

PART 1942 - ASSOCIATIONS

Subpart A - Community Facility Loans

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PART 1942 - ASSOCIATIONS

Subpart A - Community Facility Loans

§ 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing insured loans for community facilities except fire and rescue and other small essential community facility loans and water and waste disposal facilities. This subpart applies to Community Facilities loans for fire and rescue and other small essential community facility loans only as specifically provided for in subpart C of this part. Water and waste loans are provided for in part 1780 of this title.

(1) The policies and procedures in this subpart address both loans between the Agency and the applicant and between the Agency and an approved eligible re-lender who then relends the funds to eligible applicants for eligible projects under this subpart. (Revised 09-19-18, PN 516.)

(2) The Agency shall cooperate fully with State, Tribal and local agencies in making loans to assure maximum support to the State and Tribal strategies for rural development. State Directors and their staffs shall maintain coordination and liaison with State agency and substate planning districts. Funds allocated for use under this subpart are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity to participate in the benefits of these programs as compared with other residents of the State. (Revised 09-19-18, PN 516.)

(3) Federal statutes provide for extending Agency financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes. (Revised 09-19-18, PN 516.)

(4) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an Agency employee. (Revised 09-19-18, PN 516.)

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(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of the Agency's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met.

(c) Loans sold without insurance by the Agency to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans. (Revised 10-20-87, SPECIAL PN.)

(d) The Area Office will normally be the entry point for preapplications and serve as a local contact point. Applications will be filed with the Area Office and loans will be processed to the maximum extent possible by the Area Office staff. The applicant's governing body should designate one person to coordinate the activities of its engineer, architect, attorney, and any other professional employees and to act as contact person during loan processing. Agency personnel should make every effort to involve the applicant's contact person when meeting with the applicant's professional consultants and/or agents. The State Office staff will monitor community programs loanmaking and servicing, and will provide assistance to Area Office personnel to the extent necessary to assure that the activities are being accomplished in an orderly manner consistent with the Agency's regulations. (Revised 05-19-92, SPECIAL PN.)

§ 1942.2 Processing applications.

(a) Preapplications.

(1) The Area Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication, SF 424.2, "Application for Federal Assistance (For Construction)." The Rural Development Manager will assist applicants as needed in completing SF 424.2, and in filing written notice of intent and request for priority recommendation with the appropriate clearinghouse. The Rural Development Manager will inform the applicant that it may be necessary to apply for credit from commercial sources. It will be explained that if credit for the project is available from commercial sources at reasonable rates and terms the applicant is not eligible for the Agency's financing. The Rural Development Manager will meet with the applicant, whenever appropriate to discuss the

## § 1942.2(a) (1) (Con.)

Agency's preapplication processing. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully reviewed. The District Director will then forward to the State Director:  
(Revised 02-14-96, PN 257.)

- (i) Eligibility determination and recommendations.
- (ii) One copy of SF 424.2. (Revised 4-11-90, SPECIAL PN.)
- (iii) State intergovernmental review comments and recommendations (clearinghouse comments).
- (iv) Priority recommendations.
- (v) Supporting documentation necessary to make an eligibility determination, such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advise applicants on what documents are necessary. Applicants should not be required to expend significant amounts of money or time developing supporting documentation at the preapplication stage. (Added 3-1-88, SPECIAL PN.)

(2) The State Director will review each SF 424.2 along with other information that is deemed necessary to determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the State Director will instruct the District Director to so inform the applicant and recommend the applicant apply to commercial sources for financing. Projects may be funded jointly with other lenders provided the requirements of §1942.17 (g) of this subpart are met. Joint financing occurs when two or more lenders make separate loans to supply the funds required by one applicant for a project.

(i) In order to provide a basis for referral of preapplications of only those applicants who may be able to finance projects through commercial sources, State Directors should maintain liaison with representatives of banks, investment bankers, financial advisors, and other lender representatives in the State. State Directors should maintain criteria for determining preapplications which should be referred to commercial lenders. A list of lenders representatives interested in receiving such referral should be maintained.

(ii) The State Director shall maintain a working relationship with the State Office or official that has been designated as the single point of contact for the intergovernmental review process and give full consideration to their comments when selecting preapplications to be processed. (Revised 05-19-92, SPECIAL PN.)

(iii) The State Director will review the District Director's eligibility determination and recommendations in sufficient time for the District Director's use in preparing and issuing Form AD-622.

(iv) Form AD-622 will be prepared by the District Director within forty-five (45) calendar days from receipt of the preapplication by the Agency, stating the results of the review action. The original will be signed and delivered to the applicant with a copy to the State Director.

