



Control Number: 45552



Item Number: 13

Addendum StartPage: 0



United States Department of Agriculture
Rural Development

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OFFICE OF THE STATE DIRECTOR

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PUBLIC UTILITY COMMISSION
FILING CLERK

Mr. James E. Leveston, President
Old Tamina Water Supply Corporation (WSC)
P. O. Box 7402
The Woodlands, TX 77387

Dear Mr. Leveston:

Congratulations on being selected to receive a \$2,195,000 water and waste disposal loan and grant for Old Tamina WSC.

We have enclosed a copy of Form RD 1940-1, "Request for Obligation of Funds." This form indicates that April 23, 2012, USDA Rural Development approved a loan of \$1,000,000 and a grant of \$1,195,000 for Old Tamina WSC.

USDA Rural Development works to support the sustainable development of rural communities and to improve the quality of life in rural areas.

Sincerely,

FRANCISCO VALENTIN, JR.
State Director

Enclosure

1101 South Main Street • Federal Building, Suite 102, Temple, Texas 76501
Phone: (254)-742-9789 • Fax: (254) 742-9749 • TDD: (254) 742-9712 • Web: <http://www.rurdev.usda.gov/tx>

Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,
Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

13

REQUEST FOR OBLIGATION OF FUNDS

INSTRUCTIONS-TYPE IN CAPITALIZED ELITE TYPE IN SPACES MARKED () Complete Items 1 through 29 and applicable Items 30 through 34. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 50-070-*****6798		LOAN NUMBER 01/02	FISCAL YEAR 12
2. BORROWER NAME Old Tamina Water Supply Corporation		3. NUMBER NAME FIELDS (1, 2, or 3 from Item 2)	
		4. STATE NAME Texas	
		5. COUNTY NAME Montgomery	
GENERAL BORROWER/LOAN INFORMATION			
6. RACE/ETHNIC CLASSIFICATION 1 - WHITE 2 - BLACK 3 - AM/N 4 - HISPANIC 5 - API	7. TYPE OF APPLICANT 1 - INDIVIDUAL 2 - PARTNERSHIP 3 - CORPORATION 4 - PUBLIC BODY 5 - ASSOC. OF FARMERS 6 - ORG. OF FARMERS 7 - NONPROFIT-SECULAR 8 - NONPROFIT-FAITH BASED 9 - INDIAN TRIBE 10 - PUBLIC COLLEGE/UNIVERSITY 11 - OTHER	8. COLLATERAL CODE 1 - REAL ESTATE SECURED 2 - REAL ESTATE AND CHATTEL 3 - NOTE ONLY OR CHATTEL ONLY 4 - MACHINERY ONLY 5 - LIVESTOCK ONLY 6 - CROPS ONLY 7 - SECURED BY BONDS 8 - RLF ACCT	9. EMPLOYEE RELATIONSHIP CODE 1 - EMPLOYEE 2 - MEMBER OF FAMILY 3 - CLOSE RELATIVE 4 - ASSOC.
10. SEX CODE 1 - MALE 2 - FEMALE	11. MARITAL STATUS 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOWED/DIVORCED)	12. VETERAN CODE 1 - YES 2 - NO	13. CREDIT REPORT 1 - YES 2 - NO
14. DIRECT PAYMENT (See FMI)	15. TYPE OF PAYMENT 1 - MONTHLY 2 - ANNUALLY 3 - SEMI-ANNUALLY 4 - QUARTERLY	16. FEE INSPECTION 1 - YES 2 - NO	
17. COMMUNITY SIZE 1 - 10 000 OR LESS (FOR SFH AND HPG ONLY) 2 - OVER 10,000		18. USE OF FUNDS CODE (See FMI)	
COMPLETE FOR OBLIGATION OF FUNDS			
19. TYPE OF ASSISTANCE 068 (See FMI)	20. PURPOSE CODE 1	21. SOURCE OF FUNDS	22. TYPE OF ACTION 1 - OBLIGATION ONLY 2 - OBLIGATION/CHECK REQUEST 3 - CORRECTION OF OBLIGATION
23. TYPE OF SUBMISSION 1 - INITIAL 2 - SUBSEQUENT	24. AMOUNT OF LOAN 1,000,000.0	25. AMOUNT OF GRANT 1,195,000	
26. AMOUNT OF IMMEDIATE ADVANCE	27. DATE OF APPROVAL MO DAY YR APR 13 2012	28. INTEREST RATE 2 %	29. REPAYMENT TERMS 40
COMPLETE FOR COMMUNITY PROGRAM AND CERTAIN MULTIPLE-FAMILY HOUSING LOANS			
30. PROFIT TYPE 1 - FULL PROFIT 2 - LIMITED PROFIT 3 - NONPROFIT			
COMPLETE FOR EM LOANS ONLY		COMPLETE FOR CREDIT SALE-ASSUMPTION	
31. DISASTER DESIGNATION NUMBER (See FMI)		32. TYPE OF SALE 1 - CREDIT SALE ONLY 2 - ASSUMPTION ONLY 3 - CREDIT SALE WITH SUBSEQUENT LOAN 4 - ASSUMPTION WITH SUBSEQUENT LOAN	
FINANCE OFFICE USE ONLY		COMPLETE FOR FP LOANS ONLY	
33. OBLIGATION DATE MO DA YR APR 23 2012		34. BEGINNING FARMER/RANCHER (See FMI)	

