USDA
United States Department of Agriculture

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September 10, 2018

Pete Williams, City Manager
City of Bethel
PO Box 1388
Bethel, AK 99559

SUBJECT: "The Avenues" water and sewer project
Loan - $8,250,000
Grant -$5,021,000

Dear Mr. Williams:

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

You must meet all conditions set forth under Section III - Conditions Required Prior to Advertising for Bids within 6 months of this letter. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 30 days:

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

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

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.
The conditions are as follows:

USDA is an equal opportunity provider, employer, and lender.

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

SECTION I - PROJECT DETAIL

1. **Project Description** – Funds will be used for the construction of piped water and sewer system, including service line connections for residential homes in and around the project area referred to as "The Avenues." In addition, the purchase of six (6) water haul trucks will take place.

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

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

Project Costs:	**Total Budgeted:**
Engineering Fees (Design/Construction Administration/Inspection)	$1,712,000
Construction (water/sewer mains)	$5,171,630
Construction (water/sewer residential service lines)	$2,800,000
Contingency	$1,713,000
Equipment (6 water haul trucks)	$1,500,000
Interest - Interim	$500,000
Taxes, bonds, insurance	$230,370
TOTAL	**$13,627,000**

   Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. Obligated loan or grant funds not needed to complete the proposed project will be deobligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget.

   It must be agreed and understood that funding for service line connections is not eligible to be utilized for commercial users. The funding available for services lines must only be utilized for residential connections.

3. **Project Funds** – Project funding is planned from the following sources:

Project Funding Source	**Funding Amount:**
Applicant Contribution	$306,000
Rural Development Loan	$8,250,000
Rural Development Grant	$5,021,000
TOTAL	**$13,627,000**

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of applicant contributions and approval of other funding sources. This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

Prior to advertising for bids, the City of Bethel must provide individual service documentation as outlined in RD's acceptance letter dated September 10, 2018, accepting the preliminary engineering and environmental reports.

SECTION II – LOAN AND GRANT TERMS

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

   Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal $181,418 amortized installments, beginning six months after the closing date. For planning purposes, use a 3.125% interest rate and an amortization factor of 40, which provides for a semi-annual payment of $181,418. The precise payment amount will be based on the interest rate at which the loan is closed and may be different than the one above.

   The payment due date will be established as the day that the loan closes (the 28th is the due date when loans are closed on the 29th, 30th or 31st).

   Income Available: You must maintain a rate schedule that provides adequate income to meet minimum requirements for operation and maintenance and reserves. Based on application information provided, you must raise water and sewer rates in order to meet the requirements necessary for reserves, debt service, and operations/maintenance costs. **As such, prior to project closeout, a rate increase which results in an increase of monthly user rates to a level no less than $177 a month for water and $55.75 a month for sewer, will be required.**

   Rates must be set to generate monthly revenues of at least $592,408 a month or $7,108,900 annually for the water and sewer utilities. This will ensure that there is adequate income to meet the minimum operation and maintenance and reserves for the systems.

5. **Security** – The loan will be secured by a Revenue instrument (promissory note and/or bond) with first lien position in the amount of $8,250,000. The instrument will be fully registered as to both principal and interest in the name of the United States of America, Acting through the United States Department of Agriculture.

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

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

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

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

7. **Construction Completion Timeframe** - All projects are required to be completed and all funds disbursed within five years of obligation. If funds are not disbursed within five years of obligation, you must submit a written waiver request with adequate justification of extenuating circumstances beyond your control for an extension of time. Any additional requests for waivers beyond the initial extension will be submitted through the State Office to the Assistant Administrator for concurrence decision.

8. **Disbursement of Agency Funds** Any applicant contribution will be the first funds expended, followed by other funding sources. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached prior to start of construction or loan closing, whichever occurs first, with all other funding sources on how funds are to be disbursed. Agency grant funds will be expended last. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. Grant agreements must not be closed, and funds must not be disbursed prior to loan funds except as specified in RUS Instruction 1780.45(d).

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

   a. The recipient receives less than $120,000 in Federal awards per year.
   b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.
   c. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
   d. A foreign government or banking system prohibits or precludes interest-bearing accounts.

9. **Reserves** – Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs and assist with debt service should the need arise. The following reserves are required to be established as a condition of this loan:

   a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. Ten percent of the proposed loan installment would equal $3,023.63 per month; this amount should be deposited monthly until a total of $362,836 has accumulated. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully-funded amount is reached.

   b. **Short-Lived Asset Reserve** – In addition to the debt service reserve fund, you must establish a short-lived asset reserve fund. Based on the preliminary engineering report, you must deposit $683,867 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets.