(3) For preapplications eligible for Agency funding which have the necessary priority to compete with similar preapplications, the Agency will issue Form AD-622 inviting an application containing the following statement: (Revised 10-19-88, SPECIAL PN.)

"You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions."

§ 1942.2(a) (Con.)

(4) The following statement must be added to Form AD-622 when notifying preapplicants who are eligible, but do not have the priority necessary for further consideration at this time:

"You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without Rural Development funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by Rural Development to proceed."

(b) Environmental review requirements. Loans made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. Starting with the earliest discussions with prospective applicants or review of pre-applications and continuing through application processing, environmental issues must be considered. (Revised 04-01-16, SPECIAL PN.)

(c) Applications. The District Director should assist the applicant in application assembly and processing.

(1) State Directors should have applications in process representing approximately 150 percent of the current State allocation.

(2) The application docket will include SF 424.2 and related forms, materials, and information. The application will be assembled in accordance with Guide 15 of this subpart or State guides developed under §1942.16 of this subpart. (Revised 4-11-90, SPECIAL PN.)



(3) When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms; furnish guidance necessary for orderly application processing; and to initiate a processing checklist for establishing a time schedule for completing items using Form RD 1942-39, "Processing Check List (Other Than Public Bodies)," or Form RD 1942-40, "Processing Check List (Public Bodies)," or other checklist adopted for use in the State. The District Director will confirm decisions made at this conference by letter to the applicant and by copy of the processing checklist. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy of the checklist retained in the District Office will be kept current as application processing actions are taken. The copy will be sent to the State Office to use in updating its copy of this form. The State Office will then return the District Office's copy. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conferences to extend and update the processing checklist.

(Revised 11-8-89, PN 121)

(d) Review of decision. If at any time prior to loan approval it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by Rural Development may be requested by the applicant under Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of adverse action. "The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (Provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580." (Revised 3/1/88, SPECIAL PN.)

(e) Joint funding. Rural Development may finance projects jointly with funds from other sources, such as, commercial/private lenders, Federal agencies, State and local Governments, etc. Other departments, agencies, and

## § 1942.2(e) (Con.)

executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with Rural Development to any applicant to whom Rural Development is providing assistance. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities except that any limitation on joint participation itself is superseded by Section 125 of PL 95-334 (Section 347, Consolidated Farm and Rural Development Act, as amended).

§ 1942.3 Preparation of appraisal reports.

When the loan approval official requires an appraisal, Form RD 442-10, "Appraisal Report - Water and Waste Disposal Systems," may be used with appropriate supplements. Form RD 442-10 may be modified as appropriate or other appropriate format may be used for facilities other than water and waste disposal. Appraisal reports prepared for use in connection with the purchase of existing essential community facilities or when required by § 1942.17(g) (2) (iii) (8) (2), (9) (3) (iii) (B) (2), and (j) (4) of this subpart, may be prepared by the RD engineer/architect or, if desired by the State Director or other qualified appraiser. The loan approving official may require an applicant to provide an appraisal prepared by an independent qualified appraisers however, the loan approving official must determine that the appraised value shown in such reports reflects the present market value. (Revised 3-1-88, SPECIAL PN.)

§ 1942.4 Borrower contracts.

The State Director will, with assistance as necessary by the Office of the General Counsel (OGC), concur in agreements between borrowers and third parties such as contracts for professional and technical services and contracts for the purchase of water or treatment of waste. State Directors are expected to work closely with representatives or engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other such matters in order to expedite application processing, minimize referrals to OGC, and resolve problems which may arise.

§ 1942.5 Application review and approval.

(a) Procedures for review. Ordinarily the Rural Development staff review will proceed as applications are being developed. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the staff and approval officials. The engineering/architect reports and association data are to be reviewed by the Rural Development staff engineer or architect, as appropriate, as soon as available but prior to

the Rural Development Manager's completion of the Project Summary. During the review, the Rural Development Manager, in all cases, will make certain that no low-income or minority community within the service area has been omitted or discouraged from participating in the proposed project. The Rural Development Manager will also determine how the service area was defined to ensure that gerrymandering of specific communities or areas has not occurred. The findings should be documented in the running record. Prior to presenting the assembled application to the approval official, the assembled application ordinarily will be processed in the following sequence:

(1) The Rural Development Manager will complete the automated Community Facilities Project Summary, including written analysis and recommendations and will prepare a draft Letter of Conditions listing all the requirements that the applicant must agree to meet within a specific time. (Revised 03-19-03, PN 357.)