If the decision contained above in this form results in denial, reduction or cancellation of USDA assistance, you may appeal this decision and have a hearing or you may request a review in lieu of a hearing. Please use the form we have included for this purpose.

Position 2

ORIGINAL - Borrower's Case Folder

COPY 1 - Finance Office

COPY 2 - Applicant/Lender

COPY 3 - State Office

CERTIFICATION APPROVAL

For All Farmers Programs

EM, OL, FO, and SW Loans

This loan is approved subject to the availability of funds. If this loan does not close for any reason within 90 days from the date of approval on this document, the approval official will request updated eligibility information. The undersigned loan applicant agrees that the approval official will have 14 working days to review any updated information prior to submitting this document for obligation of funds. If there have been significant changes that may affect eligibility, a decision as to eligibility and feasibility will be made within 30 days from the time the applicant provides the necessary information.

If this is a loan approval for which a lien and/or title search is necessary, the undersigned applicant agrees that the 15-working-day loan closing requirement may be exceeded for the purposes of the applicant's legal representative completing title work and completing loan closing.

35. **COMMENTS AND REQUIREMENTS OF CERTIFYING OFFICIAL**
Approval of financial assistance is subject to the Letter of Conditions dated 4/13/2012.

36. I HEREBY CERTIFY that I am unable to obtain sufficient credit elsewhere to finance my actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near my community for loans for similar purposes and periods of time. I agree to use the sum specified herein, subject to and in accordance with regulations applicable to the type of assistance indicated above, and request payment of such sum. I agree to report to USDA any material adverse changes, financial or otherwise, that occur prior to loan closing. I certify that no part of the sum specified herein has been received. I have reviewed the loan approval requirements and comments associated with this loan request and agree to comply with these provisions.

(For FP loans at eligible terms only) If this loan is approved, I elect the interest rate to be charged on my loan to be the lower of the interest rate in effect at the time of loan approval or loan closing. If I check "NO", the interest rate charged on my loan will be the rate specified in Item 28 of this form. ☐ YES ☐ NO

WARNING: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both."

Date 4/13/2012, 20 12

James E. Leveston
James E. Leveston, President

(Signature of Applicant)

Date _____, 20 _____

(Signature of Co-Applicant)

37. I HEREBY CERTIFY that all of the committee and administrative determinations and certifications required by regulations prerequisite to providing assistance of the type indicated above have been made and that evidence thereof is in the docket, and that all requirements of pertinent regulations have been complied with. I hereby approve the above-described assistance in the amount set forth above, and by this document, subject to the availability of funds, the Government agrees to advance such amount to the applicant for the purpose of and subject to the availability prescribed by regulations applicable to this type of assistance.

Francisco Valentin, Jr.
(Signature of Approving Official)

Typed or Printed Name: _____

FRANCISCO VALENTIN, JR.
State Director

Date Approved: APR 13 2012

Title: _____

38. TO THE APPLICANT: As of this date APR 23 2012, this is notice that your application for financial assistance from the USDA has been approved, as indicated above, subject to the availability of funds and other conditions required by the USDA. If you have any questions contact the appropriate USDA Servicing Office.

