

June 29, 2020 Original Date of Issue

May 28, 2021 Date of Re-issue with clarifications

July 20, 2022 - Revised Letter of Conditions

Town of Hardwick  
Select Board Members, Hardwick Sewer Commission  
P.O. Box 575  
307 Main Street  
Gilbertville, MA 01031

**SUBJECT** Town of Hardwick Water and Environmental Program Application  
Project Name: 2020 Combined Sewer Project  
CFDA Number – 10.760 Water and Waste Disposal Systems for Rural Communities

<b>FUNDING</b>	<b>Loan amount:</b>	<b>\$ 5,681,000</b>
	<b>Grant amount:</b>	<b>\$ 17,017,500</b>
	<b>PPG grant:</b>	<b>\$ 22,500</b>
	<b>Applicant Contribution:</b>	<b>\$ 7,500</b>

Town of Hardwick Select Board Members,

This letter and conditions herein are the result of appeal and subsequent mediation concerning the Agency's notice of intent to de-obligate the 2020 funding award due to absence of timely progress and failure to meet conditions required in the 2020 Letter of Conditions and Letter of Conditions with clarifications issued in 2021. **This supersedes prior letters and conditions and establishes conditions which must be understood and agreed to by you in order to proceed with Agency funding award.** This 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.

Based on the timeline presented, size and scope of the project components, delay in the state funds and need to finalize rates and betterments in coordination with RCAP solutions, the project will be separated such that the Hardwick Road Sewer System Upgrade & Ruggles Road Pump Station ("Project #1") shall proceed directly and according to the timeline further detail below with timely progress and assuming Agency conditions are met, Wheelwright and Gilbertville projects (collectively "Project #2") shall be undertaken at a later date with Agency approval and after State grant funds have been deposited into the town's designated construction account. Note it is acknowledged that this condition has been met as state grant funds were released and deposited into the town's designated construction account on or around July 5<sup>th</sup> 2022.

**Rural Development • Hadley Service Center**  
195 Russell Street, B7 • Hadley MA 01035  
Voice (413) 585-1000 Ext 4 • Fax (855) 596-7672

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Agency reserves the right to discontinue and/or to release (de-obligate) funds awarded if bid award for Project #1 extends beyond October 1<sup>st</sup>, 2022, without written Agency consent/extension and/or scheduled bidding for Project #2 extends beyond December 1<sup>st</sup>, 2022 without written Agency consent/extension.

Once the terms outlined herein have been presented and discussed in mediation, acceptance and expression of intent is required by signature of Form RD 1942-46, revised "Letter of Intent to Meet Conditions", and submitted to Agency within 7 days of issuance of this letter if you intend that further consideration be given to Agency funding.

***Any changes in project scope, cost, sources of funding, or any other material changes in the project or underlying changes in credit must be reported to and reviewed by the Agency, with acceptance and/or approval of revisions evidenced by written amendment to this letter. Changes not expressly approved by this Agency in writing will delay, reduce or otherwise adversely impact the funding award, release of funds awarded or to the terms or approval of this award.***

***In accepting this Letter of Conditions, the Town of Hardwick acknowledges and approves de-obligation of funds as provided herein if conditions are not met.***

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## SECTION A. CONDITIONS TO RD APPROVAL

Except where exception has been requested and approved, all conditions below must be satisfied within target time frames to avoid further slippage of project construction. All forms noted in this Letter of Conditions are listed collectively under the “**WEP Loan & Grant listing of FORMS and BULLETINS.**”

### 1. Requirements Prior to Agency Obligation of funds.

The Town Administrator and Board of Selectmen should review this letter carefully in mediation. Agency acknowledges receipt of documents noted as such below or otherwise require update prior to conclusion of mediation:

- a. **(Submitted) Authorizing Resolution.** The execution of these and all documents required by USDA Rural Development must be authorized by appropriate resolutions of the borrower’s governing body, evidenced by documentation previously submitted to Agency.
- b. **(Submitted) Request for Obligation of Funds.** (Form RD 1940-1)
- c. **(2022) Letter of Intent to Meet Conditions** (Form RD 1942-46)
- d. **(Submitted) Equal Opportunity Agreement** (Form RD 400-1)
- e. **(Submitted) Assurance Agreement** (Form RD 400-4)
- f. **(Submitted) Grant Agreement** (RUS Bulletin 1780-12)

The loan/grant award was previously approved and funded using Form RD 1940 -1, “Request for Obligation of Funds”, signed by the approving official at initial award in 2020.

Copies of this letter should be provided for review and use by your attorney, engineer, accountant or accounting firm and bond counsel. 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).

## SECTION B. PROJECT DETAILS

### 1. Project Description

Loan/grant proceeds, along with any additional sources of funds will finance:

- a. Gilbertville Water Pollution Control Facility: (Project #2) the proposed process configuration for the upgrade and modernization of the Gilbertville WPCF includes preliminary treatment with screenings removal, secondary treatment utilizing the extended aeration activated sludge process with final settling, flow metering, and UV disinfection. Secondary waste solids will be stored in the existing sludge storage tank and will be removed via a contracted hauler as is the current practice. The effluent will continue to be discharged to the Ware River.