(i) Requirements listed in the Letter of Conditions will include the following, unless inappropriate due to the particular type of funding or entity involved: Maximum amount of loan and/or grant that may be considered; scheduling of payments; term of loan and any deferment of principal that may be allowed; reserve requirements; compliance with Section 504 of the Rehabilitation Act of 1973; number of users (members) and verification required; contributions; rates and charges; interim financing; disbursement of funds; security requirements; graduation requirements; debt collection policies through the execution of Form RD 1910-11, "Application Certification, Federal Collection Policies for Consumer or Commercial Debts"; organization; business operations; insurance and bonding (including applicant/borrower and contractor); construction contract documents and bidding requirements; accounts; records; audit reports required (including requirements of OMB Circulars A-128 and A-110); adoption of Form RD 1942-47, "Loan Resolution (Public Bodies)," for public bodies or Form RD 1942-9, "Loan Resolution (Security Agreement)," for other than public bodies; closing instructions; and any other requirements. (Revised 8-11-89, SPECIAL PN.)

(ii) Each Letter of Conditions will contain the following paragraphs: (Revised 1-31-85, SPECIAL PN.)

This letter establishes conditions that must be understood and agreed to by you before further

§ 1942.5(a) (1) (ii) (Con.)

consideration may be given to the application. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported and approved by written amendment to this letter. Any changes not approved by the Agency shall be cause for discontinuing processing of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed \$\_\_\_\_\_.

If (insert agency name) makes the loan, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you. If you want the lower of the two rates, your written request should be submitted to the Agency as soon as practical. In order to avoid possible delays in loan closing, such a request should ordinarily be submitted at least 30 calendar days before loan closing.

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," if you desire further consideration be given to your application. (Revised 11-08-89, PN 121.)

(iii) Rural Development Managers may add the following:

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

(2) The State staff engineer or architect, as appropriate, will include a written analysis and recommendations on the automated Community Facilities Project Summary. (Revised 03-19-03, PN 357.)

(3) The Chief, Community Programs or Community and Business Programs, will review the assembled application and include in the automated Community Facilities Project Summary a written analysis and recommendations, including the availability of other credit and other eligibility determinations. The draft Letter of Conditions will be reviewed and any necessary modifications made. (Revised 03-19-03, PN 357.)

(b) Project requiring National Office review. Prior National Office review is required for certain proposals. (See subpart A of part 1901 of this chapter.)

(1) The Rural Development Manager should assemble applications for the National Office review in the following order, from top to bottom, and forward them to the State Director for review and recommendation prior to submission to the National Office:

(i) Transmittal memorandum including:

- (A) Recommendation.
- (B) Date of expected obligation.
- (C) Any unusual circumstances.

(ii) Copies of the following:

- (A) Proposed Letter of Conditions.
- (B) Applicable State Intergovernmental Review comments. (RD Instruction 1970-I, available in any Rural Development office.) (Revised 01-18-12, SPECIAL PN.)
- (C) A copy of the automated Community Facilities Project Summary. (Revised 03-19-03, PN 357.)
- (D) Preliminary architectural or engineering report. (Renumbered 04-02-98, SPECIAL PN.)
- (E) Form RD 442-3, "Balance Sheet," or a financial statement or audit that includes a balance sheet. (Renumbered 04-02-98, SPECIAL PN.)
- (F) For other essential community facility loan applicants whose proposals do not meet the assured income or tax-based security requirements of

§ 1942.5(b) (1) (ii) (F) (Con.)

§ 1942.17(g) (2) (iii) and (g) (3) (iii) of this subpart, financial information for the last 5 years of operation will be submitted if available. The type of financial information to be submitted should be determined based on what is available, in the following order of preference: (Renumbered 04-02-98, SPECIAL PN.)

(1) Complete audits.

(2) Unaudited financial statements, including balance sheets and statements of income and expenses.

(3) Lists of income and expenses. (Revised 03-01-88, SPECIAL PN.)

(G) For other essential community facility loans secured under paragraph (b) (1) (ii) (F) of this section, submit a detailed explanation of the proposed security, evidence that the application cannot be processed and the loan secured under paragraph (b) (1) (ii) (F) of this section, evidence supporting the efforts by the applicant in persuading appropriate public bodies to provide the proposed facility and services, and the results and comments of the Regional Attorney concurring in the applicant's legal authority to give the proposed security. (Revised and renumbered 04-02-98, SPECIAL PN.)

(H) Financial Feasibility Report when required by § 1942.17(h) (1). (Renumbered 04-02-98, SPECIAL PN.)

(I) Proposed lease agreements, management agreements, or other agreements when facility management will be provided by other than the applicant. (Renumbered 04-02-98, SPECIAL PN.)

(J) Other forms and documents on which there are specific questions. (Renumbered 04-02-98, SPECIAL PN.)

(K) Environmental impact analysis and documentation. (Renumbered 04-02-98, SPECIAL PN.)

(L) Civil Rights Impact Analysis. (Added 04-02-98, SPECIAL PN.)