James E. Leveston, President
Old Tamina Water Supply Corporation
PO Box 7402
The Woodlands, TX 77387

Dear Mr. Leveston:

This letter establishes conditions which must be understood and agreed to before further consideration may be given to this application. These conditions must be met before loan closing or start of construction. State and Local Office staff of USDA Rural Development will administer the loan and/or grant on behalf of the Rural Utilities Service (RUS). Any changes in project cost, source of funds, scope of services, or any other significant change in the project or applicant must be reported to and approved by USDA Rural Development by written amendment to this letter. If significant changes are made without obtaining such approval, USDA Rural Development may discontinue processing the application.

This letter does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. The docket may be completed on the basis of a loan not to exceed \$1,000,000 and a development grant not to exceed \$1,195,000.

The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing. A written request should be submitted to USDA Rural Development staff at least 15 calendar days before loan closing, if the Corporation does not want the interest rate changed to the rate at loan closing. The loan and/or grant will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to the Corporation.

The Corporation may access information and regulations referenced in the letter at our web-site located at www.usda.gov/rus/water/ for the following:

- a. Title 7 Code of Federal Regulation, Part 1780, (7 CFR 1780) – Sections A-D and RUS Bulletins are the Regulations for the program.
- b. RUS Bulletin 1780-26, "Guidance for the Use of Engineers Joint Contract Documents Committee (EJCDC) Documents on Water and Waste Projects with RUS Financial Assistance"

2 Financial Plaza • Suite 745 • Huntsville, TX 88340
Phone: (936) 291-1901 • Fax: (936) 634-294-0533 • TDD: (254) 742-9712 • Web: <http://www.rurdev.usda.gov>

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Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

Following are the conditions that must be understood, agreed to, and met:

1. PROJECT COSTS

Funding from all sources has been budgeted for the estimated expenditures as follows:

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Development	\$1,601,340
Contingencies	160,134
Engineering Services	208,174
Topographic Survey/Geotechnical	127,760
Inspection Services	48,300
Legal Services	10,092
Interest during Construction	39,200
TOTAL PROJECT COST	\$2,195,000

Your funding needs will be reassessed if there is a significant reduction in project costs after bids are received. Obligated loan or grant funds not needed to complete the proposed project will be deobligated. Any reduction will be applied to grant funds first. An "Amended Letter of Conditions" will be issued for any revised project budget.

2. PROJECT FUNDS

USDA RUS Loan	\$1,000,000
USDA RUS Grant	<u>1,195,000</u>
Total Project Funding (All Sources):	\$2,195,000

Any changes in funding sources following obligation of RUS funds must be reported to the processing official. Prior to advertisement for construction bids, you must provide evidence of applicant contributions and approval of other funding sources. This evidence should include a copy of the commitment letter.

3. USE OF FACILITY

Services provided through this loan and/or grant will be offered to all potential users living within the service area. All users will execute a Service Application and Agreement, RUS-TX Bulletin 1780-9. Those residents not desiring service will execute a Service Rejection Statement on Form RUS TX Bulletin 1780-1. Refusal to sign such a statement authorizes the Board representative to sign a statement that services were offered and declined. No free service or use of the facility will be permitted.

4. REPAYMENT SCHEDULE

- A. Interest during construction will be provided in the amount of \$39,200 until the facility is in full operation. Principal payments will be deferred for two full years after loan closing. Payments on this loan will be paid directly to USDA Rural Development from utility revenues as set out in Form RD 440-22, "Promissory Note," to be executed at loan closing.
- B. Loan Repayment – (Monthly Installments) Your loan will be scheduled for repayment over a period of 40 years. The payments due the first 2 years will consist of interest only. Payments for the remaining 38 years will be equal amortized monthly installments. For planning purposes use a 2.00% interest rate and a monthly amortization factor of 3.14, which provides for a monthly payment of \$3,140.
- C. Form RD 3550-28, "Authorization Agreement for PreAuthorized Payments," must be executed for this loan, as well as all existing loans.
- D. Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs, and assist with debt service through a debt service reserve should the need arise. Reserves can also be established and maintained for the anticipated and expected expenses including but not limited to operation and maintenance, customer deposits, deferred interest during the construction period, and an asset management program.

