required that members of the Board of, 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.

#### **6.9 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](http://www.fsrs.gov). Your Agency processing office can provide more information.



## **SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN**

**7.1 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.*

**7.2 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.

**7.3 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.

**7.4 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.

**7.5 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.

**7.6 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.

**7.7 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.

**7.8 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.

**7.9 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.

## **SECTION IX – OTHER CONDITIONS WHICH MUST BE MET**

The Borrower agrees to execute Form RD 1910-11, "Application Certification, Federal Collection Policies for Consumer or Commercial Debts," prior to loan closing or start of construction, whichever occurs first.

Form RD 400-4, "Assurance Agreement," must be executed by the Borrower. The following covenant must be included in each instrument of conveyance for real property purchased with RUS funds subject to Title VI of the Civil Rights Act of 1964.

"The property described herein was obtained or improved through federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer."

The Borrower must execute Form RD 400-1, "Equal Opportunity Agreement."

For all public media notices, Borrower is required to acknowledge that funding was obtained from USDA/Rural Utilities Service.

Three additional copies of this letter and all RUS Instructions mentioned are attached for your use. We will be available to meet with you, your attorney, and your architect/engineer to discuss the terms set forth in this letter.

We look forward to working with you to complete this project. If you have any questions, please contact Charles Huester at 302-857-3604 or by e-mail at [charles.huester@usda.gov](mailto:charles.huester@usda.gov).

Sincerely,



TERRY S. FEARINS  
Community Program Director

#### Attachments

cc: Accountant  
Attorney  
Bond Counsel  
Engineer  
Charles Heuster

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

## Appendix A

### 2 CFR Part 25

## 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.fsrc.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.fsrc.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/excomp.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/excomp.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]

## **TABLE OF CONTENTS**

### **SECTION I - PROJECT DETAIL**

1. Project Description
2. Project Funding
3. Project Budget

### **SECTION II – LOAN AND GRANT TERMS**

4. Repayment
5. Security
6. Electronic Payments
7. Construction Completion Timeframe
8. Disbursement of Agency Funds
9. Reserves

### **SECTION III –REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS**

10. Environmental Requirements
11. Engineering Services
12. Contract Documents, Final Plans and Specifications
13. Legal Services
14. Property Rights
15. System Policies, Procedures, Contracts, and Agreements
16. Closing Instructions
17. Interim Financing
18. Construction Account
19. System Users
20. Other Funding
21. Proposed Operating Budget
22. Permits
23. Vulnerability Assessment/Emergency Response Plan (VA/ERP)
24. Bid Authorization

### **SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION**

25. Bid Tabulation
26. Contract Review
27. Final Rights-of-Way
28. Insurance and Bonding Requirements
29. Form AD-3031
30. Initial Compliance Review

## **SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING**

- 31. Vulnerability Assessment/Emergency Response Plan (VA/ERP)
- 32. Other Requirements

## **SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION**

- 33. Resident Inspector(s)
- 34. Preconstruction Conference
- 35. Inspections
- 36. Change Orders
- 37. Payments
- 38. Use of Remaining Funds
- 39. Technical, Managerial and Financial Capacity
- 40. Reporting Requirements Related to Expenditure of Funds

## **SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN**

- 41. Prepayment and Extra Payments
- 42. Graduation
- 43. Security/Operational Inspections
- 44. Annual Financial Reporting/Audit Requirements
- 45. Annual Budget and Projected Cash Flow
- 46. Vulnerability Assessment/Emergency Response Plan (VA/ERP)
- 47. Insurance
- 48. Statutory and National Policy Requirements
- 49. Compliance Reviews and Data Collection

## **SECTION VIII – REMEDIES FOR NON-COMPLIANCE**

**Acronyms**

**Forms and Bulletins**

**Appendix A - System for Award Management and Universal Identifier Requirements**

**Appendix B – Reporting Subawards and Executive Compensation**

**Table of Contents**

**Topical Cross-Reference**

## TOPICAL CROSS-REFERENCE

<u>Keyword</u>	<u>Item Number</u>	<u>Section</u>
Age Discrimination Act	48	VII
Agreement, Engineering	11	III
Agreement, Lease	15	III
Agreement, Legal Services	13	III
Agreement, Other	15	III
Agreement, Parity / Intercreditor	5	II
Agreement, Parity / Intercreditor	15	III
Agreement, Water / Sewer User	15	III
Americans with Disabilities Act	48, 49	VII
Annual Operating Budget and Projected Cash Flow	45	VII
Annual Financial Reporting/Audit Requirements	44	VII
Audit (Construction)	40	VI
Audit (Servicing)	44	VII
Bid Authorization	24	III
Bid Tabulation	25	IV
Bond, Fidelity	28	IV
Bond, Fidelity	47	VII
Bond, Revenue and General Obligation	5	II
Budget and Projected Cash Flow, Annual Operating (Servicing)	45	VII
Budget, Project	3	I
Budget, Proposed Operating (Prior to Bid)	21	III
Certified Operator	32	V
Change Order	36	VI
Civil Rights Act of 1964	48	VII
Closing Instructions	16	III
Compliance Review (Initial)	30	IV
Compliance Review (Servicing)	48, 49	VII
Conflict of Interest	15	III
Conflict of Interest	43	VII
Construction Account	18	III
Construction Completion Timeframe	7	II
Contract Documents	12	III
Contract Documents	26	IV
Contract Review	26	IV
Contract - Water Purchase / Sewage Treatment	15	III
Contracts for Other Services	15	III
Cost Overruns	25	IV