- b. Wheelwright Water Pollution Control Facility: (Project #2) the proposed process configuration for the upgrade of the Wheelwright WPCF includes preliminary treatment with screenings removal, influent pumping, secondary treatment utilizing an SBR process with flow metering, effluent filtration and UV disinfection. Secondary waste solids will be stored in the existing sludge storage tank and will be removed via a contracted hauler as is the current practice. The effluent will continue to be discharged to the Ware River.
- c. Hardwick Road Sewer System Upgrade & New Pump Station (Project #1 and formerly named Eagle Hill Pipe/Pump Station/Force Main): a new pumping system will be installed, with related upgrades to the electrical systems and emergency generator to accommodate the expected higher horsepower of the new pumps. A new pH adjustment system is also proposed to alleviate issues with the existing odor control chemical precipitating out of solution and depositing within the force main. Replacement of one existing air release/backpressure sustaining valve structure may be required and has been included. A force main repair allowance has also been included for spot repairs and force main modifications that may be required after startup of the new pumping system.

We note that Eagle Hill School ((EHS) Debt Settlement occurred February 2022, which had previously waived sewer user fees as repayment of previous agreement executed by the School. EHS accepted settlement in the amount of \$1.8M; this payment is part of the subject project and eligible for Agency funds awarded. Evidence of a written agreement memorializing the debt settlement, was provided to the Agency in February 2022 and quarterly EHS user fees resumed with the first quarterly payment received in February 2022 for the period/quarter 10/1/2021 through 12/31/21.

Facilities must 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 in advance of Agency obligation of funds. All changes to the scope of project, use of funds, including change orders, and/or related contracts and agreements must obtain advance Agency approval.*** Seven business day turn time should be assumed, though the Agency will use best efforts to respond sooner.

## **2. Construction Completion Timeframe**

The updated and revised PER and Scope of Work dated January 2021 as Addendum to the original PER is hereby approved by the Agency and is used as the basis for this LOC. The Town (Historic) commission has signed off on Project #1 location as of the date of this letter. Updated Project #1 shall proceed to bid upon Agency written approval (Agency Environmental review must be concluded before bidding and necessary property rights for Project 1 must be confirmed/obtained by the Town) and bid award shall be made on or before October 1<sup>st</sup>, 2022. Completion of Project #1 shall be within twenty (20) months of Agency Notice to Proceed for Project 1. Updated Project #2 shall proceed to bid upon Agency written approval, contingent on satisfactory performance/progress of Project #1, with intent to begin bidding by December 1<sup>st</sup>, 2022. Project #2 completion shall be within twenty (20) months of the respective Agency Notice to Proceed for Project 2.

The Town of Hardwick requested the one-time extension on 12/30/2021 as permitted in the original letter of

conditions (May 2020) and clarified Letter of Conditions (June 2020). We note that this revised Letter of Conditions is the result of that extension approval and Agency response to formal mediation. **Additional extension requests must be submitted in writing to the Agency with supporting circumstances, explained and beyond your control and substantially evidenced. Further approval of extension request/s are not guaranteed. Town is responsible for attention to this requirement and in moving forward and understands this extension term to end June 30, 2024.**

### 3. Project Financing

Project Sources:	
USDA RUS Loan	\$ 5,681,000
USDA RUS Grant	\$ 17,017,500
	\$ 22,500 from PPG
State Funding	\$ 5,000,000
Applicant:	\$ <u>7,500</u> from PPG
Total Public Project Funding:	\$ 27,728,500

#### Project Uses:

Construction	\$ 19,655,000
Design	\$ 1,970,000
Const. Admin	\$ 980,000
Inspection	\$ 980,000
Contingency	\$ 1,956,000
Legal	\$ 62,000
Bond Counsel	\$ 80,000
Interim Interest	\$ 245,500
Debt Payment	\$ <u>1,800,000</u>
Total Public Project Cost	\$ 27,728,500

### 4. Changes in Project Scope, Cost and/or Funding

Agency funding is offered based on the amounts stated above and the total project costs approved by the Agency. The following requirements must be met:

- a. Use of Agency Funds. **Use of Agency funds for any reason other than those noted herein are not permitted without advance written approval of Agency. All changes to scope or use of funds, including Change Orders, require advance Agency written approval. Any reduction in scope or cost savings resulting from Agency approved changes shall result in reduction of Agency grant award only.**
- b. Timing requirements. Project completion shall not extend beyond the Agency approved extension date of June 30, 2024. Any adverse change in cost or credit associated with delay may result in change to Agency funding unless a reasonable offset to cost or credit can be identified and

approved.

- c. Changes in funding. Any changes in funding sources following obligation of Agency funds must be reported to the Agency. If actual project costs exceed the project cost estimates, the Town may propose the escrow of additional contribution or deposit into construction account from funds on hand prior to the issuance of Agency Notice to Proceed. **Increased cost will naturally impact project affordability and as such requires Agency advance review and approval. Should affordability exceed Agency standards applied at initial review and award the Agency will not approve the change or issue any notice to proceed.**

Borrower (Hardwick) contribution must be used first prior to Agency loan funds with Agency grant funds used last. Any cost overruns must be provided for through Hardwick funding prior to project continuation and further use of Agency funds.