As a part of this Agency loan proposal you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment.

In addition to the debt service reserve account, you must fund a short lived asset replacement reserve by depositing a sum of \$700 annually.

5. CONTRIBUTION AND USER VERIFICATION

- A. Any required contribution shall be considered as the first funds expended. An agreement should be reached with all other funding sources on how funds are to be disbursed before the start of construction. RUS loan funds (interim financing) are to be used prior to the use of RUS grant funds.

- B. The Corporation must establish a separate construction account, with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. All project funds will be deposited into this account. 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. 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 constructions account at any one time. Additional guidance on collateral acceptability and valuation are available to Treasury's Bureau of the public debt website at www.publicdebt.treas.gov.
- C. This Letter of Conditions is based upon 249 members having paid at least the initial cash contribution required in the Bylaws and application, and having signed RUS-TX Bulletin 1780-9, "Service Application and Agreement."
- D. The number of users is to be verified by a USDA Rural Development official, using RUS Bulletin-TX 1780-40, "Certification of Users by Rural Development Manager." Any member or connection that will not also use water when it is first made available is considered a dry tap and will not be included in the above figures.
- E. All water shall be metered by meters to be furnished and installed by the Corporation. The meter and/or connection is for the sole use of the member or customer.

6. **INTERIM FINANCING/MULTIPLE ADVANCES**

- A. For all loans exceeding \$500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to bid authorization. The Agency approval official may make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after loan funds or interim financing is expended.
- B. In accordance with RUS Instruction 1780, Section 1780.45 (b) (1), multiple advances may be used. Loan funds must be expended before grant funds, with grant funds being utilized after all loan funds have been accounted for.
- C. RUS Bulletin 1780-10, "Guide for Use in Informing Private Lender of Rural Utilities Services Commitment," will be used to inform private lenders of RUS' commitment.

- D. The Debt Collection Improvement Act (DCIA) of 1996 requires that, effective January 1999, all Federal disbursements must be made by Electronic Funds Transfer/Automated Clearing House (EFT/ACH). A benefit of receiving disbursements by EFT/ACH is that funds are directly deposited to the Corporation's account at a financial institution and are available on the date of disbursement.
- E. The Corporation will complete Form SF-3881, "Electronic Funds Transfer Payment Enrollment Form," for each account where funds will be electronically received. The completed form(s) must be received by USDA Rural Development at least thirty (30) days prior to loan closing.
- F. The loan will be closed by signing the necessary loan documents (note and mortgage, deed of trust, or other debt instruments) and filing of any necessary papers. After closing, USDA Rural Development personnel will request fund disbursement through EFT/ACH system. The funds are placed in the Corporation's account two (2) business days from the date of the request. This procedure should pose no problems since the interest will not accrue until funds are deposited in this account.
- G. Cash advances should coincide with cash needs. If RUS grant funds are not disbursed immediately upon receipt, excess funds must be deposited into an interest bearing account, if possible. Interest earned of \$250 or more per year must be returned to USDA Rural Development at least annually.

7. SECURITY REQUIREMENTS

- A. All facilities will be placed on property owned by the Corporation or on private property with the necessary easements or leases secured. Property purchased should be obtained in fee simple title; reversionary clauses should not appear in deeds, easements, or leases. Deeds, easements, and leases will contain appropriate civil rights statements.
- B. Wherever practicable, water and/or sewer lines and appurtenances will be located in private right-of-way easements. The Corporation must certify to RUS that it will (1) condemn the easement or (2) relocate its property to the public right of way, in the event an easement was to fail or be extinguished through foreclosure. The Agency will consider such certification in determining whether the Corporation has valid, continuous and adequate rights of way. If it is necessary to place any lines or appurtenances on public rights-of-way, the Corporation shall obtain a letter from each public entity having public easements or rights-of-way through which the proposed lines are designed to traverse. This letter is to approve the use proposed by the Corporation and confirm that there are no plans in the foreseeable future for construction of road improvements or other utilities that might conflict with the Corporation's use of the public right-of-way. In the event the Corporation is required to relocate its property, RUS will not be obligated to provide financing for any costs involved in such relocation.