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

SECTION III –REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. **Environmental Requirements** – At the conclusion of the proposal's environmental review process, specific action(s) were determined necessary to avoid or minimize adverse environmental impacts. As outlined in the Environmental Report dated June 2018, the following actions are required for successful completion of the project and must be adhered to during project design and construction:
    - Clearing and grubbing is not recommended within the migratory bird window of May 5 to July 25, except as permitted by federal, state, and local laws;
    - Contractor to make every effort to use local labor during construction;
    - Re-vegetation of disturbed areas as soon as practicable with local and native species;
    - Should archeological resources be discovered during the course of the project, work would be interrupted in the area of the discovery until the resources have been evaluated in terms of the NRHP, in consultation with AKSHPO;
    - During construction, if contaminated soil, groundwater, or free phase petroleum product is encountered and determined to be associated with a known contaminated site, the construction contractor or other project representative shall contact the appropriate DEC staff to ensure that contamination in the corridor is managed and documented as deemed necessary;
    - Obtain a floodplain development permit and Section 404 permit from the City.

- Contractor to prepare a Storm Water Pollution Prevention Plan (SWPPP), in compliance with the Alaska Pollutant Discharge Elimination System General Construction Permit.

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

11. **Engineering Services** – The agreement for engineering services must 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 Disposal Projects with RUS Financial Assistance," or other approved form of agreement. The Agency must concur in the agreement and any modifications for professional engineering services prior to advertising for bids. The Agency concurrence will occur immediately following approval of the loan and/or grant. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

12. **Contract Documents, Final Plans and Specifications** –

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

g. 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 it is required.

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

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

a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
b. **Form RD 442-20, "Right-of-Way Easement"** – This form may be used to obtain any necessary easements for the proposed project.
c. **Form RD 442-21, "Right-of-Way Certificate"** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
d. **Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way"** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.
e. Preliminary Title Work (Title Opinion) – When applicable, your attorney will provide a preliminary title opinion for any property related to the facility, currently owned and to be acquired, along with copies of deeds, contracts or options for purchasing said property. Form RD 1927-9, "Preliminary Title Opinion," may be used.
f. Preliminary Title Work – (Title Insurance) – When applicable, a title insurance binder will be required on all real estate related to the facility now owned and property to be acquired in connection with this project. The binder will be in the amount of the proposed loan and name the United States of America, acting through the United States Department of Agriculture, as the proposed insured.

The above rights-of-way forms may contain a few exceptions, such as properties that must be condemned. However, prior to closing or the start of construction, whichever occurs first, new forms must be provided which do not provide for any exceptions.

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

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

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

    Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure of the same format is required if no conflicts are anticipated.

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

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

16. **Closing Instructions** – The Agency will prepare closing instructions as soon as the requirements of paragraphs 12, 13, and 14 are complete, as well as a draft of the security instrument(s). Closing instructions must be obtained prior to advertising for bids.

17. **Interim Financing** – For all loans exceeding $500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency 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 interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.

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

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

19. **System Users** – This letter of conditions is based upon your indication at application that there will be at least 1,773 residential users and 550 non-residential users (commercial) users on the existing system when construction is completed.

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

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

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

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

22. **Permits** –The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertisement 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.

23. **Vulnerability Assessment/Emergency Response Plan (VA/ERP)** – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. Borrowers with existing systems must provide a certification that a VA/ERP has been completed prior to advertising for bids. The documents are not submitted to the Agency. For new systems, see Section V of this Letter of Conditions. For VA/ERP requirements throughout the life of the loan, see Section VII. Technical assistance at no cost is available in preparing these documents.

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

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

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

    Cost Overruns. If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.

26. **Contract Review** – Your attorney will certify that the executed contract documents, including performance and payment, if required, are adequate and that the persons executing

these documents have been properly authorized to do so in accordance with RUS Instruction 1780.61(b).

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

27. **Resident Inspector(s)** – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must concur in the request. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred in 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.

28. **Preconstruction Conference** – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and provide minutes of this meeting to the owner and Agency.

29. **Final Rights-of-Way** – If any of the rights-of-way forms listed under paragraph 13 above contained exceptions, new forms which do not provide for any exceptions must be provided prior to the issuance of the notice to proceed. For projects involving the acquisition of land, you must provide evidence that you have title to the land prior to the issuance of the Notice to Proceed.

Final Title Work - On the day of loan closing or start of construction, whichever occurs first, your attorney must furnish a separate final title opinion on all existing land(s) and those to be acquired for the facility, showing no exceptions. Form RD 1927-10, "Final Title Opinion" may be used.

