

Attachment B



Rural Development

January 8, 2025

Sent by email Only

Salinas Field Office

744-A LaGuardia

Street

Salinas, CA

93905

Voice 831-975-7762

Fax 844-206-7009

Monterey County
Pajaro County Sanitation District
Attn: Randell Ishii
1441 Schilling Place
Salinas, CA 93901

SUBJECT: Letter of Conditions

Recipient Name: Monterey County – Pajaro County Sanitation District

Project Name: CY 2022 Disaster Relief – In kind

Water and Waste Disposal Systems for Rural Communities

CFDA NUMBER - 10.760

Agency Grant: \$4,075,000

Dear Randel Ishii:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development (RD), both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. This includes any significant changes in the Applicant's financial condition, operation, organizational structure or executive leadership. Any significant changes made without Agency concurrence shall be cause for discontinuing processing of the application.

This letter does not constitute grant approval, nor does it ensure that funds are or will be available for the project. The funding is being processed on the basis of a grant not to exceed \$4,075,000. The grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds" is signed by the Agency approval official.

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

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

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 1 days:

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

All parties may access information and regulations referenced in this letter at our website located at:

[Water and Environmental Programs | Rural Development \(usda.gov\)](https://www.rd.usda.gov/water-and-environmental-programs)

The conditions are as follows:

SECTION I - PROJECT SCOPE

1. Project Description – Funds will be used to help Pajaro County Sanitation District in Monterey County recover from the severe winter storms declared in the Presidential Declared Disaster (DR-4863-CA) and address existing wastewater system deficiencies to minimize negative impacts of severe winter storms, including potential failures of the aging lift station and add resiliency to the community sewer collection system.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) prepared by Wallace Group, dated April 10, 2024, as concurred with by the Agency.

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

Agency Grant - \$ 4,075,000

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

Applicant Contribution - \$ 0.00

TOTAL PROJECT COST - \$ 4,075,000

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Prior to grant closing, any increase in non-Agency funding will be applied first as a reduction to Agency funds.

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

Prior to advertisement for construction bids, you must provide evidence of applicant contributions and other funding sources. This evidence should include a copy of the commitment

letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

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

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Project Administration	
Project Management	\$ 71,000
Consultant and Contractor Management	\$ 43,000
Administration and Legal	\$ 43,000
Preliminary Design Report	\$ 127,000
Permitting, Easements, and Environmental	
Permitting	\$0
Easements	\$0
Environmental Documentation	\$0
Engineering	
Field Services (Survey, Geotechnical, Potholing)	\$ 110,000
Engineering	\$ 422,000
Bid Phase	\$ 29,000
Construction	
Construction Management, Inspect, ESDC, Record Drawings	\$ 422,000
Las Lomas Sewer Main Upgrades	\$1,038,000
Pajaro Lift Station Upgrades	\$ 954,000
Contingency	
Las Lomas	\$ 425,000
Pajaro	\$ 391,000
TOTAL	\$4,075,000

Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. Obligated grant funds not needed to complete the proposed project will be deobligated. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. An “Amended Letter of Conditions” will be issued for any changes to the total project budget.

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

prior to the benchmark. The correspondence must contain a valid explanation as to why the milestone cannot be met and include a proposed revised project completion schedule. If the Agency agrees to the modification, written confirmation will be provided. The Agency reserves the right to de-obligate grant funds, or take other appropriate action, if the established or amended deadlines are not met.

<u>Milestone</u>	<u>Date</u>
Land and Easement Acquisition	NA
Permits Acquisition Complete	NA
Plans and Specifications, and Design Complete	4/2/2026
Advertisement for Bids	5/28/2026
Award Contract(s)/Initiate Construction	5/28/2026
Substantial Completion	3/4/2027
Final Completion	5/27/2027

SECTION II –Grant Agreement

5. Grant Agreement - The RUS Bulletin 1780-12, “Grant Agreement” will be executed prior to the first disbursement of grant funds.

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

SECTION III –REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

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

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

Principal –

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with federal funds, who –

- (1) Is in a position to handle federal funds;
- (2) Is in a position to influence or control the use of those funds; or,
- (3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction. (2 CFR §180.995).

8. Environmental Requirements –

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.

This project has applied the Nationwide Programmatic Agreement Among the U.S. Department of Agriculture Rural Development Programs, National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation for Sequencing Section 106 (NPA). This agreement allows the Agency to obligate funds prior to the completion of Section 106 of the National Historic Preservation Act. The Agreement stipulates, among other things, that the Section 106 process must be complete prior to the awarding of funds and prior to construction. Rural Development is in receipt of your signed NPA Awareness Certification form. In the Awareness Certification, you have acknowledged your awareness of these and other requirements and have agreed that you must complete the Section 106 process before the environmental review component of your application can be finalized and before construction. These historic preservation requirements must be met prior to final approval and prior to taking any action that would have an adverse effect on historic properties or hinder completion of the consultation process required under Section 106 of the National Historic Preservation Act (NHPA). Do not initiate any type of ground disturbing activity, enter into construction contracts, initiate construction, rehabilitation, or purchase land or equipment prior to receiving notification from the Agency that these requirements have been met. Taking any of these actions prior to completion of the required reviews could result in loss of program funds.

