



Rural Development

November 30, 2022

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**SUBJECT:** Recipient Name: City of San Juan Bautista  
Project Name: San Juan Bautista to Hollister Force Main Development  
CFDA Number: 10.760

RUS Loan: \$10,268,000  
RUS Grant: \$ 4,303,000  
Other Funding: \$ 4,000,000

Dear Mr. Reynolds:

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 (RD), 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. This includes any significant changes in the Applicant's financial condition, operation, organizational structure or executive leadership. Any changes made without Agency concurrence shall be cause for discontinuing processing of the application.

This letter does not constitute loan and grant approval, nor does it ensure that funds are or will be available for the project. The funding is being processed on the basis of a loan not to exceed \$10,268,000 and a grant not to exceed \$4,303,000. The loan and grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds" is signed by the Agency approval official.

The applicant will ensure projects are completed in a timely, efficient, and economical manner. You must meet all conditions set forth under Section III – Requirements Prior to Advertising for Bids within 1 year of this letter.

If you do not meet the conditions of this letter, the Agency reserves the right to withdraw Agency funding.

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 by Wednesday, November 30, 2022:

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Form RD 1942-46, "Letter of Intent to Meet Conditions"  
Form RD 1940-1, "Request for Obligation of Funds"

All parties may access information and regulations referenced in this letter at our website located at <https://www.rd.usda.gov/programs-services/water-environmental-programs/water-waste-disposal-loan-grant-program>.

The conditions are as follows:

**SECTION I - PROJECT SCOPE**

1. **Project Description** – Funds will be used to decommission the existing SBR pond plant and converting it into an emergency storage basin. A new pump station will be constructed to deliver equalized and screened raw sewage to the City of Hollister Wastewater Treatment Plant in an 10-inch diameter HDPE for treatment disposal at the city of Hollister wastewater treatment plant.

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), prepared by Stantec Consulting Services Inc. dated March 14, 2022, approved July 8, 2022, with amended approved September 13, 2022, as concurred with by the Agency.

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

USDA Loan	\$10,268,000
USDA Grant	\$ 4,303,000

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

State Funding Allocation	\$ 3,000,000
<u>EPA</u>	<u>\$ 1,000,000</u>

TOTAL PROJECT COST	\$18,571,000
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Any changes in funding sources following obligation of Agency funds must be reported to the processing official. 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.

The applicant must certify that they have exhausted all other funding avenues and have no pending funding considerations from any other sources. Further, the applicant must certify that they do not intend to apply anywhere else for funding for this project. If, after obligation of Agency funds, other funding becomes available, the Agency reserves the right to deobligate any and all funding for this project and to re-underwrite. This may result in the offering of a different funding package to for this project.

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Prior to advertisement for construction bids, you must provide evidence of applicant contributions and 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:

Bond Counsel	\$ 40,000
Legal Counsel	\$ 30,000
Interest Expense	\$ 500,000
Connection Fees	\$ 2,547,200
Environmental Services:	
CEQA Environmental Report	\$ 70,000
NEPA Environmental Report	\$ 30,000
Environmental Mitigation Svcs	\$ 60,000
Engineering Services:	
PER	\$ 112,000
Design Services	\$ 683,000
Bidding/Contract Services	\$ 28,000
Construction/Post Construction	\$ 360,000
Resident Inspector	\$ 504,000
Additional Services:	
Permitting:	\$ 69,000
Regulatory Compliance Report	\$ 5,000
Environmental Mitigation Svcs	\$ 468,000
Surveying Services	\$ 10,000
O&M Manual(s)	\$ 25,000
Geotechnical Services	\$ 105,000
Material Testing Services	\$ 25,000
Construction	\$11,217,000
<u>Contingency (15%)</u>	<u>\$ 1,682,800</u>
 TOTAL	 \$18,571,000