Final Title Work - Immediately after closing, a Title Insurance Policy showing no exceptions that would adversely affect the use of the real property in connection with the proposed project must be provided.

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

    a. **General Liability Insurance** – Include vehicular coverage.

b. **Workers' Compensation** – In accordance with appropriate State laws.
c. **Fidelity or Employee Dishonesty Bonds** – You will provide 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 the Agency loan. The Agency will be identified in the fidelity bond for receipt of notices. Form RD 440-24, "Position Fidelity Schedule Bond," or similar format may be used.
d. **National Flood Insurance** - If the project involves acquisition or construction in designated special flood or mudslide prone areas, you must purchase a flood insurance policy at the time of loan closing.
e. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

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

SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING

If interim financing is being used, then the following items are required prior to closing:

31. **Documents from Section II and III** – Documents detailed above must be adopted and/or executed and submitted to the Agency prior to loan closing.

32. **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.

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

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

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

b. **Litigation.** You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.

c. **Certified Operator**. Evidence must be provided that your system has or will have, as defined by applicable State or Federal requirements, a certified operator available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – CONSTRUCTION AND POST CONSTRUCTION REQUIREMENTS:

34. **Inspections** - The Agency requires a pre-construction conference, pre-final and final inspections, and warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any warranty issues. The Agency will conduct an inspection 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. You must participate in these inspections and provide the required information.

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

36. **Payments** – Prior Agency concurrence is required for all Invoices and Partial Payment Estimates before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner's written concurrence.

37. **Use of Remaining Funds** – Applicant contribution and connection or tap fees will be the first funds expended in the project, followed by non-Agency sources of funds. Remaining

funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

a. Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.
b. 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.
c. Grant funds not expended for authorized purposes will be cancelled within 90 days of final completion of project. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

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

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

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

39. 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.

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

41. Annual Report/Audit Requirements – You are required to submit an annual report at the end of each fiscal year. The annual report will be certified by the appropriate organization official and will consist of financial information and a rate schedule. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted

accounting principles (GAAP) and must include at a minimum a balance sheet and income and expense statement. The annual report will include separate reporting for each water and waste disposal facility, and itemize cash accounts by type (debt service, short-lived assets, etc.) under each facility. You will retain all records, books and supporting material for three years after the issuance of the annual report.

If an audit is required, you must enter into a written 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.

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

a. **Audits** – 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.

An annual audit is required in the following instances:

- Single Audit. If you expend $750,000 or more in Federal financial assistance per fiscal year, an audit under the Single Audit Act is required. 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.

- GAGAS Audit. If you expend less than $750,000 in Federal financial assistance per fiscal year but have a total outstanding Agency loan balance of $1,000,000 or more, a financial audit performed in accordance with the latest revision of the generally accepted government auditing standards (GAGAS) is required.

b. **Financial Statements** – If you expend less than $750,000 in Federal financial assistance per fiscal year and have an outstanding Agency loan balance of less than $1,000,000, you may submit financial statements in lieu of an audit which include at a minimum a Balance Sheet and an Income and Expense Statement. You may use Form RD 442-2, "Statement of Budget, Income and Equity," and 442-3, "Balance Sheet," or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end.

c. **Quarterly Reports** – Quarterly Income and Expense Statements will be required until the processing office waives this requirement. You may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower

official. The Agency will notify you in writing when the quarterly reports are no longer required.

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

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

43. **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.

44. **Insurance**. You will be required to maintain insurance on the facility and employees as described in paragraph 30 for the life of the loan.

45. **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 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.

    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. 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.

d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under federally assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, "Improving Access to Services by Persons with Limited English Proficiency" and further affirmed in the USDA Departmental Regulation 4330-005, "Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA."

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during compliance reviews. Compliance reviews will typically be conducted in conjunction with the security inspections described in paragraph 39.

46. Data Collection. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will collect this data as part of the required compliance review described under paragraph 44.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

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

We look forward to working with you to complete this project. If you have any questions, please contact the undersigned at 907-271-2424 extension 118 or by e-mail at tasha.deardorff@ak.usda.gov

Sincerely,

Tasha Deardorff

TASHA DEARDORFF
Community Programs Director

Attachments

ACRONYMNS:

ACH – Automated Clearing House
AD – Agriculture Department
CDBG – Community Development Block Grant
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
GAGAS – Generally Accepted Government Auditing Standards
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

Appendix A

I. 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 award term.

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 award term) 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 award term:

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 award term, 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.