9. Engineering Services – You have been required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance,” or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids and must approve any modifications to this agreement.

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

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

11. American Iron and Steel Requirements. Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference applies the American Iron and Steel (AIS) requirement to obligations made after May 5, 2017:

- (1) No Federal funds made available for this fiscal year for the rural water, wastewater, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all of the iron and steel products used in the project are produced in the United States.
- (2) The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (3) The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the “Secretary”) or the designee of the Secretary finds that—
 - (a) applying the requirement would be inconsistent with the public interest;
 - (b) iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - (c) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
- (4) Owners are ultimately responsible for compliance with AIS requirements (as defined in RUS Bulletin 1780-35).
 - (a) **Sign** loan resolutions, grant agreements and letters of intent to meet conditions which include AIS language, accepting AIS requirements in those documents and in the letter of conditions.
 - (b) **Sign** agreements for engineering services, executed construction contracts and all other appropriate and necessary documents which include AIS language.

Change Orders and Partial Payment Estimates: **Acknowledge** responsibility for compliance with AIS requirements by signing change orders (EJCDC C-941) and partial payment estimates (EJCDC C-620).

- (c) Substantial completion of project: **Obtain** the certification letters from the consulting engineer and **maintain** this documentation for the life of the loan.
- (d) Special Cases
 - i. Where Owner provides their own engineering, the Owner's responsibilities will include items listed in Section 5 of RUS Bulletin 1780-35.
 - ii. Where Owner performs their own construction, the Owner's responsibilities will include items listed in Section 6 of RUS Bulletin 1780-35.
 - iii. Where Owner directly procures AIS products, Owner must **utilize** EJCDC Procurement Series standard contract documents following RUS Bulletin 1780-26 Exhibit D and **obtain** manufacturers' certifications and provide copies to Engineer and Contractor.

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

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

- a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
- b. **Form RD 442-20, “Right-of-Way Easement”** – This form, or similar format, may be used to obtain any necessary easements for the proposed project.
- c. **Form RD 442-21, “Right-of-Way Certificate”** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
- d. **Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

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

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

- a. Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place up-to-date written standards of conduct covering conflict of interest. The standards of conduct must include disciplinary actions in the event of a violation by officers, employees, or agents of the borrower. The standards identified herein apply to any parent, affiliate or subsidiary organization of the borrower that is not a state or local government, or Indian Tribe. Policies and accompanying documents shall be furnished to Rural Development upon request.

You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure in the same format is required if no conflicts are anticipated.

Sample conflict of interest policies may be found at the National Council of Nonprofits website, <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at <http://www.irs.gov/pub/irs-pdf/f1023.pdf>. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

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

- #b. Contracts for Other Services/Lease Agreement** – Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.
- #c. Other agreements** with governments or other entities regarding joint operation of facilities, granting authority to Agency borrower for providing service within another

entity's service area, etc.— The draft agreement must receive Agency concurrence prior to advertising for bids.

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

15. Grant Closing Instructions – The Agency will prepare grant closing instructions as soon as the requirements of the previous paragraphs are complete. Closing instructions must be obtained prior to advertising for bids.

16. (for applications processed in accordance with RUS Instruction 1780) System Users – This letter of conditions is based upon your indication at application that there will be at least 965 residential users and 88 non-residential users on the existing system when construction is completed.

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

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

(Add following paragraphs when project does not involve mandatory connections)

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

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

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

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

19. Permits – The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

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

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

The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. It should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every five years at a minimum.

21. 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

22. Disbursement of Agency Funds - Agency funds will be disbursed electronically into the your construction account as they are needed. SF 3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” must be completed and submitted to the Agency prior to commencement of construction.

The order of disbursement is as follows: 1) Applicant contribution, 2) other funding sources, and 3) Agency grant funds.

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

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

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

- a. **Cost Overruns** – If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on eligibility, program limits and the availability of funds. Cost overruns exceeding 20 percent of the development cost at time of grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.
- b. **Excess Funds** - If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original Engineering Report for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the Engineering Report, ER, and Letter of Conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be

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

24. Suspension and Debarment Screening – In accordance with 2 CFR Part 180, Subpart C, as a condition of the transaction and the responsibilities to persons at the next lower tier with whom you enter into transactions, you must conduct screening for suspension and debarment of lower tier recipients (e.g., vendors, contractors, etc.). {2 CFR §180.435(b)}.

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

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for concurrence. Construction cannot commence until the Agency has concurred in the construction contracts.

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

If any of the right-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed.