- d. Evidence of Borrower contribution. Prior to Project #1 advertisement for bid, evidence of borrower contribution and Agency approval of other funding source is required, if applicable. **This includes State grant award noted in Sources and Uses above.**
- e. Impact of increase to non-Agency funding sources. Prior to loan closing, any increase in non-Agency funding sources 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.
- f. Loan closing will occur near the end of construction of Project 1 or when interim funds are about to be completely disbursed/exhausted. Documents detailed above from above 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.
- g. Bids under cost. Obligated Agency funds not needed to complete the project as proposed and awarded will be de-obligated prior to construction by reduction of award amount plus standard contingency of no more than 12%. Reduction of funds shall be applied to grant award, if any, prior to reduction of loan funds.
- h. Change orders. Change orders submitted to the Agency after substantial completion shall not be approved by the Agency.
- i. Remaining funds after completion. After providing for all authorized costs and Agency determination of project substantial completion, **any remaining USDA funds will be de-obligated by the Agency within 30 days of said determination unless extension is granted** by Agency in response to written request from Borrower with supporting information.

## SECTION C. LOAN AND GRANT TERMS

### 1. Loan Payment

The interest rate may be the lower of the rate in effect at the time of loan approval (Agency obligation of funds) or the time of loan closing. Your loan will be scheduled for repayment over a period of forty (40) years,

subject to Bond Counsel review and requirements. Payments will be equal annual amortized installments; installments beginning one year after Agency loan closing date. For planning purposes, the following rate (in effect at the time of obligation) and annual loan payments are:

Rate	Amortization Factor	Payment
1.375%	32.67	\$185,599.00

NOTE: The precise payment amount will be based on final calculation, including interim financing terms, and may be different than 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.

- a. Authorization Agreement for Preauthorized Payments. Form RD 3550-28, Electronic preauthorized debit (PAD) will facilitate loan repayment to the Agency via electronic debit from your account on the day your payment is due. Please ensure that sufficient funds are budgeted and/or transferred prior to Agency loan repayment and concurrent electronic withdrawal of funds. Additional interest will be charged for delayed payments of any kind, including those stemming from the absence of sufficient funds in the designated account on the day payment is due.

## 2. Source of Payment

The loan is conditioned upon the affirmative passage of payment sourcing from the Town of Hardwick through the authority of the select board and/or Town Meeting as required by law.

- a. Tax Levy. Evidence of an affirmative vote by the Hardwick Town Meeting has been submitted that approves one half of the annual loan payment shall be carried by taxation on the entire tax base of the Town of Hardwick. This levy must be carried throughout the life of the loan and be without special consideration to any nonexempt taxpayers unless requested in writing and approved by the Agency in advance of bid award.
- b. Betterment. Evidence that the Town of Hardwick has assessed a betterment upon the owners of land abutting the public sewer main. Monies collected from betterments may only be applied towards payments of the improvements, i.e. debt repayment. Accounting practices must be implemented to collect and separate monies from general operating funds of the Sewer Department or the Town General Fund, and expressly directed at Agency debt repayment. **Such practices shall be reviewed and approved by Agency or Agency designee prior to Agency approval of bid award.**
- c. User fees. **Evidence of an increase of user fees must be submitted for review and approval by the Agency or Agency designee prior to Agency notice to proceed,** in an amount sufficient to cover operating expenses of the sewer department, USDA debt repayment and any (BAN or interim) debt commitments. The Select Board, in consultation with the Town Administrator, must regularly review income and expenses and raise rates, if necessary, in advance to maintain financial sustainability for both operating costs and loan repayment throughout the life of the loan, **including the provision of funds annually towards the annual Short Lived Asset Reserve requirement of \$65,000.00 provided for in Section 4 below.** In addition, the Town must update user fees, rate structure and billing practices to reflect industry standards, determined as such by the Agency, certified by Agency designee. **Technical services of RCAP Solutions have been provided by the Agency at Agency cost, who will conduct the required rate study with recommendation in support of industry standards. Final rates and betterment schedules must be approved by Agency through RCAP Solutions concurrence.** All work undertaken by RCAP Solutions shall be at the sole direction of MA/CT/RI Community Programs Direct (PD) and shall not requested or used by the Borrower without advance written consent of the Agency.

### 3. Security

The loan will be secured by a General Obligation bond, previously approved by the Town. Agency shall have priority lien on General Obligation, all dedicated revenues and any reserves required by the Agency. The Bond will be fully registered as to both principal and interest in the name of the United States of America, Acting through the Rural Utilities Service, United States Department of Agriculture.

**Any subsequent sewer related, additional debt undertaken by the Borrower shall obtain advance Agency approval, and if approved must be on parity with Agency debt or subordinated to existing Agency debt.** The Bond or Security instrument must specify that, in the event of default, each lender will be affected on a proportionate basis in the event of parity debt. An Inter-Creditor Agreement is required between the Agency and the Parity Lender prior, and a draft concurred with by the Agency prior to closing on subsequent loan.

The Bond or Security instrument 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. 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 submitted by the Borrower within 30 days of Project 1 substantial completion or within 30 days of scheduled loan closing date.** The bond resolution and Loan Resolution must be duly adopted and executed prior to loan closing.

### 4. Reserves

Reserves are critical to fund unanticipated emergency maintenance and repairs, renewal and replacement, and to assist with debt service should the need arise. All reserves, whether Agency imposed or otherwise, must be properly budgeted to ensure the financial viability and sustainability of any operation. Current assets, expressly named and dedicated, can also be used to establish and maintain reserves for anticipated expenses, including but not limited to operation and maintenance, deferred interest during the construction period, and an asset management program.