- C. This loan will be secured by a first lien on all real estate, an assignment of income and contracts financed by the project.
- D. Additional security requirements are contained in RUS Bulletin 1780-12, "Water or Waste System Grant Agreement", RUS Bulletin 1780-28, "Loan Resolution Security Agreement", which also serves as an assignment of income, and Form RD 1942-8, "Resolution of Members or Stockholders".
- E. Attached is a copy of RUS Bulletin 1780-12, "Water and Waste System Grant Agreement." A completed form must be executed at the time of grant closing.

8. ORGANIZATION

- A. Due to the recent changes to the election procedures, we recommend the Corporation adopt the Agency's current revisions to RUS-TX 1780-20, "Bylaws." Any changes or amendments to the organizational documents must be approved by USDA Rural Development.
- B. RUS Bulletin 1780-28, "Loan Resolution Security Agreement," must be adopted prior to requesting closing instructions.
- C. It is required that each member of the Board of Directors receive available training in regard to their duties and responsibilities in accordance with the Texas Government Code, Chapter 551, Subchapter A, Section 551.005 and Chapter 552, Subchapter A, Section 552.012.

9. BUSINESS OPERATIONS

- A. Operating & Maintenance (O&M) expenses must be properly budgeted to determine the financial viability of any operation. For planning purposes, we have projected O&M expenses based on the information. This information is utilized to determine loan repayment and is reflected in the proposed operating budget. It is expected that O&M will change over each successive year and user rates will need to be adjusted for the need.

The Corporation's authorized official must approve the Operating Budget prior to funding approval.

- B. You will be required to submit a copy of your proposed annual operating budget and rate analysis to this office which supports the proposed loan repayment prior to this agency giving you written authorization to proceed with the bidding phase. The operating budget should be based on a typical year cash flow subject to completion of this project in the first full year of operation. The rate analysis will be required to show the number of users and rate structure to support the necessary revenue to make the operating budget cash flow. Form RD 442-7, "Operating Budget," or similar form 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.

Assistance is available from technical assistance resources to help evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested, please contact our office for phone numbers and contacts for these organizations.

- C. The Corporation must adopt a wastewater rate that will generate sufficient revenue to pay debt service, reserve, operation and maintenance, and any necessary short lived asset replacement reserve. The rates must be approved by USDA Rural Development before loan closing or beginning of construction.
- D. As part of the docket, the Corporation will present for USDA Rural Development review and approval a management plan and facility maintenance plan. Such plans should include written agreements for management and maintenance services, if applicable.
- E. The Corporation may be required to obtain the services of an independent licensed Certified Public Accountant (CPA). When permitted by state statutes or with the approval of the Agency, a state or Federal auditor may perform the audit in lieu of a CPA.

The Corporation must enter into a written audit agreement with the auditor and submit a copy to the Agency prior to 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. Prior to the advertisement for bids, your accountant must certify to you and the Agency that the accounts and records as required by your State statutes have been established and are operational.

- F. Annual reports and audits are to be furnished as set forth in RUS Instruction 1780, Section 1780.47. The following management data will be required from the Corporation on an annual basis and be submitted to the Agency as specified below:
 - 1. A borrower that expends \$500,000 or more in federal financial assistance per fiscal year shall submit an audit performed in accordance with the requirements of OMB Circular A-133. As described above, the total federal funds expended from all sources shall be used to determine federal financial assistance expended. Projects financed with interim financing are considered federal expenditures.
 - 2. A borrower that expends less than \$500,000 in Federal financial assistance per fiscal year an outstanding Agency loan balance of \$1,000,000 or more shall submit an audit performed in accordance with Generally Accepted Government Auditing Standards, (GAGAS).

3. A borrower that expends less than \$500,000 in Federal financial assistance per fiscal year and has an outstanding Agency loan balance of less than \$1,000,000 may submit a management report, which includes at a minimum a Balance Sheet and an Income and Expense Statement.