(2) For applications to be reviewed in the State or field, at least those items in paragraph (b) (1) (ii) of this section should be available.

(c) For all applications. All Letters of Conditions will be addressed to the applicant, signed by the Rural Development Manager or other Agency representative designated by the State Director, and delivered to the applicant. Upon signing the Letter of Conditions, the Rural Development Manager will send two copies of the Letter of Conditions and two copies of the automated Community Facilities Project Summary to the State Director. The State Director will immediately send one copy of the automated Community Facilities Project Summary and a copy of the Letter of Conditions to the National Office, Attention: Community Facilities Division. The Rural Development Manager, with assistance as needed from the State Office, will discuss the requirements of the Letter of Conditions with the applicant's representatives and afford them an opportunity to execute Form RD 1942-46. (Revised 03-19-03, PN 357.)

(1) The Letter of Conditions should not ordinarily be issued unless the State Director expects to have adequate funds in the State allocation to fund the project within the next 12 months, based on historic allocations or other reliable projections.

(2) If the applicant declines to execute Form RD 1942-46, the Rural Development Manager will immediately notify the State Director and provide complete information of the reasons for such declination. (Revised 11-08-89, PN 121.)

(3) If the applicant accepts the letter of conditions by executing Form RD 1942-46, the Rural Development Manager will forward the executed Form RD 1942-46 and a signed and an unsigned copy of Form RD 1940-1 to the State Director. (Revised 03-19-03, PN 357.)

(d) Loan approval and obligating funds. Loans will be approved under this subpart and subpart A of part 1901 of this chapter (available in any Rural Development office). The loan will be considered approved on the date the signed copy of Form RD 1940-1 is mailed to the applicant. The State Director or designee may request an obligation of funds when available within their State allocation and according to the following:

(1) Form RD 1940-1, authorizing funds to be reserved, may be executed by the loan approval official providing the applicant has the legal authority to contract for a loan, enter into required agreements, and has signed Form RD 1940-1.

## § 1942.5(d) (Con.)

(2) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form RD 1940-1.

(3) The State Director or designee will request an obligation of loan and/or grant funds via the automated system after signing Form RD 1940-1. The requesting official will furnish security identification as necessary. The requesting official will record the date, time of request, and their initials on the original Form RD 1940-1. (Revised 03-19-03, PN 357.)

(4) The date the applicant is notified of the loan and/or grant approval is 6 working days from the date funds are reserved unless an exception is granted by the National Office. (Revised 08-29-19, PN 527.)

(5) Immediately after verifying that funds have been reserved, utilizing the Rural Development field office terminal system status inquiry function, the State Director or designee will notify, by telephone, the Legislative and Public Affairs Staff in the National Office as required by RD Instruction 2015-C. (Revised 03-19-03, PN 357.)

(6) Loan approval and applicant notification will be accomplished by the State Director or designee by mailing to the applicant, 6 working days from the obligation date, a copy of Form RD 1940-1 which has been previously signed by the applicant and loan approval official. The date the applicant is notified is also the date interest rate at loan approval is established. The State Director or designee will record the date of applicant notification and the interest rate in effect at the time on the original of Form RD 1940-1 and include it as a permanent part of the District Office project file with a copy placed in the State Office file. (Revised 08-29-19, PN 527.)



## § 1942.5(d) (Con.)

(7) If a transfer of obligation of funds is necessary, complete Form RD 450-10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and process via the Rural Development field office terminal system. An obligation of funds established for and applicant may be transferred to a different (substituted) applicant provided:

(i) The substituted applicant is eligible to receive the assistance approved for the original applicant;

(ii) The substituted applicant bears a close and genuine relationship to the original applicant (such as two organizations that are controlled by the same individuals); and

(iii) The need for and scope of the project and the purpose(s) for which Rural Development funds will be used remain substantially unchanged. (Added 3-1-88, SPECIAL PN.)

1942.6 Preparation for loan closing

(a) Obtaining closing instructions. Completed dockets will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(b) Verification of users and other funds.

(1) In connection with a loan for a utility type project to be secured by a pledge of user fees or revenues, the District Director will authenticate the number of users prior to loan closing or the commencement of construction, whichever occurs first. Such individual will review each signed user agreement and check evidence of cash contributions. If during the renew any indication is received that all signed users may not connect to the system, there will be such additional investigation made as deemed necessary to determine the number of users who will connect to the system. The District Director will record the determination in memorandum to the State Director.

(2) In all cases the availability and amount of other funds to be used in the project will be verified by Rural Development.

(c) Initial compliance review. An initial compliance review should be completed under Subpart E of Part 1901 of this chapter.