The following reserves are required as a condition of this loan:

Short Lived Asset Reserve: The Town of Hardwick must establish a short-lived asset reserve fund. Based on the preliminary engineering report (PER), you must deposit no less than \$65,000.00 into the short-lived asset reserve fund annually commencing in year one of operations and for the life of the loan to pay for repairs and/or replacement of major system assets. **This reserve must be designated by line item in Town/Enterprise financials and used exclusively for the purpose intended, certified annually to the Agency in connection with reporting requirements.** The Town of Hardwick shall assess all sewer enterprise facilities short-lived asset needs on a regular basis and increase the amount deposited to meet those needs.

### 5. Disbursement of Agency Funds

**Any borrower contribution will be the first funds expended, followed by other non-Agency funding**

**sources before Agency loan funds.** Interim financing or Agency loan funds will be expended after all other Funding sources unless a written exception is granted by the Agency. In any event, interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds in accordance with RUS Instruction 1780.45(d). In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

- a. Disbursement of funds from the interim lender is subject to Agency advance review and approval of Monthly Project Budget Report (see Appendix C), as are all change orders and modification of plans or project for any reason. **Interim loan proceeds and disbursements must run through the Construction Account. Final accounting of the Construction Account, including all transfers in and disbursements from the account shall be provided to the Agency no less than 30 days prior to loan closing and again prior to final grant disbursement.**

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

## SECTION D REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

### 1. Environmental Requirements

- j. Environmental/Scope of Work. The project scope of work as documented in the Preliminary Engineering Report (PER) has been approved by the Agency. The project as proposed has also already been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, Tribal, and local environmental laws, regulations and or permits may apply or be required. At the conclusion of the proposals environmental review process, specific action(s) were determined necessary to avoid or minimize adverse environmental impacts. As outlined in the Environmental Report and comments from the Agency State Environmental Coordinator, the following action is required for successful completion of the project and must be adhered to during project design and construction. Failure to adhere to the required mitigation measures may jeopardize Agency funding.
  - Prior to the expiration of the 30-day comment period, the COVID-19 outbreak occurred, which possibly prevented applicable consulting parties from adequately reviewing the project and responding. In order to move this project forward so that it can be considered for funding, the Agency Federal Preservation Officer (FPO) has chosen to apply the Programmatic Agreement among the U.S. Department of Agriculture Rural Development Programs, National Conference of State Historic Preservation Officers, Tribal Signatories, and The Advisory Council on Historic Preservation for Sequencing Section 106 (NPA) for this project. The NPA awareness certification was signed by the applicant on 4/22/2020.
  - Portions of the existing Gilbertville WPCF are located in a 100 -year flood plain, and the proposed upgrades are considered a “critical action” as defined by §1970.255(h)(5), which

states that critical actions include but are not limited to actions that increase or extend the useful life of structure or facilities within the specified categories, including utilities vital to public health and safety such as wastewater. As such, mitigative measures are proposed to ensure the longevity of the structures, and safety of the operations staff. The proposed mitigative measures include structures being designed to have a top of concrete/first floor elevations that are a minimum of three feet above the 100 -year flood elevation, in accordance with Executive Order 13690.

- Due to the planned construction within the 100-year floodplain, the project had to be elevated from an Environmental Report to an Environmental Assessment (EA) in accordance with §1970.10 and §1970.52(b)(4)(iv). The preparer included the additional necessary documentation for the conversion, including conducting the 8 -step alternatives analysis which was found to be acceptable without any modifications. The EA was approved on 23 April 2020. A Preliminary Public Notice for Potential Impacts to Floodplains and the Public Notice Announcing the Availability of the Environmental Assessment was published starting on 29 April 2020 with a 14-day comment period and there were no comments. The FONSI and the Final Notice for Floodplain Impacts were drafted and published on 25 May 2020 with no comment period.
  - Environmental/Changes to the Scope of Work. A modification to the scope of work after obligation may be allowed with prior Agency approval. **Any proposed modifications must be documented in a revised or supplement to the PER. A modification to the scope of work may also require a revision to the environmental documentation, including the re-initiation of Section 106, Section 7, and other required documentation. Construction on the modifications to the scope of work cannot commence until the revised PER and ER have been approved by the Agency.**

## 2. Engineering Services

Borrowers are responsible for providing the engineering, architect and environmental services necessary for the planning, designing, bidding, contracting, inspecting, and constructing the projects. Services may be provided by the borrower's "in house" engineer or architect or through contract, subject to Agency approval. Engineers and Architects must be licensed in the State where the project is to be constructed.

- a. Contract Forms/Formats. Acceptable contract forms/formats include EJCDC E-500 (2014 Edition) with edits per RUS Bulletin 1780-26 and RUS Bulletin 1780-35. All agreements and associated amendments must be submitted and concurred with by the Agency. The agreements should be submitted for review after obligation but before bidding. The submitted agreement shall include all edits that are easily identifiable by ~~strike through~~, highlights, or red-lined. Engineers are required to submit with their agreement signed certifications (RUS Bulletin 1780-26, Exhibit C for general edits and RUS Bulletin 1780-35, Exhibit B for AIS compliance)
- b. Amendments to Engineering Agreements. All amendments to engineering agreements must be documented using EJCDC E-500, Exhibit K. All amendments are subject to prior Agency approval.
- c. Engineering Fees. Agency may reimburse for fees that are considered fair and reasonable; "excessive"

fees must be justified. Engineering fees that exceed Agency determined max amount shall be the responsibility of the Town of Hardwick.