4. **Project Timeline** – To ensure that the project proceeds in a timely manner, key processing milestones have been established in accordance with the PER or other Agency approved documentation. **Projects should be completed and Agency funds fully disbursed within three years of obligation.** By agreeing to the terms herein, you agree to comply with the milestones identified below. If, for any reason, one or more of the milestones cannot be met, you must notify the Agency in writing at least 30 days prior to the referenced date. Should your final completion date become more than three years after obligation the written request will follow the procedures outlined in Section VI of this letter, including the submission of not less than 90 days prior to the benchmark. The correspondence must contain a valid explanation as to why the milestone cannot be met and include a proposed revised project completion schedule. If the Agency agrees to the modification, a written confirmation will be issued. The Agency reserves the right to de-obligate

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loan and/or grant funds, or take other appropriate action, if the established or amended deadlines are not met.

<u>Milestone</u>	<u>Date</u>
Plans & Specifications, and Design Complete	10/14/2022
Permits Acquisition Complete	2/14/2023
Initial Advertisement for Bids	2/28/2023
Award Contract(s)/Initiate Construction	6/6/2023
Substantial Completion	5/21/2024
Final Completion	6/25/2024

## SECTION II – RATES & TERMS

1. **Interest Rates and Loan Terms** – 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. The payment due date will be established as the day that the loan closes.

The loan will be scheduled for repayment over a period of 40 years. Payments will be annual principal installments and semi-annual interest installments, beginning one year after closing. For planning purposes, use a 2.750% interest rate and an amortization factor of 41.54, which provides for an annual payment of \$426,533. 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. **Security** – The loan will be secured by a Revenue Bond with parity lien position in the amount of \$10,268,000. 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.” Bond Counsel will be utilized in preparation of these documents.

The Revenue Bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or associated laws. There must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983. The Revenue Bond must be prepared in accordance with RUS Instruction 1780 Subpart D, and State law. The assistance and opinion of a recognized bond counsel must be obtained.

If the loan will be on parity with an/other lender/s, the Revenue Bond must specify that, in the event of default, each lender will be affected on a proportionate basis.

Additional security requirements are contained in RUS Bulletin 1780-27, “Loan Resolution (Public Bodies)” and RUS Bulletin 1780-12, “Water and Waste System Grant Agreement”. A draft

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of all security instruments, including draft bond resolution, must be reviewed and concurred in by the Agency prior to advertising for bids. Bond/loan resolutions must be duly adopted and executed prior to loan closing.

The Grant Agreement will be executed prior to the first disbursement of grant funds. The grantee understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 2 CFR part 200 in effect at this time and as may be subsequently modified. The grantee understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation the project.

**3. Reserves** – Reserves must be properly budgeted and set aside to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency repairs, to assist with debt service should the need arise, and for the replacement of assets which have a useful life less than the repayment period of the loan. The following reserves are required to be established as a condition of this loan and must be shown separately and as restricted funds in the recipient's financial statements and/or audits:

- a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. For planning purposes, 10% of the proposed loan installment would equal \$3,554.44 per month; this amount should be deposited monthly until a total of \$426,533 has accumulated. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully funded amount is reached.
- b. **Short-Lived Asset Reserve** – In addition to the debt service reserve fund, the recipient must establish a short-lived asset reserve fund. Based on the Preliminary Engineering Report, the recipient must deposit at least \$25,200 annually into the short-lived asset reserve and maintain for the life of the loan to pay for repairs and/or replacement of major system assets. It is the recipient responsibility to assess the facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

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

**1. Organization** – The Bond Counsel transcripts of proceedings must show that your organization is a duly incorporated public body and has continued legal existence. Your organization must have the authority to own, construct, operate, and maintain the proposed facility, as well as for borrowing money, pledging security and raising revenues.

**2. Suspension and Debarment Screening** – You will be asked to provide information on the principals of your organization. Agency staff must conduct screening for suspension and debarment of the entity, as well as its principals through the Do Not Pay Portal.