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

- a. **(If applicable) General Liability Insurance** – Include vehicular coverage.
- b. **(If applicable) Workers' Compensation** – In accordance with appropriate State laws.
- c. **(If applicable) Guaranty or Fidelity Insurance** – Coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through “blanket” coverage providing protection for all appropriate employees. Each position is to be insured in an amount equal to the maximum amount of funds expected to be under the control of that position at any one time. The coverage may be increased during construction based on the anticipated monthly advances.

- d. **(If applicable) National Flood Insurance** - If the project involves acquisition or construction in a designated special flood area, the community in which the acquisition or construction is situated must be currently participating in the national flood insurance program. Additionally, if the project involves acquisition or construction in designated special flood or mudslide prone areas, a flood insurance policy must be in place at the time of 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. You must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds. 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.

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

SECTION V – REQUIREMENTS PRIOR TO GRANT CLOSING

29. 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 closing.

- a. **System for Award Management.** You will be required to maintain a Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Renewal can be completed online at: <http://sam.gov>. This registration must be renewed and revalidated every 12 months for as long as there is an active loan, grant, or guaranteed loan with the Agency.

To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the 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 grant closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.
- c. **Certified Operator.** Evidence must be provided that your system has or will have a certified operator, as defined by applicable State or Federal requirements, available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

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

31. Resident Inspector(s) – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must provide written concurrence. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the preconstruction conference.

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

33. Inspections - The Agency requires a preconstruction conference, pre-final, final, and warranty inspections. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the 9-11 warranty period to address and/or resolve any outstanding warranty issues. The Agency will conduct an inspection with you of your records management system at the same time.

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

35. Payments – Prior Agency concurrence is required for all invoices and requests for payment 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.

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

- a. Funds remaining after the applicant contribution and connection fees may be considered in direct proportion to the amounts of funding obtained from each source. The use of Agency funding will be limited to eligible grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the grant remains the same.
- b. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 60 days of final completion of project. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
- c. Under no circumstances is it appropriate to use remaining funds as contributions to a new project outside the scope of the funded project.

37. Technical, Managerial and Financial Capacity - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for additional information.

38. Reporting Requirements Related to Expenditure of Funds -- An annual audit under 2 CFR 200 is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of your fiscal year end. Both the audit and accompanying management report must be submitted for review.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy of that agreement to the Agency prior to the advertisement of construction bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

39. Statutory and National Policy Requirements – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 *et seq.*) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 *et seq.*) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005, “Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA.”
- f. **Controlled Substances Act** - Even though state law may allow some activities, as a recipient of Federal funding, you are subject to the Controlled Substances Act. Specific questions about the Controlled Substances Act should be directed to the Servicing Official who will contact the Office of General Counsel, as appropriate.

40. Compliance Reviews and Data Collection – Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter.

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

SECTION VII – REMEDIES FOR NON-COMPLIANCE

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

We look forward to working with you to complete this project. If you have any questions, please contact Esther De La Cruz at 831-975-7762 or by e-mail at esther.delacruz@usda.gov

Sincerely,

Esther De La Cruz
Area Specialist

Attachments

cc: Luis Andrade, Water and Environmental Program Director
Benny Young, Management Specialist County of Monterey
Kari Wagner, Principal/Director of Water Resources

FORMS and BULLETINS:

Form AD-3031 “Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants” – Item 26

Internal Revenue Service Form 1023, Appendix A, “Sample Conflict of Interest Policy” - Item 13

Form RD 442-20, “Right-of-Way Easement” – Item 12

Form RD 442-21, “Right-of-Way Certificate” – Item 12

Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way” – Item 12

Form RD 1927-9, “Preliminary Title Opinion” – Item 12

Form RD 1927-10, “Final Title Opinion” – Item 22

Form RD 1940-1, “Request for Obligation of Funds” – Page 2

Form RD 1942-46, “Letter of Intent to Meet Conditions” – Page 2

SF 3881, “ACH Vendor/Miscellaneous Payment Enrollment Form” – Item 20

RUS Bulletin 1780-7, “Legal Services Agreement” – Item 11

RUS Bulletin 1780-9, “Water Users Agreement” - Items 13

RUS Bulletin 1780-12 Exhibit B, “ECWAG Grant Agreement” – Item 5

RUS Bulletin 1780-12 “Grant Agreement” – Item 5

RUS Bulletin 1780-26, “Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance” – Items 9 and 10

Appendix A

A. Reporting Total Compensation of Recipient Executives

In the rare instance in which all of the following apply, please contact your POB Specialist for language to include in the LOC:

1. The total Federal funding authorized to date under this award is \$30,000 or more;
2. In the preceding fiscal year, the applicant received—
 - (A) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

B. Subaward and Subrecipients

In the rare instance in which there is a subrecipient in the project, please contact your POB Specialist for language to include in the LOC:

Subrecipient means an entity that:

- i. Receives a subaward from the recipient under this award; and
- ii. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

a. Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.