### **3. American Iron and Steel**

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) applies a new American Iron and Steel requirement:

(1) No Federal funds made available for this fiscal year for the rural water, waste water, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all of the iron and steel products used in the project are produced in the United States.

(2) The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(3) The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the “Secretary”) or the designee of the Secretary finds that—

- A. applying the requirement would be inconsistent with the public interest;
- B. iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- C. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(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.

#### 4. Design/Contract Method

The only approved contract method is the "Design-Bid-Build" Method of Construction. Under this method, a professional engineer or architect is hired directly by the Borrower through a written contract to prepare plans and specifications (design services), assist in the bidding and construction process (contract administration), and monitor the construction (resident inspection services). The construction will be performed by an independent general contractor through a second contract between the borrower and the Contractor. A Design-Build Method of Construction is not allowed under RUS Instruction 1780.

#### 5. Project Construction Requirements

The Borrower and their Engineer/Architect shall develop plans and specifications for construction that must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible. **In addition to the technical sections, the specification must contain Agency "boilerplate" sections.** These sections include specific Agency required language with respect to bidding, basis of award (low bidder), bonding, contractor requirements, payments, change orders, construction signage, etc. **During construction, a resident inspector must be utilized.** See section (G)(1) for more details on that requirement.

- a. Standards. This Agency has adopted the use of standard Engineers Joint Contract Documents Committee (EJCDC) contract documents, 2013 edition. These documents, when coordinated with edits listed in RUS Bulletin 1780-26 (standard edits) and RUS Bulletin 1780-35 (AIS edits) and other RD documents form a complete set of "boilerplate" documents. The use of these documents is mandatory.
- b. Base Bid and Bid Alternates. In an effort to meet the established project budget, it is recommended to arrange the contract documents with a base bid along with additive bid alternates, provided the work covered by the alternates has been included in the original scope of work documented in the PER and ER. Alternates, if used, must be selected at time of award to fully utilize the available funding. Conversely, if funding is limited, the project still may be awarded with just the base bid. The sequencing and selection of alternatives is already specified in the "boilerplate" language. The use of deductive bid alternatives is not recommended and should not be used.
- c. Submission for Review/Approval. Prior to bidding, a set of plans and specifications must be submitted to the Agency for review and approval. Signed certifications must accompany the plans and specifications in accordance with RUS Bulletins 1780 -26 and 1780-35. Once all conditions have been met, Agency will authorize you to proceed with advertising for bids. Such advertisement must be in accordance with applicable State statutes.

- d. Changes to Plans and Specifications During Bidding. All changes to the plans and specifications made during the bidding are considered “addenda” and must be submitted to the Agency for review/approval.

## 6. Procurement

As noted above Project #1 shall be bid first and Project #2 shall be bid upon successful progress on Project #1 and with Agency approval. The method of procurement shall be by the competitive sealed bid process with award based on the lowest, responsible bidder. Other forms of procurement are highly discouraged and may cause undue delay in project consideration.

- a. Open and Free Competition. All procurement transactions shall be conducted in a manner that provides maximum open and free competition. **Procurement procedures for construction or any other service related to this project shall not restrict or eliminate competition.**
- b. Bid Opening. You must notify Agency date and time of bid opening, as an Agency representative will attend.

## 7. 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 must stipulate an hourly rate for the work with a “not to exceed”, including reimbursable expenses. RUS Bulletin 1780-7, “Legal Services Agreement,” or similar format may be used. The Agency must concur with legal services agreement prior to advertising for bids, including amounts payable under the agreement, which must be fair and reasonable. Any changes to the fees or services spelled out in the original agreement are subject to review and approval by Agency and must be reflected in an amendment to the agreement. RD MA Form RD 1942-1, Attorney’s Opinion, and RD MA Form 1942-3, Attorney’s Certificate as to No-Litigation must be executed. Anything above and beyond what the Agency deems reasonable is the responsibility of The Town of Hardwick.

## 8. Financial and Sewer Management Oversight

**As required in the original award Letter of Conditions, you are required to contract with independent third parties for annual oversight of 1) Town accounting and financial practices and 2) for management oversight for the operation of the Sewer Department.** The purpose of the oversight is to bring the financial and sewer department practices up to industry standard. The contracts must detail the services provided by the firms, how the oversight will be managed, and benchmarks for assessing progress by the Town for improving its financial and sewer department management practices. Both contracts must specify annual cost with not to exceed price. The related contracts must be reviewed and approved by the Agency. The Agency will review the progress on an annual basis in connection with servicing and will determine when oversight may conclude. Cancellation of the contracts without Agency approval will be considered a violation of the terms of this Letter of Conditions. *Any exception to this requirement shall be requested in writing with reasoning and is subject to Agency review and approval.*

**The Agency must be assured that accounting oversight is in place annually unless Agency approves an alternate plan, presented in writing for Agency consideration. Failure to meet this requirement constitutes failure to meet Agency conditions of this award agreed to by the Town at obligation and issuance of the 2022 Letter of Conditions and will result in Agency suspension or de-obligation of award due to ongoing concern regarding Borrower financial practices.**