Principal –



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- i. An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
- ii. A consultant or other person, whether or not employed by the participant or paid with federal funds, who –
  1. Is in a position to handle federal funds;
  2. Is in a position to influence or control the use of those funds; or,
  3. Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction. (2 CFR §180.995)

**3. 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 September 2022, the following actions required for successful completion of the project can be identified in Appendix I of the Environmental Report which is attached.

In addition, The USFWS has issued a Biological Opinion (BO) dated 8/23/2022, that the USDA’s proposed funding of the subject project is not likely to jeopardize the continued existence of the San Joaquin kit fox, California red-legged frog and the California tiger salamander with the implementation of the listed conservation measures. A condition of the proposed funding is that the applicant will implement the requirements of the BO including all of the required conservation measures, monitoring and reporting under the terms of the Biological Opinion.

Prior to the start of construction, the City will:

- a. Request the USFWS approval of any biologists that they or their contractors employ to conduct project activities associated with the California red-legged frog and California tiger salamander pursuant to this biological opinion. Such requests must be in writing (communication by electronic mail is acceptable) and be received by the Ventura Fish and Wildlife Office at least 30 days prior to any such activities being conducted. Authorization of Service-approved biologists is valid for this project only.
- b. Provide receipt of the purchase of 7.8 acres of dual species conservation credits from Sparling Ranch Conservation Bank or another Service-approved conservation bank prior to the initiation of ground disturbing activities.
- c. Provide the Service access to the action area to survey and inspect project activities.
- d. Notify the Ventura Fish and Wildlife Office via electronic mail ([fw8venturasection7@fws.gov](mailto:fw8venturasection7@fws.gov)) prior to conducting project activities pursuant to this biological opinion.

During the course of design and/or construction the City will notify USDA and the USFWS if:

- a. The amount or extent of incidental take is exceeded;

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- b. New information reveals effects of the proposed project that may affect listed species or critical habitat in a manner or to an extent not considered in the biological opinion;
- c. The project is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in the biological opinion; or
- d. A new species is listed or critical habitat designated that may be affected by the action.

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.

**4. 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. The Agency will provide concurrence prior to advertising for bids and must approve any modifications to this agreement.

**5. Contract Documents, Final Plans, and Specifications** – All development will be completed by contract in accordance with applicable provisions of RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, (copy available upon request), and in compliance with all statutory requirements. You are responsible to share this with your engineer before pre-design

- a. The plans and specifications and all proposals required by law must be approved by the State Water Resource Control Board.
- b. In preparing final design and providing service to the planned project area, you and your engineer will comply with all zoning and planning requirements of the appropriate governing bodies where service is to be provided.
- c. The Agency will need to concur in the plans and specifications prior to advertising for bids. The Agency may require an updated cost estimate if a significant amount of time has elapsed between the original project cost estimate and advertising for bids.
- d. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.
- e. 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.
- f. **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

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mandating domestic preference applies the 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 (as defined in RUS Bulletin 1780-35).
  - (a) **Sign** 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) **Sign** agreements for engineering services, executed construction contracts and all other appropriate and necessary documents which include AIS language.  
Change Orders and Partial Payment Estimates: **Acknowledge** responsibility for compliance with AIS requirements by signing change orders (EJCDC C-941) and partial payment estimates (EJCDC C-620).
  - (c) Substantial completion of project: **Obtain** the certification letters from the consulting engineer and **maintain** this documentation for the life of the loan.
  - (d) Special Cases
    - i. Where Owner provides their own engineering, the Owner’s responsibilities will include items listed in Section 5 of RUS Bulletin 1780-35.
    - ii. Where Owner performs their own construction, the Owner’s responsibilities will include items listed in Section 6 of RUS Bulletin 1780-35.
- ii. Where Owner directly procures AIS products, Owner must **utilize** EJCDC Procurement Series standard contract documents following RUS Bulletin 1780-26 Exhibit D and **obtain** manufacturers’ certifications and provide copies to Engineer and Contractor

**6. Legal Services** – A legal services agreement is required with your attorney and bond counsel 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

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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.

7. **Property Rights** – Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have 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, or similar format, 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.

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.