A supplemental report is required annually containing:

- a. Total number of customers
 - b. List of current governing body names, addresses, and telephone numbers.
- G. The Corporation is required to submit an Annual Budget and projected cash flow to the Agency 30 days prior to the beginning of each fiscal year. With the submission of the Annual Budget, you will be required to provide a current rate schedule, a current listing of the Board members and their terms.
 - H. During the first full year of operation, a quarterly management report will be required for new borrowers and for all borrowers experiencing financial management problems for one year from the date problems were noted. The Corporation may use Form RD 442-2, "Statement of Budget, Income and Equity," for this purpose. Quarterly management reports will be required until the Agency waives the required reports.
 - I. The Corporation will be required to obtain a legal services agreement. RUS Bulletin-TX 1780-7, "Agreement for Legal Services" is provided. This agreement will address the fees necessary for the services outlined in this agreement. At closing the owner's attorney will certify that the executed contract documents, including performance and payment bonds on contracts over \$100,000 are adequate and that the persons executing these documents have been properly authorized to do so in accordance with RUS Instruction 1780, Section 1780.61(b).
 - J. The loan is subject to the provisions of the Federal Civil Rights and Equal Opportunity laws. The applicant must agree to comply with these requirements by executing Forms RD 400-4, "Assurance Agreement," and RD 400-1, "Equal Opportunity Agreement."
 - K. Civil Rights & Equal Opportunity - You should be aware of and will be required to comply with other federal statute requirements including but not limited to:

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.

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 subpart E of part 1901 of this title, 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.

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. Title II of the Act applies to facilities operated by State and local public entities which provides services, programs and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities which accommodate the public.

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.

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap.

- L. Attached is Form RD 1910-11, "Applicant Certification - Federal Collection Policies For Consumer or Commercial Debts." This form must be executed prior to loan closing.
- M. Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Cover Transactions," must be executed to certify that the Corporation is not debarred or suspended from Government assistance.
- N. For any contract in excess of \$25,000, Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," must be executed by any person or entity the Corporation does business with as a result of this Government assistance certifying that they are not debarred or suspended from Government assistance.
- O. The grant is subject to the provisions of the Drug Free Workplace Act of 1988. The grantee must certify to USDA Rural Development that it will provide a drug free workplace. As a prior condition of being awarded a grant, the grantee shall make certification, by execution of Form AD-1049 that the provisions of the Act will be complied with.
- P. The Corporation must have an acceptable wastewater disposal contract from the City of Shenandoah. This contract must be approved by USDA Rural Development before loan closing or beginning of construction. Form RD 442-30 may be used as a guide in completing an acceptable contract.

- Q. The Corporation must have an acceptable Management Agreement with the Chateau Woods to enforce disconnection should non-payment of utility charges occur. This Agreement must be approved by USDA Rural Development before loan closing or beginning of construction.
- R. Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights-of-ways needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation and Real Property Acquisition Act. Such evidence of control over the lands and rights must be in the following form:
1. Right-of-Ways - A right-of-way map will be required showing clearly the location of all lands and right-of-ways needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof. A certification and legal opinion relative to title to right-of-ways and easements is required. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way", and Form RD 442-21, "Right-of-Way Certificate" may be used. These forms may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, new forms must be provided which do not provide for any exceptions.
 2. Preliminary Title Work - (Title Opinions) A separate Form RD 1927-9, "Preliminary Title Opinion" along with copies of deeds, contracts or options for any lands needed other than rights-of-way, may be used for each property currently owned or to be acquired.
 3. Final Title Work - Immediately after loan closing, your attorney must furnish a separate final title opinion on all existing land(s) and those to be acquired on the day of loan closing. Form RD 1927-10, "Final Title Opinion" may be used.

10. INSURANCE AND BONDING

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

- a. General Liability Insurance - Include vehicular coverage.
- b. Workers' Compensation - In accordance with appropriate State laws.

- c. Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. You should have each position 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 of this project based on the anticipated monthly advances. The minimum coverage acceptable to the Agency will be for each position to be bonded for an amount at least equal to one annual installment on your Agency loan(s). The amount of coverage should be discussed and approved by the Agency. Form RD 440-24, "Position Fidelity Bond" may be used for this purpose.
- 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. 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.