(d) Ordering loan checks. Checks will not be ordered until:  
(Revised 7-12-88, PN 89.)

(1) The applicant has complied with approval conditions and closing instructions, except for those actions which are to be completed on the date of loan closing or subsequents thereto; and

(2) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(e) Multiple advances of Rural Development funds. When Rural Development provides loan funds during the construction period using interim (temporary) instruments described in § 1942.19(g) of this subpart, the following action will be taken prior to the issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for retirement of the interim instruments and issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instrument will be forwarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Finance Office immediately, except that for promissory notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. In developing the permanent instruments, the sequence of preference set out in § 1942.19(e) of this subpart will be followed. (Revised 8-10-88, PN 92.)

§ 1942.7 Loan closing.

Loans will be closed in accordance with the closing instructions issued by the OGC and § 1942.17(o) of this subpart and as soon as possible after receiving the check.

(a) Authority to execute, file, and record legal instruments. Area Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgments, and other certificates.  
(Revised 05-18-05, PN 386.)

(b) Preparation of mortgages. Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument.

(c) Source of funds for insured loans. All loans will be made from the Rural Development Insurance Fund (RDIF).

(d) Unused funds. Obligated funds planned for project development, which remain after all authorized costs have been provided for, will be disposed of in accordance with § 1942.17(p) (6) of this subpart. See Subpart B of Part 1951 of this chapter as to the method of returning loan and grant funds.

(e) Loan disbursements. Whenever a loan disbursement is received, lost, or destroyed, the Rural Development Manager will take appropriate actions outlined in RD Instruction 2018-D. (Revised 05-18-05, PN 386.)

(f) Supervised bank accounts. Supervised bank accounts will be handled under Subpart A of Part 1902 of this chapter. (Revised 3-1-88, SPECIAL PN.)

§ 1942.8 Actions subsequent to loan closing.

(a) Mortgages. Real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

RD Instruction 1942-A  
§ 1942.8 (Con.)

(b) Notes and bonds. When the debt instrument is a promissory note or single instrument bond fully registered as to principal and interest, a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing. (Revised 3-1-88, SPECIAL PN.)

(c) Multiple advances -- bond(s). When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right-hand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made, except that for promissory notes and single instrument bonds fully registered as to principal and interest, the original will be retained in the District Office and a copy will be forwarded to the Finance Office. (Revised 3-1-88, SPECIAL PN.)

(d) Bond registration record. Form RD 442-28, "Bond Registration Book," may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(e) Disposition of title evidence. All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed.

(f) Material for State Office. When the loan has been closed, the District Director will submit to the State Director:

(1) The completed docket; and

(2) A statement covering information other than the completion of legal documents showing what was done in carrying out loan closing instructions.

(g) State Office review of loan closing. The State Director will review the District Director's statement concerning loan closing, the security instruments, and other documents used in closing to determine whether the transaction was closed properly. All material submitted by the District Director, including the executed contract documents (if required by OGC) with the certification of the borrower's attorney, along with a statement by the State Director

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that all administrative requirements have been met, will be referred to OGC for post closing review. OGC will review the submitted material to determine whether all legal requirements have been met. OGC's review of Rural Development's standard forms will be only for proper execution thereof, unless the State Director brings specific questions or deviations to the attention of OGC. It is not expected that facility development including construction will be held up pending receipt of the opinion from OGC. When the opinion from OGC is received, the State Director will advise the District Director of any deficiencies that must be corrected and return all material that was submitted for review. (Revised 3-1-88, SPECIAL PN.)

(h) Safeguarding bond shipments. Rural Development personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in RD Instruction 2018-E (available in any Rural Development office), whenever they mail or deliver these items.

(i) Water stock certificates. Water stock certificates will be filed in the loan docket in the Area Office. (Revised 09-24-12, PN 458.)

§ 1942.9 Planning, bidding, contracting, and constructing. [See §§ 1942.17(p) and 1942.18]

(a) Review of construction plans and specifications. All plans and specifications will be submitted as soon as available to the State Office for review and comments.

(b) Contract approval. The State Director or designee is responsible for approving all construction contracts using legal advice and guidance of OGC as necessary. The use of a contracting method under §1942.18 (1) of this subpart exceeding \$250,000 must be concurred by the National Office. When an applicant requests such concurrence, the State Director will submit the following to the National Office along with Guide 27, Attachment 7: (Revised 09-24-12, PN 458.)

(1) State Director's and Rural Development engineer/architect's comments and recommendations, and if noncompetitive negotiation per 1942.18(k)(4) is accepted by the Agency, submit an evaluation of previous work of the proposed construction firm. (Revised 09-24-12, PN 458.)

(2) Regional attorney's opinion and comments regarding the legal adequacy of the proposed procurement method and proposed contract documents.