8. **System Policies, Procedures, Contracts, and Agreements** – The facility must be operated on a sound business plan which involves adopting 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 up-to-date written standards of conduct covering conflict of interest. The standards of conduct must include disciplinary actions in the event of a violation by officers, employees, or agents of the borrower. The standards identified herein



apply to any parent, affiliate or subsidiary organization of the borrower that is not a state or local government, or Indian Tribe. Policies and accompanying documents shall be furnished to Rural Development upon request.

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. **Sewage Treatment Contract** – You propose to purchase sewage treatment services from the City of Hollister. This purchase arrangement must be evidenced by a sewage treatment 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 7 CFR 1780.62.
- c. **Sewer User Agreement** – Projects not involving mandatory connection require users to execute a Sewer Users Agreement. The draft agreement must receive Agency concurrence prior to advertising for bids. RUS Bulletin 1780-9, "Water Users Agreement," or similar format may be used.
- d. **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.
- e. **Parity/Intercreditor Agreement** – Projects with parity liens must have in place a written agreement between the parity lenders. The draft agreement must receive Agency concurrence prior to advertising for bids.
- f. **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 above 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.



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**9. 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). Both your bond and legal counsel must comply with these instructions when closing the Agency loan/grant. Closing instructions must be obtained prior to advertising for bids. All applicable bond closing documents must be submitted by the Bond Counsel, at least 90 days prior to the planned closing date.

**10. System Users** – This letter of conditions is based upon your indication at application that there will be at least 727 residential users and 77 non-residential users on the existing 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.

**11. Construction Account** – A separate construction account is not required for project 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, in accordance with 2 CFR 200.305. These funds must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. **If the balances at the financial institution where federal funds will be deposited exceeds the FDIC insurance coverage, the excess amount must be collaterally secured up to 100 percent of the highest amount of funds expected to be deposited in the account at any one time, per the Department of Treasury regulations and requirements.**

**12. Interim Financing** – The Agency's policy is to utilize interim financing for all loans exceeding \$500,000. Prepayment penalties on interim financing are not allowed. Borrowers are required to seek interim financing initially from private or cooperative lenders if funds can be borrowed at reasonable interest rates on an interim basis from those sources for the construction period. The fact that a commercial lender's rates are higher than current Agency interest rates does not necessarily mean that the commercial rate is not reasonable. The recipient must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids.

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.

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**13. 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 and M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency, 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 and M expenses 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.

**14. 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.

**15. Risk and Resilience Assessment/Emergency Response Plan (RRA/ERP)** – The Agency requires all financed water and wastewater systems to have a RRA/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 an RRA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that an RRA/ERP has been completed prior to advertising for bids. Technical assistance is available in preparing these documents at no cost to you.

Before funds are drawn, you should have in place a cybersecurity plan, a supply chain plan, and a plan to comply with cybersecurity requirements of the National Institute of Standards and Technology and the Cybersecurity and Infrastructure Security Agency. These items should be addressed in the RRA/ERP.

The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. 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 five years at a minimum.

**16. 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**

**1. Disbursement of Agency Funds** - Agency funds will be disbursed electronically into the construction account as they are needed. SF 3881, “ACH Vendor/Miscellaneous Payment



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Enrollment Form,” must be completed and submitted to the Agency prior to commencement of construction.

The order of disbursement is as follows: 1) Applicant contribution, 2) other funding sources, 3) interim financing or Agency loan funds, and 4) Agency grant funds. 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 the first disbursement. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. Agency Grant funds must not be disbursed prior to loan funds except as authorized in 7 CFR 1780.45(d).

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:

- The recipient receives less than \$120,000 in Federal awards per year.
- The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
- 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.
- A foreign government or banking system prohibits or precludes interest-bearing accounts.

2. **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 percent 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

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construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

3. **Suspension and Debarment Screening** – In accordance with 2 CFR Part 180, Subpart C, as a condition of the transaction and the responsibilities to persons at the next lower tier with whom you enter into transactions, you must conduct screening for suspension and debarment of lower tier recipients (e.g., vendors, contractors, etc.).