11. CONSTRUCTION

- A. The Agency must approve any agreements and modifications to agreements for professional engineering services. The agreement for engineering services should consist of the Engineers Joint Contract Documents Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance" or other approved form of agreement.
- B. The consulting engineer will prepare construction contract documents and specifications using RUS Instruction 1780, Subpart C, and State supplements.

Evidence must also be provided indicating your system has a licensed operator, meeting State requirements, will be available prior to the system becoming operational or a suitable supervisory agreement with a licensed operator is in effect.

- C. The owner, contractor or responsible party will be required to obtain all required permits for the project prior to advertisement for construction bids. A narrative opinion from your attorney concerning all permits, certificates, licenses and other items necessary to show that all legal requirements can be met and stating how they will be met.

D. Contract Documents, Final Plans and Specifications

1. The contract documents should consist of the EJCDC Construction Contract Documents as indicated in RUS Bulletin 1780-26 or other approved form of agreement.
2. The contract documents, final plans, and specifications must comply with RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Construction and Inspections and be submitted to the Agency and Texas Commission on Environmental Quality (TCEQ) for approval prior to advertisement for bids.
3. The use of any procurement method other than competitive bidding must be requested in writing and approved by the Agency.
4. The Agency requires a pre-construction conference, pre-final, final, and warranty inspection.
5. The Agency requires prior agency concurrence with all Change Orders, Invoices, and Payment Estimates.

- E.** Once all the conditions outlined in this letter have been met and closing instructions have been issued by the Office of General Counsel, the Agency may authorize the Corporation to advertise the project for construction bids. USDA Rural Development must be represented at all bid openings and negotiations. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide the Agency with (a) bid tabulation, and (b) your engineer's evaluation of bids and (c) your recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued to you setting forth any further requirements that must be met before a Notice of Award may be issued.
- F.** Bids should not be received on any contract unless the contract can be awarded within sixty days.
- G.** Executed contracts and bonds are to be approved in writing by USDA Rural Development before any construction is started.
- H.** In accordance with RUS Instruction 1780, Section 1780.76(h), any changes in construction, addition and/or deletion will be made only on written change order, EJCDC C-941, "Contract Change Order." Approval by the authorized Corporation official(s), contractor, USDA Rural Development engineer, or USDA Rural Development official is required before any work is done. If any facility design or proposed construction activities deviate from those contained in the approved environmental documents, the Corporation may be required to undertake additional environmental review activities.

- I. An authorized representative of the Corporation will monitor and provide a report to USDA Rural Development on actual performance during construction. Full time inspection is required for all construction. A resume of qualifications of the Resident Inspector must be submitted for USDA Rural Development's acceptance. Daily inspection reports will be prepared in accordance with RUS Instruction 1780, Section 1780.76(d). All estimates for payments to contractors may be made on EJCDC C-620, "Application for Payment," prepared and certified by the consulting engineer, certified by the contractor, and approved by the appropriate Corporation official(s) and USDA Rural Development.

12. ENVIRONMENTAL REQUIREMENTS

- A. The contracts must contain a clause which states, "If cultural materials are encountered during construction, work must cease in the immediate area of the discovery. Work may continue in those project locations outside of the discovery area, with written approval from USDA Rural Development. The contractor must immediately notify the consultant engineer, the Texas Historical Commission (512) 463-5867, and the USDA Rural Development State Environmental Coordinator (254) 742-9789."
- B. The following mitigation measures will be required in the contract documents for construction:
 - a. Construction will occur during daylight hours only to reduce noise.
 - b. Dust suppression during construction when required.
 - c. Survey for migratory bird nests and Red-Cockaded Woodpecker bird nests by a qualified individual before construction begins to avoid disturbance.