(3) Copy of owner's written request and description of the procurement method proposed.

(4) Copy of the proposed contract.

(c) Bid irregularities. Any irregularities in the bids received or other matters pertaining to the contract award having legal implications will be cleared with OGC before the State Director consents to the contract award.

(d) Noncompliance. State Directors, upon receipt of information indicating borrowers or their officers, employees, or agents are not performing in compliance with § 1942.18 (j)(1) of this subpart, may request the Regional Office of the Inspector General (OIG) to investigate the matter and provide a report. The State Director is responsible for resolving the issue.

§ 1942.10 Strategic economic and community development.

Applicants with projects that support the implementation of strategic community investment plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic community investment plans on a Multi-jurisdictional and Multi-sectoral basis. (Revised 09-29-20, SPECIAL PN.)

§ 1942.11 [Reserved]

§ 1942.12 Loan cancellation.

Loans which have been approved and obligations which have been established may be cancelled before closing as follows:

(a) Form RD 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation." The Rural Development Manager or State Director may prepare and execute Form RD 1940-10 in accordance with the Forms Manual Insert (FMI). If the disbursement has been received or is subsequently received in the Area Office, the Rural Development Manager will return it as prescribed in RD Instruction 2018-D. (Revised 05-18-05, PN 386.)

(b) Notice of Cancellation. If the docket has been forwarded to OGC, that office will be notified of the cancellation by copy of Form RD 1940-10. Any application for title insurance, if ordered, will be cancelled. The borrower's attorney and engineer/architect, if any, should be notified of the cancellation. The Rural Development Manager may provide the borrower's attorney and engineer/architect with a copy of the notification to the applicant. The State Director will notify the Director of Legislative Affairs and Public Information by telephone or electronic mail and give the reason for such cancellation. (Revised 05-18-05, PN 386.)

§ 1942.13 Loan servicing.

Loans will be serviced under Subpart E of Part 1951 of this chapter.

§ 1942.14 Subsequent loans.

Subsequent loans will be processed under this subpart.

§ 1942.15 Delegation and redelegation of authority.

The State Director is responsible for implementing the authorities in this subpart and for issuing State supplements redelegating authorities. Loan and grant approval authority is in Subpart A of Part 1901 of this chapter. Except for loan and grant approval authority, Rural Development Manager may redelegate their duties to qualified staff members. (Revised 05-18-05, PN 386.)

§ 1942.16 State supplements and guides.

State Directors will obtain National Office clearance for all State supplements and guides under RD Instruction 2006-B, (available in any Rural Development office).

(a) State supplements. State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in § 1942.18 of this subpart.

(b) State guides. State Directors may develop guides for use by applicants if the guides to this subpart are not adequate. State Director may prepare guides for items needed for the application, items necessary for the docket, and items required prior to loan closing or start of construction.



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§1942.17 Community Facilities.

(a) General. This section includes information and procedures specifically designed for use by applicants, including their professional consultants and/or agents who provide such assistance and services as architectural, engineering, financial, legal, or other services related to application processing and facility planning and development. This section is made available as needed for such use. It includes Rural Development policies and requirements pertaining to loans for community facilities. It provides applicants with guidance for use in proceeding with their application. Rural Development shall cooperate fully with appropriate State agencies to give maximum support of the State's strategies for development of rural areas. (Revised 05-19-92, SPECIAL PN.)

(b) Eligibility. Financial assistance to areas or communities adjacent to, or closely associated with, nonrural areas is limited by §1942.17 (c) of this subpart. (Revised 05-19-92, SPECIAL PN.)

(1) Applicant.

(i) A public body, such as a municipality, county, district, authority, or other political subdivision of a state.

(A) Loans for water or waste disposal facilities will not be made to a city or town with a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(B) Loans for essential community facilities will not be made to a city or town with a population in excess of 20,000 inhabitants, according to the latest decennial Census of the United States.

(ii) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. Applicants organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter, bylaws, mortgage, or supplemental agreement provisions as may be required as a condition of loan approval. Essential community facility applicants other than utility-type must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(A) Association with or controlled by a local public body or bodies, or broadly based ownership and controlled by members of the community.

(B) Substantial public funding through taxes, revenue bonds, or other local Government sources, and/or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.

(iii) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes.

(2) Facility.

(i) Facilities must be located in rural areas, except for utility-type services such as water, sewer, natural gas, or hydroelectric, serving both rural and non-rural areas. In such cases, Rural Development funds may be used to finance only that portion serving rural areas, regardless of facility location.

(ii) Essential community facilities must primarily serve rural areas.

(iii) For water or waste disposal facilities, the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(iv) For essential community facilities, the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 20,000 inhabitants, according to the latest decennial Census of the United States.