**The sewer system must provide for compliance with state mandates for operation of the treatment plants by contracting of third-party oversight and by hiring of additional staff. The Agency condition of third-party oversight must be addressed by Town submission of written recommendation to the Agency with draft contract for review and approval prior to going out for bid on Project 1. The Town must maintain appropriate operating staff as required by state and/or federal standards. Training of new staff and establishment of efficient and sustainable practices must be obtained third party oversight concurrence and be formally adopted by the Town prior to loan closing.**

**In addition to the requirement for contracting with a third-party for management oversight for the sewer department, all policy-making functions currently performed by the elected Board of Sewer Commissioners, including but not limited to the establishment of rates and charges for use of the sewer system, shall be delegated to the Board of Selectmen. It is expected that this will be accomplished by the passage of a special act of the Massachusetts Legislature; provided, however, that the Agency may waive this requirement upon a finding that despite reasonable efforts by the Board of Selectmen, the Town was unable to obtain the legislation needed to comply with this requirement.**

## **9. Property Rights**

Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have or will obtain adequate continuous and valid control over lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be completed in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. 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. and 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. RD MA Form 1942-2, Certificate as to Title to Project Site. must be completed by your attorney.

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.

## 10. 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 concurrence with the documents below, before closing instructions may be issued unless otherwise stated.

**RCAP solutions had been working with the Town financial team on financial management best practices, and general budgeting issues where the Agency learned that there was a significant number of accounts that were either delinquent or received payment waivers. It is evident that the policies and procedures for account collection must be updated to ensure financial sustainability of the project. The resulting practices and procedures must be supported by RCAP solutions, and a draft submitted to the Agency prior to the award of bid for Project 1. Collection of delinquent accounts must be cured to industry standard using delinquency levels commonly found in comparable towns in MA.**

- a. Conflict of Interest Policy. Prior to obligation of funds, you must certify in writing that the **Town of Hardwick 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 borrower'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 borrower's official **prior to bid solicitation** or 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 provided** through Agency-contracted technical assistance provider, if needed.

- b. Sewer User Agreement. Projects not involving mandatory connections requires users to execute a

Sewer Users Agreement, which agreement may be contained in the rules and regulations as arising automatically upon acceptance of service. RUS Bulletin 1780-9, "Sewer Users Agreement," or similar format may be used. The draft agreement must receive RD approval prior to advertising for bids. The amount of the connection fee required will be set by the Sewer Commissioners and concurred with by the Agency.

- c. Contracts for Other Services/Lease Agreement. Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must obtain Agency approval prior to advertising for bids, if applicable, or prior to execution if not subject to public bidding.
- d. Parity/Inter-creditor Agreement. Projects with parity liens must have in place or execute a new written agreement between the parity lenders. Agency approval must be obtained prior to advertising for bids.
- e. Other Agreements. Agency approval is required for all 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 agreement must receive Agency approval prior to advertising for bids. Fully executed copies of any policies, procedures, ordinances, non-construction contracts or agreements must be submitted to the Agency for review and concurrence **prior to bid award** with the exception of the conflict-of-interest policy, which must be in place prior to obligation of funds.

11. Closing Instructions. The Agency will prepare closing instructions after the requirements of the previous paragraphs are complete, and a draft of the security instrument(s) provided 30 days in advance of closing for Agency review and approval by the Office of General Counsel (OGC), who will issue final closing instructions.

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 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.

- a. If interim financing will be used to provide for construction financing borrower must provide the Agency with a copy of the interim loan terms for review and concurrence prior to advertising for bids. Agency concurrence will require, among other things, that all interim disbursements flow into an established construction account for the sole use of the subject project and all payments shall be made from the same construction account. Evidence of construction account must be submitted for Agency review and approval.
- b. All draws on Interim Loan to be paid from Agency loan or grant funds must be determined eligible in amount and purpose. Interim lender shall not make disbursements without Agency advance written approval of Monthly Budget Project Report (MPBR) prepared by the borrower and submitted to the Agency for advance approval to ensure eligibility and adherence to Agency requirements. **One MPBR is required per month after initial draw and though project**

**construction to completion.**

- c. Note interim lender must provide Agency with final accounting of all funds in and out prior to loan closing or grant disbursements.
- d. Grant funds from the Agency will be disbursed to the borrower construction account by multiple advances through electronic transfer of funds after interim financing is exhausted and Agency loan funds are disbursed, in accordance with RUS Instruction 1780.45. The construction account statement/interim loan accounting and records shall be the basis for Agency review and audit prior to loan closing or grant disbursements. Agency findings must confirm all account inflows and outflows were determined eligible and approved by the Agency as required in monthly project budget reports, signed and submitted by the Town.

**13. Construction Account**

You must establish a construction account for all funds related to the project, with account to be held by an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. A construction account is required that will separately identify, report, and account for all state, interim and 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.

**14. Agency Disbursements**

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

**15. System Users**

This letter of conditions is based upon your indication at application that when construction of project is completed there will be at least:

- a. 206 residential users and
- b. 117 non-residential users

Prior to advertisement for construction bids, Borrower must certify in writing that the above numbered users indicated at application are currently using the system or signed up to use the system once it is operational; only users under Agreement and with immediate effect shall be included in number of users for calculation revenues.

If the actual number of existing and/or proposed users is less than the number indicated at the time of application, you must provide the Agency with a written plan to generate sufficient 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.