13. RESTRICTION ON LOBBYING

- A. Federal law requires that each recipient who requests or receives a Federal contract, grant, loan, or a Federal commitment to guarantee a loan disclose the expenditure of any funds for lobbying activities. RD Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants, and Loans" must be executed prior to loan and/or grant approval if the loan request exceeds \$150,000 and/or the grant request exceeds \$100,000.
- B. Any person who requests or receives a contract, subcontract, or subgrant (consulting engineers, construction contractors, etc.) in excess of \$100,000 must complete RD Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants, and Loans."
- C. Standard Form (SF) LLL, "Disclosure of Lobbying Activities," will be completed by any recipient requesting or receiving a USDA Rural Development contract where the grant exceeds \$100,000, or loan exceeds \$150,000, and has made or has agreed to make any payment using funds other than appropriated funds to influence or attempt to influence a decision in connection with this specific award.

14. GRADUATION

If, at any time in the future, the Corporation is able to refinance the amount of the indebtedness owed the Government by obtaining a loan for such purpose from a responsible cooperative or private credit source at reasonable rates and terms for similar purposes and periods of time, the Corporation will be required to apply for and accept such a loan in sufficient amount to refinance its RUS indebtedness.

15. HOMELAND SECURITY INITIATIVE

The Corporation must comply with USDA Rural Development's Homeland Security Initiative by preparing a Vulnerability Assessment (VA) and Emergency Response Plan (ERP) to ensure public safety. The Corporation will be required to have an ERP at the start of operations, and a VA within one year. USDA Rural Development may assist your organization with preparing VA's and ERP's through the use of technical assistance providers. The Corporation must provide **certification** to USDA Rural Development of these requirements. (Do not provide a copy of the actual VA or ERP documents.)

The Corporation will also be required to provide a **certification** that the VA and ERP are current every three years after the start of operations. Rural Development does not need or want a copy of the VA or ERP. The requested certification will be sufficient to meet our needs. Technical assistance providers are available to provide onsite assistance.

16. COST OVERRUNS

Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date. Cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means prior to consideration by the Agency for subsequent funding. Such requests will be contingent on the availability of funds.

17. REMAINING FUNDS

Applicant contributions and connection or tap fees will be the first funds expended in the project. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

- Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the [loan and grant] remains the same.
- Agency loan funds that are not needed will be applied as an extra payment on the Agency indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute.

- Grant funds not expended for authorized purposes will be cancelled within 45 days of project completion. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.

18. **CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER REQUIREMENTS**

Beginning October 1, 2010, financial assistance grant/loan recipients must have a Dun and Bradstreet Data Universal Numbering System (DUNS) numbers and maintain current registration in the Central Contractor Registration (CCR) database. The DUNS number requirement is not new; however, the CCR requirement is new. Based on the search of the CCR, the Corporation is registered and will expire March 26, 2013. You as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award and all grants funds under this award have been disbursed or de-obligated, 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 award term. Recipients can register on-line at (<https://www.bpn.gov/ccr/>).

- a) You as the recipient may not make a sub-award to an entity unless the entity has provided its Data Universal Numbering System (DUNS) number to you. Sub-recipients with sub-awards of \$25,000 or more must also have and maintain a current CCR registration.
- b) **Recipient Reporting.** You as the recipient must report each first tier sub-awards of \$25,000 or more in non-Recovery Act funds to <http://www.fsr.gov> no later than the end of the month following the month the obligation was made. As part of your registration profile at <http://www.ccr.gov>, you must report the total compensation of the 5 most highly compensated executives (if the award was \$25,000 or more, 80% or more of annual gross revenues subject to Transparency Act, and \$25 Million of annual gross revenues subject to Transparency Act) by end of month following month in which award was made. This requirement also pertains to sub-recipients (if the award was \$25,000 or more, 80% or more of annual gross revenues subject to Transparency Act, and \$25 Million of annual gross revenues subject to Transparency Act).

Closing instructions issued by the Office of General Counsel must be complied with.

Attached please find two additional copies of this letter and attachments. One copy should be furnished to the consulting engineer and to the attorney. I want to meet with the governing board, the consulting engineer, and attorney so that we may discuss the contents of this letter.

Please complete and return the attached Form RD 1942-46, "Letter of Intent To Meet Conditions," if the Corporation desires that further consideration be given to this funding request.

If the conditions set forth in this letter are not met within two years from the date hereof, USDA Rural Development reserves the right to discontinue the processing of this application.

Sincerely,


for RONALD E. LAWRENCE
Area Director

Attachments