(3) Credit elsewhere. Applicants must certify in writing and Rural Development shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

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(4) Legal authority and responsibility. Each applicant must have or will obtain the legal authority necessary for constructing operating and maintaining the proposed facility or service and for obtaining giving security for and repaying the proposed loan. The applicant shall be responsible for operating maintaining and managing the facility and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the applicant even though the facility may be operated maintained or managed by a third party under contract management agreement or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice. Management agreements should provide for at least those items listed in Guide 24 of this subpart (available in any Agency office). Such contracts management agreements or leases must not contain options or other provisions for transfer of ownership.

(5) Refinancing debt. The Government shall require an agreement that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding in whole or in part by obtaining a loan for such purposes from responsible cooperative or private credit sources at reasonable rates and terms for loans for similar purposes and periods of time the borrower will upon request of the Government apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

(6) Expanded eligibility for timber-dependent communities in Pacific Northwest. In the Pacific Northwest defined as an area containing national forest covered by the Federal document entitled Forest Plan for a Sustainable Economy and a Sustainable Environment, dated July 1 1993; the population limits contained §1942.17(b) are expanded to include communities with not more than 25,000 inhabitants until September 30, 1998 if: (Added 09-06-95, PN 250.)

(i) Part or all of the community lies within 100 miles of the boundary of a national forest covered by the Federal document entitled Forest Plan for a Sustainable Economy and a Sustainable Environment, dated July 1, 1993; and

(ii) The community is located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

(c) Priorities.

(1) Truly rural areas. Rural Development program assistance will be directed toward truly rural areas and rural communities. Normally, priority will not be given to preapplications for projects that will serve other than truly rural areas. Truly rural areas are areas other than densely settled areas or communities adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water or waste disposal assistance, or 20,000 residents for essential community facility assistance. When determining whether a rural area or rural community is adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water and waste disposal, or 20,000 residents for essential community facility assistance, minor open spaces such as those created by physical or legal barriers, commercial or industrial development, parks, areas reserved for convenience or appearance, or narrow strips of cultivated land, will be disregarded. An area or community shall be considered adjacent to or closely related with a nonrural area when it constitutes for general, social, and economic purposes a single community having a contiguous boundary.

(2) Project selection process. The following paragraphs indicate items and conditions which must be considered in selecting preapplications for further development. When ranking eligible preapplications for consideration for limited funds, Rural Development officials must consider the priority items met by each preapplication and the degree to which those priorities are met, and apply good judgment.

(i) Preapplications. The preapplication and supporting information submitted with it will be used to determine the proposed project's priority for available funds.

(ii) State Office review. All preapplications will be reviewed and scored and Form AD-622, "Notice of Preapplication Review Action," issued within the time limits in §1942.2 (a) (2) (iv) of this subpart. When considering authorizing the development of an application for funding, the State Director should consider the remaining funds in the State allocation, and the anticipated allocation of funds for the next fiscal year as well as the amount of time necessary to complete that application. Applicants whose preapplications are found to be ineligible will be so advised. These applicants will be given adverse notice through Form AD-622 and advised of their appeal rights under Subpart B of Part 1900



of this chapter. Those applicants with eligible lower scoring preapplications which obviously cannot be funded within an eighteen month period of time, and are not within 150 percent of the State's allocation, should be notified that funds are not available; and requested to advise whether they wish to have their preapplication maintained in an active file for future consideration. The State Director may request an additional allocation of funds from the National Office for such preapplications. Such requests will be considered along with all others on hand.

(iii) Selection priorities. The priorities described below will be used by the State Director to rate preapplications. The priorities should be applied to water and waste disposal or community facilities preapplications as directed. The format found in Part I of Guide 26 of this subpart should be followed in scoring each preapplication. A copy of the score sheet should be placed in the case file for future reference.

(A) Population priorities. The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated.

(1) The proposed project is located in a rural community having a population not in excess of 2,500 - 25 points.

(2) The proposed project is located in a rural community having a population not in excess of 5,500 - 20 points. (Points under this priority should not be assigned to a preapplication if points were assigned under paragraph (c) (2) (iii) (A) (1) of this section.

(B) Health priorities. Points will be distributed as indicated.

(1) Water and Waste Disposal preapplications only. The proposed project is:

(i) needed to alleviate the sudden unexpected diminution or deterioration of a water supply, or to meet health or sanitary standards which pertain to a community's water supply - 25 points.

(ii) required to correct an inadequate waste disposal system due to unexpected occurrences, or to meet health or sanitary standards which pertain to a community's waste disposal system - 25 points.

(2) Community Facility preapplication only. The proposed project is required either to correct a health or sanitary problem, or to meet a health or sanitary standard - 25 points.