- a. Positive Program to Encourage Connections. If applicable, you must provide a positive program to encourage connection by all users as soon as service is available. The program will be reviewed by the Agency prior to advertising for bids. A guide for developing your positive program is available from the Agency.
- b. Service Declination Statement. If applicable, each potential user who is located along planned lines and declines the offered service will be provided an opportunity to sign a “Service Declination Statement.”

## 16. Other Funding/Positive Vote

Prior to advertising for bids the town must provide evidence of borrower contributions, state grant source and positive Town vote or alternate source of funding shortfall, if applicable. Note if project cost exceeds existing limit set by voter approval the town must fund any shortfall subject to subsequent vote.

## 17. Proposed System 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 rate schedule submitted must be updated to reflect current industry practice for rate schedules. Technical assistance at no cost is available in preparing the rate schedule. A draft of the schedule should be submitted for Agency approval prior to final adoption.

RCAP Solutions had been providing technical assistance to the Town on preparation of options for rate schedules. **Any requests for additional information, meetings, or work from RCAP shall be at the direction of the Agency. The Sewer Commissioners (or the Select Board acting as such) shall hold public meetings for input to further refine the draft rate schedule, with Agency loan specialist and RCAP invited by advance notice and either or both attending.**

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.

## 18. 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.

## 19. 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 F of this letter of conditions. For VA/ERP requirements throughout the life of the loan, see Section H. Technical assistance at no cost is available in preparing these documents.

## SECTION E - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

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. The engineer shall verify that the contractor has not been debarred from participating in government funded projects. In addition, the bid award recommendation letter must specify if any of the bid additive alternates will be selected and awarded. 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. Any deviation from award to low bidder must be petitioned by borrower counsel for Agency consideration and concurrence prior to 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 must be considered, or alternately the shortfall must be covered by the Town of Hardwick contribution and approved by the Agency prior to Agency issuance of Notice to Proceed. Additional Agency funds will not be considered and in any event, the resulting revenues against loan repayment must demonstrate sustainability through Agency credit review process.
  - b. Excess Funds. If bids are lower than anticipated, excess funds will be de-obligated prior to start of construction, with grant funds being de-obligated first. No more than 12% of the bid award amount will be allowed for construction contingency, with remaining funds being de-obligated.
  - c. Contract Review. Your attorney will certify that the executed contract documents, including performance and payment bonds 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, a complete set of contract documents must be submitted to the Agency for its' concurrence. A pre-construction conference cannot be scheduled and/or Notice to Proceed issued until the Agency has concurred with the construction contract and all other applicable provisions of the Letter of Conditions have been satisfied

## **2. 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.

## **3. 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. 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.

Insurance noted below are required and must be continued through the life of the loan.

- 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.

## **5. 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. Subsequent such reviews are required every three (3) years or later every (6) years throughout the life of the loan and will require that information be provided by the Borrower in order to satisfy this as a reporting requirement.

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

### **1. Interim Financing**

Interim financing shall be used in the absence of multiple advances. 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. 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.

### **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 are 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 G: REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

### 1. Resident Inspector(s)

Resident Inspector/full time inspection is required. 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.

### 2. Preconstruction Conference

**A preconstruction conference will be held prior to Agency issuance of the Notice to Proceed in which a representative from Rural Development must be present.** 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.

### 3. Agency Inspections

**The Agency requires and must attend 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 during the 11<sup>th</sup> month following completion, one month 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.

### 4. Change Orders

**Prior Agency written concurrence is required for all Change Orders.** All change orders must be associated with the original scope of work as identified in the Agency approved PER that formed the basis for award. Change orders for work outside the original scope of work and change orders that simply add scope of work for the sole purpose to expend excess funding will be denied.

- a. Timing & Agency Concurrence. **Prior Agency concurrence is required for all Change Orders.** Work associated with each change order must not commence until Agency review and concurrence is complete. Change orders submitted after the work is complete will not be considered. Borrower and their engineer shall plan accordingly and allow for five (5) business days for Agency review.
- b. Process. Change Orders must be submitted using EJCDC C-941. The change order must include: (1) detailed description of the change, (2) comprehensive reason for the change and (3) a verification from the borrower of availability of funds. A “draft” change order may be submitted to the Agency in advance to expedite review and approval. **Thirty days should be assumed for Agency response time though every effort will be made to review and respond sooner.**

## 5. Payments

**Prior Agency concurrence is required for all Invoices and Partial Payment Estimates before Interim Lender or 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. Monthly Project Budget Report

In addition to the pay requisition listed above, a Monthly Project Budget Report (MPBR) must be completed and submitted on a monthly basis starting after obligation. All expenses related to the project and all funding sources are tracked on this report. All expenses listed on this report must be supported with associated documentation; unsupported expenses will not be allowed. Agency will provide the borrower a completed MPBR just after obligation based on expenses and funding at the time of application. The borrower must update this report monthly and submit for Agency review and approval. Agency approval must be obtained prior to disbursement from Interim Loan or other funds to ensure eligibility and conformance to Agency requirements. *Prior MPBRs were submitted to the Agency but require revision and integration into the construction account for consistency and recording purposes. This must be completed prior to bid award.*

## 7. Use of multiple source funds

Project must be financed using Borrower contribution, including State grant award first, followed by any other non-Agency sources of funds. Agency Loan may then be used, with Agency Grant funds used last.