4. **Contract Review** – Your attorney will certify that the executed contract documents, including performance and payment bonds, if required, are adequate and that the persons executing these documents have been properly authorized to do so in accordance with 7 CFR 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for concurrence. Construction cannot commence until the Agency has concurred in the construction contracts. The Notice to Proceed cannot be issued until the Agency has concurred with the construction contracts and the pre-construction conference has been held.

5. **Final Rights-of-Way** – Your attorney or title company must furnish a separate final title opinion or Title Insurance Policy on all 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.

If any of the right-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.

6. **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 bond coverage is maintained.

- a. **General Liability Insurance** – Include vehicular coverage.
- b. **Workers’ Compensation** – In accordance with appropriate State laws.
- c. **Guaranty or Fidelity Insurance** – 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 employees. Each position is to be insured in an amount equal to the maximum amount of funds expected to be under the control of that position at any one time. The minimum coverage allowed will be an amount equal to the total annual debt service payment on the Agency loans. The coverage may be increased during construction based on the anticipated monthly advances.

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- d. **National Flood Insurance** - If the project involves acquisition or construction in a designated special flood area, the community in which the acquisition or construction is situated must be currently participating in the national flood insurance program. Additionally, if the project involves acquisition or construction in designated special flood or mudslide prone areas, a flood insurance policy must be in place 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.

The Agency is to be listed as “Other Insured” so as to receive notifications on all insurance, regardless of security. Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

7. **Initial Civil Rights Compliance Review** – The Agency will conduct an initial civil rights compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E. You are expected to comply with the completion of the review, including the furnishing of any documents, records, or other applicable material.

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

1. **Interim Financing** – Interim financing is being used. Generally, loan closing will occur near the end of construction when interim funds are fully 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
2. **Electronic Payments** – Payments will be made 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.
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 Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Renewal can be completed online at: <http://sam.gov>. This registration must be renewed and revalidated every 12 months for as long as there is an active loan, grant, or guaranteed loan with the Agency.

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



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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 a certified operator, as defined by applicable State or Federal requirements, 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**

1. **Construction Completion Timeframe** – Following the benchmarks established in Section I, Item 4, Project Timeline, all projects should be completed and Agency funds fully disbursed within three years of the date of obligation. If funds are not disbursed within three years of obligation and you have not already done so per Section I, Item 4, you must submit a written request for extension of time to the Agency with adequate justification of the circumstances, including any beyond your control. The request must be submitted at least 90 days prior to the end of the three-year timeframe and include a revised estimated date of completion. The Agency will typically only allow one extension. Subsequent requests for waivers beyond the initial extension or requests that exceed five years from the initial date of obligation will be submitted to the RUS, Water and Environmental Programs for consideration. The Agency retains the right to de-obligate any loan and/or grant monies, or take other appropriate action, related to unliquidated funds that exceed the timeframes above and are not under an active extension.

2. **Resident Inspector(s)** – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must provide written concurrence. 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 preconstruction conference.

3. **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.

4. **Inspections** – The Agency requires a preconstruction conference, pre-final, final, and warranty inspections. 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 outstanding warranty issues. The Agency will conduct an inspection with you of your records management system at



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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.

**5. Change Orders** – A Change Order must be submitted for all modifications to the approved scope of work, including existing contracts. This includes non-physical modifications such as any time extension requests. Prior written Agency concurrence is required for all Change Orders.

**6. Payments** – Prior Agency concurrence is required for all invoices and requests for payment before Agency funds, or Interim Lender 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.

**7. Use of Remaining Funds** – As stated above, applicant contribution and connection or tap fees will be the first funds expended in the project. Funds remaining after all costs incident to the basic project have been paid or provided will be handled as follows:

- e. Funds remaining after the applicant contribution and connection fees may be considered in direct proportion to the amounts of funding obtained from each source. The use of Agency funding will be limited to 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.
- f. Any reductions in the Agency funding will be first applied to the grant funds.
- g. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 60 days of final completion of project. Prior to actual cancellation, you, your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
- h. Under no circumstances is it appropriate to use remaining funds as contributions to a new project outside the scope of the funded project.
- i. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

**8. 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 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 additional information.