Data Collection	49	VII
Debt Service Reserve	9	II
Disbursement of Agency Funds	5, 7, 8	II
Disbursement of Agency Funds	17, 18	III
Disbursement of Agency Funds	40	VI
Disbursement of Agency Funds	Appendix B	NA
Electronic Payments	4, 6	II
Electronic Payments	17, 18	III
Electronic Payments	30	V
English Proficiency, Limited	48	VII
Engineering Agreement	11	III
Engineering Fees	3	II
Engineering Services	11	III
Environmental Requirements	10	III
Excess Funds	25	IV
Extra Payments	38	VI
Extra Payments	41	VII
Felony Convictions or Tax Delinquent Status for Corporate Applicants, Assurance Regarding (Form AD-3031)	29	IV
Final Plans	12	III
Final Plans	22	III
Final Title Work (Rights-of-Way)	27	IV
Financial Statements	44	VII
Financial Statements	Appendix B	NA
Financing Statement	5	II
Graduation (Refinancing)	5	II
Graduation (Refinancing)	42	VII
Inspections (Construction)	35	VI
Inspections (Security/Operational)	43, 49	VII
Inspector, Resident	33	IV
Insurance and Bonding Requirements (Project)	28	IV
Insurance (Servicing)	47	VII
Insurance (Servicing)	Appendix B	NA
Insurance, Title	14	III
Insurance, Title	27	IV
Intercreditor Agreement	5	II
Intercreditor Agreement	15	III
Interest	3	I
Interest Rate	4	II
Interest Rate	17	III
Interim Financing	3	I
Interim Financing	8	II

Interim Financing	17	III
Interim Financing	30	V
Interim Financing	38, 40	VI
Interim Financing	44	VII
Lease Agreement	15	III
Legal Services	13	III
Limited English Proficiency	48	VII
Litigation	32	V
Loan Term	4	II
Non-Compliance	NA	VIII
Operating Budget, Proposed (Prior to Bid)	21	III
Operator, Certified	32	V
Other Funding	SUBJECT LINE	NA
Other Funding	2	I
Other Funding	8	II
Other Funding	20	III
Parity / Intercreditor Agreement	5	II
Parity / Intercreditor Agreement	15	III
Payments	4, 6	II
Payments	30	V
Payments	37	VI
Payments	41	VII
Payments	Appendix B	NA
Permits	10	II
Permits	22	III
Plans, Final	12	III
Plans, Final	22	III
Positive Program to Encourage Connections	19	III
Preconstruction Conference	34	VI
Preliminary Engineering Report	1	I
Preliminary Engineering Report	3, 9	II
Preliminary Engineering Report	25	IV
Preliminary Title Work (Rights-of-Way)	14	III
Prepayment	41	VII
Project Budget	3	I
Project Description	1	I
Project Funding	2	I
Property Rights	14	III
Refinancing (Graduation)	5	II
Refinancing (Graduation)	42	VII
Repayment	4	II
Rehabilitation Act of 1973	48	VII

Remaining Funds, Use of	38	VI
Remedies for Non-Compliance	NA	VIII
Reporting Subawards and Executive Compensation	Appendix B	NA
Reserves	9	II
Reserves	19, 21	III
Resident Inspector	34	VI
Rights-of-Way, Final	27	IV
Rights-of-Way, Preliminary	14	III
Quarterly Reports	44	VII
Security	5	II
Security/Operational Inspections	43, 49	VII
Service Declination Statement	19	III
Sewage Treatment Contract	15	III
Short-Lived Assets Reserve	9	II
Specifications	12, 22	III
Statutory and National Policy Requirements	48	VII
System for Award Management	33	V
System for Award Management	Appendix A	NA
System Policies, Procedures, Contracts, and Agreements	15	III
Technical Assistance	15	III
Technical Assistance	21	III
Technical Assistance	23	III
Technical Assistance	31	V
Technical Assistance	39	VI
Technical Assistance	44, 45	VII
Technical, Managerial and Financial Capacity	39	VI
Title Work, Preliminary	14	III
Title Work, Final	27	IV
Universal Identifier	Appendix A	NA
User Agreement, Water / Sewer	15	III
Users, System	19	III
Vulnerability Assessment/Emergency Response Plan	23	III
Vulnerability Assessment/Emergency Response Plan	31	V
Vulnerability Assessment/Emergency Response Plan	46	VII
Water Purchase Contract	15	III