## 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 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.

## 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 shall 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 State or Federal auditor if allowed by State law and 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.fhrs.gov](http://www.fhrs.gov). Your Agency processing office can provide more information.

## SECTION H– 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, without penalty. Security instruments, including bond 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. 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.

### 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, provide the required information in a timely manner, and provide the Agency access to the facilities as requested for the inspections.

### 4. Annual Financial Reporting/Audit Requirements

**Commencing with award year, you are required to submit an internally prepared financial statement to the Agency within 180 days of the end of each municipal fiscal year and an outside annual financial report to the Agency within 270 days end of each municipal fiscal year and no later than 12/30 annually, to maintain loan compliance and good standing. The annual report must:**

- a. **certified by the appropriate organization official and will consist of financial information and a rate schedule.**
- b. **include financial statements prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP) and must include at a minimum balance sheet and income and expense statements with notes to financials.**
- c. **separate reporting for each water and waste disposal facility and itemize cash accounts by type (debt service reserve, short-lived asset reserve, etc.) under each facility.**
- d. **Reserves relating to Agency requirement must be clearly indicated (debt service reserve, short-lived asset reserve). 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.**
- e. **Annual Town Budget and Projected Cash Flow along with a current rate schedule and 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.**

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

- f. 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.

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.

## **5. 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.

## **6. 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. 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.

## **8. 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.

## **9. Compliance Reviews and Data Collection**

The Agency is required to 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. As such, Compliance Reviews will be conducted in conjunction with periodic security inspection and servicing, which must be undertaken annually to avoid non-compliance and disqualification for future Agency funding. All Borrowers must track the required information and provide the information requested in order to satisfy the Compliance Review and other servicing requirements. Borrower hereby agrees to track and provide all required information timely for the life of the loan.

### **SECTION I REMEDIES FOR NON-COMPLIANCE**

Non-compliance with the conditions in this letter or requirements of your loan documents will be addressed under the provisions of 7 CFR 1782 and other applicable regulations, statutes, and policies. Additional Agency funding is unlikely in the absence of borrower compliance.

We look forward to working with you to complete this project. If you have any questions, please contact me at 413-923-3240 or by e-mail at [Joseph.Delbove@usda.gov](mailto:Joseph.Delbove@usda.gov).

Sincerely,

Loan Specialist  
Community Programs

cc: Program Director J. Lerch  
State Director S. Soares  
Office of General Counsel Northeast Region

## 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

**WEP Loan & Grant listing of FORMS and BULLETINS**

**Prior to Obligation:**

Form RD 400-1, Equal Opportunity Agreement  
Form RD 400-4, Assurance Agreement  
AD 1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions  
AD 1049, Certification Regarding Drug-Free Workplace Requirements (GRANT ONLY)  
Certification Compliance Form  
SF 424-1, C & D – Application for Federal Assistance, Budget and Assurances  
AD 3030 Representations Regarding Felony Convictions and Tax Delinquent Status for Corporate Applicants  
AD-3031 Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants  
Form RD 1910-11, Applicant Certification Federal Collection Policies for Consumer or Commercial Debts  
Form RD 1940-Q, Exhibit A-1 – Certification for Contracts, Grants and Loans  
Form RD 442-3, Balance Sheet  
Form RD 442-7, Operating Budget  
Employee Relations/Conflict of Interest  
RUS Bulletin 1780-7, Legal Services Agreement  
Form RD 1940-1, Request for Obligation of Funds  
RUS Bulletin 1780-12, Water and Waste System Grant Agreement  
**Form RD 1942-46, Letter of Intent to Meet Conditions (2022)**  
SF LLL, Disclosure of Lobbying Activities  
Tying Agreement

**Prior to Bidding**

Annual Financials  
Successful completion of Agency Environmental Review  
Interim financing in place, approved by the Agency  
RD MA Form 1942-2, Certificate as to Title to Project Site  
Form RD 442-20, Right-of-Way Easement  
Form 442-21, Right-of-Way Certificate  
Form RD 442-22, Opinion of Counsel Relative to Rights-of-Way  
1927-9, Preliminary Title Opinion  
RUS Bulletin 1780-9, Water Users Agreement or Comparable  
RUS Bulletin 1780-27, Loan Resolution (Public Bodies)

**Prior to Construction**

Insurance Coverages  
RD MA Form RD 1942-1, Attorney's Opinion  
Rate Schedule in place, Agency approved

## **Prior to Closing**

List of Officers

RD MA Form 1942-3, Attorney's Certificate as to No-Litigation

Form RD 3550-28, Authorization Agreement for Preauthorized Payments

SF 3881, ACH Vendor/Miscellaneous Payment Enrollment Form

Form RD 1927-10, Final Title Opinion

*[The following two appendices are included as required by 2 CFR Parts 25 and 170 and apply to all direct and guaranteed loans and grants]*

## **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.fsrs.gov>.
  - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. **What to report.** You must report the information about each obligating action listed in the submission instructions posted at <http://www.fsrs.gov>.

b. Reporting Total Compensation of Recipient Executives.

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

- (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this appendix:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

- 1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this appendix, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
  - i. in the subrecipient's preceding fiscal year, the subrecipient received—
    - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
  - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of

the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this appendix:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

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

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

e. Definitions. For purposes of this appendix:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a

non- Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
  - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. .210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
4. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract. 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]