**9. Reporting Requirements Related to Expenditure of Funds** – An annual audit under 2 CFR 200 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.

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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. Both the audit and accompanying management report must be submitted for review.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy of that agreement to the Agency prior to the advertisement of construction 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.

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

**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.*

**2. 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, a current rate schedule, and listing of board members with their terms. Financial statements must be prepared on an accrual basis of accounting in accordance with generally accepted accounting principles (GAAP). The annual report will include separate reporting for each water and waste disposal facility, and itemized 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 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.

See Section VI for additional information regarding audits.



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- 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, “Statement of Budget, Income and Equity,” or similar format to provide this information. 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 quarterly reports are no longer required.

3. **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. The budget must be signed by the appropriate borrower official. Form RD 442-2, “Statement of Budget, Income and Equity,” 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 the recipient is interested, please contact the local USDA Rural Development office for information.

4. **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 can 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.

5. **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.

6. **System for Award Management**. You will be required to maintain a Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Further information can be found on Section V of this letter.

7. **Risk and Resiliency Assessment/Emergency Response Plan (RRA/ERP)** – The RRA/ERP is further outlined under Section III of this letter. You will be required to submit a certification to the servicing office every five years that the RRA/ERP is current and covers all sites related to the facility. The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. It should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. Technical assistance is available in preparing these documents at no cost to you.



A handwritten signature in blue ink, followed by the date 11/30/22.

**8. Insurance** – Insurance requirements are further outlined in Section IV of this letter. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

**9. 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.”



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- f. **Controlled Substances Act** - Even though state law may allow some activities, as a recipient of Federal funding, you are subject to the Controlled Substances Act. Specific questions about the Controlled Substances Act should be directed to the Servicing Official who will contact the Office of General Counsel, as appropriate.

**10. Compliance Reviews and Data Collection** – 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.

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 Agency regulations, statutes, and other applicable policies.

We look forward to working with the City of San Juan Bautista to complete this project. Non-compliance with the conditions in this letter or requirements of the recipient security documents will be addressed under the provisions of 7 CFR 1782 and other applicable regulations, statutes, and policies.

If there are any questions, please contact Esther De La Cruz at 831-975-7762 or by e-mail at [estherdelacruz@usda.gov](mailto:estherdelacruz@usda.gov).

Sincerely,

ESTHER DE LA CRUZ  
Digitally signed by  
ESTHER DE LA CRUZ  
Date: 2022.11.30  
11:47:28 -08'00'

Esther De La Cruz  
Area Specialist

Attachments – ATTACHMENT 5-A “BOND REVIEW GUIDE”



cc: Luis Andrade, Community Programs Director  
Mike Starinsky, State Engineer  
Don Reynolds, San Juan Bautista City Manager  
Bond Counsel – with ATTACHMENT 5-A “BOND REVIEW GUIDE”

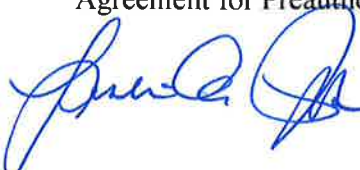
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ATTACHMENT 5-A  
BOND REVIEW GUIDE

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The applicant is responsible for the preparation of bond documents. The applicant will obtain the services and opinion of a recognized bond counsel experienced in California municipal financing. Bonds will be prepared in accordance with Agency regulations including, but not limited to, RUS Instruction 1780.94 and RD Instruction 1942.19. The following is provided as a guide for reviewing bonds and bond authorizing resolutions and documents prior to closing:

- (1) The registered owner of the bond is the UNITED STATES OF AMERICA ACTING THROUGH THE RURAL UTILITIES SERVICE or THE RURAL HOUSING SERVICE as applicable.
- (2) The repayment period should match the period stated in the Letter of Conditions. In any case, the final principal payment on the bond must not be later than 40 years from the date of the bond.
- (3) The full amount of the loan must be shown on the face of the instrument.
- (4) The closing date must be shown on the first page of the bond.
- (5) The definitions in the bond should be carefully reviewed for accuracy.
- (6) A first lien should be obtained to secure the bond. If a parity lien is being taken, the terms should be listed. Parity debt provisions will generally provide a certain coverage margin of at least 120% but will always require prior Agency approval.
- (7) Unless otherwise approved, the trustee or paying agent for the bond will be the treasurer or similar financial official of the borrower or other public official who ordinarily acts as the treasurer of the borrower.
- (8) Interest shall be calculated on a basis of 365 days and actual days elapsed. Each semiannual payment of interest shall be in the amount of one-half of the annual amount of interest due. The interest rate should be the lower of the approved rate or the current rate.
- (9) Check to ensure that the installment computation is correct. When principal payments are deferred, the instrument should show that "interest only" is due rather than the specific dollar amount. The principal repayment schedule must add up to the total amount of the bond. An interest repayment schedule should not be shown on the bond.
- (10) Payments must be received by the due date. Due dates falling on the 29<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> day of the month will be avoided.
- (11) The late payment provision will include if the loan payment is received 10 days past the due date the fee will be computed on the daily interest accrual on the amount of principal past due for each day past due.
- (12) Payments must be made using the Pre-Authorized Debit (PAD) system. Form RD 3550-28, Authorization Agreement for Pre-Authorized Payments, or Form RD 3550-CLSS, Authorization Agreement for Preauthorized Payments, (as applicable) is to be executed.

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- (13) If a prepayment clause is inserted, it should state that the borrower has the right to prepay without penalty. Prepayments will be applied in inverse order of maturity.
- (14) Payments made on indebtedness evidenced by this instrument shall be applied to the interest due through the next installment due date and the balance to principal in accordance with the terms of the bond. Payments on delinquent accounts will be applied in the following sequence: (1) Billed delinquent interest, (2) Past due interest installments, (3) Past due principal installments, (4) Interest installment due, and (5) Principal installment due.
- (15) Assessment bonds only: When the security includes a special assessment to be collected over the life of the loan, the instrument should address the method of applying any payments made before they are due. It may be desirable for such payments to be distributed over the remaining payments due, rather than to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent. The extra payments can be applied as long as the prepayment does not zero out or pay off an installment in the middle of the payment schedule.
- (16) When multiple advances of Agency funds are used, the debt instrument will show a signature line, date, and amount.
- (17) *Reserve requirements:* Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents per 7 CFR 1780.39(e) or 7 CFR 1942.17(i). For bonds other than special assessments or GO bond, a reserve fund will be established from annual deposits to the reserve in the amount of one tenth (1/10th) of the average annual debt service for ten (10) years or as required in the Letter of Conditions.
- (18) The borrower's bond authorizing resolutions should include a requirement to have an annual debt service coverage from rates, tolls, charges, and collections sufficient to pay all operating, maintenance, principal, interest, and reserve costs.
- (19) Provisions for transfer of the loan by the registered owner (USDA) are appropriate.
- (20) The bond should state that they are subject to Agency regulations (i.e. graduation, etc.). Normally, these requirements appear in the borrower's authorizing resolution, agreement, or indenture. Most bonds will say that they secure obligations under the authorizing resolution or indenture.
- (21) In the event of default, the recourse should be clearly specified in the authorizing documents.
- (22) The following provisions may not be in the bond:
  - a) The holder may manually post each payment to the instrument.
  - b) The debt instrument may be returned to the borrower so that it, rather than the Agency, may post the date and amount of each advance or the repayment on the instrument.
  - c) Provisions that amend covenants contained in Form RD 1942-47 and RUS BULLETIN 1780-27.
  - d) The bond documents shall not contain any language allowing for the defeasance of the bond so long as USDA is the owner.
- (23) Coupon bonds will not be used unless required by State statute.

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