(C) Income priorities. The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated. The median income of the population to be served by the proposed facility is:

(1) Less than the poverty line for a family of four, as defined in Section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902 (2)), or less than 80% of the statewide nonmetropolitan median household income - 25 points. (Revised 3-1-88, SPECIAL PN.)

(2) Equal to or more than the poverty line and between 80% and 100%, inclusive, of the State's nonmetropolitan median household income - 20 points. (Revised 3-1-88, SPECIAL PN.)

(D) Other factors. Points will be distributed as indicated.

(1) Water and Waste Disposal preapplication only. The proposed project will: merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service; and/or enlarge, extend, or otherwise modify existing facilities to provide service to additional rural residents - 10 points.

(2) Community Facilities preapplications only. The purpose of the proposed project is to construct, enlarge, extend or otherwise improve the following types of facilities. (Select only the factor most applicable to the proposed project.)

(i) Public safety - 10 points. (Examples include police services and fire, rescue and ambulance services as authorized by Subpart C of this Part.) (Revised 11-4-87, PN 68.)

(ii) Health care - 5 points. (Examples include clinics, nursing homes, convalescent facilities, and hospital projects designed to make the facility conform with life/safety codes, Medicare and Medicaid requirements, and minor expansions needed to meet the immediate requirements of the community. Points under this authority should not be awarded to a preapplication if points were awarded under §1942.17 (c) (2) (iii) (B) (2) of this subpart.)

(3) Water and Waste Disposal and Community Facilities preapplications.

(i) Applicant is a public body or Indian tribe - 5 points.

(ii) Project is located in a "truly rural area" as described in §1942.17(c) (1) of this subpart - 10 points.

(iii) Amount of joint financing committed to the project is:

(a) 20% or more private, local or state funds except federal funds channeled through a state agency - 10 points.

(b) 5% - 19% private, local or state funds except federal funds channeled through a state agency - 5 points.

(E) In certain cases the State Director may assign up to 15 points to a preapplication, in addition to those that may be scored under paragraphs (c) (2) (iii) (A) through (D), of this section. These points are primarily intended to address an unforeseen exigency or emergency, such as the loss of a community facility due to accident or natural disaster or the loss of joint financing if Rural Development funds are not committed in a timely fashion. However, the points may also be awarded to projects in order to improve compatibility/coordination between Rural Development's and other agencies' selection systems and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time the State Director assigns these points.

(iv) Results of State Office review. After completing the review, the State Director will normally select the eligible preapplications with the highest scores for further processing. In cases where preliminary cost estimates indicate that an eligible, high scoring preapplication is unfeasible or would require an amount of funding from Rural Development that exceeds either 25 percent of a State's current annual allocation or an amount greater than that remaining in the State's allocation, the State Director may instead select the next lower scoring preapplication(s) for further processing provided the high scoring applicant is notified of this action and given an opportunity to revise the proposal and resubmit it. If it is found that there is no effective way to reduce costs, the State Director, after consultation with applicant, may submit a request for an additional allocation of funds for the proposed project to the National Office. The request should be submitted during the fiscal year in which obligation is anticipated. Such requests will be considered along with all others on hand. A written justification must be prepared and placed in the project file when an eligible preapplication with a higher rating is not selected for further processing. The State Director will notify the District Director of the results of the review action. The State Director will return the pre-application information with an authorization for the District Director to prepare and issue Form AD-622 in accordance with §1942.2 (a) (2) (iv) of this subpart. Priority will be given to those preapplications and applications for funding which meet criteria in §1942.17 (c) (2) (iii) (A) (1) or (2); and the criteria in §1942.17 (c) (2) (iii) (B) (1) (i) or (ii) or (B) (2) of this subpart.

(v) Application development. Applications should be developed expeditiously following good management practices. Applications that are not developed in a reasonable period of time taking into account the size and complexity of the proposed project may be removed from the State's active file. Applicants will be consulted prior to taking such action.

(vi) Project obligations. To ensure efficient use of resources, obligations should occur in a timely fashion throughout the fiscal year. Projects may be obligated as their applications are completed and approved.

(vii) Requests for additional funding. All requests for additional allocations of funds submitted to the National Office must follow the formats found in Parts I and II of Guide 26. In selecting projects for funding at the National Office level, additional points may be scored based on the priority assigned to the project by the State Office.

These points will be scored in the manner shown below. Only the three highest priority projects can score points. In addition, the Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

<u>Priority</u>	<u>Points</u>
1	5
2	3
3	1

(viii) Cost overruns. A preapplication may receive consideration for funding before others at the State Office level or at the National Office level, if funds are not available in the State Office, when it is a subsequent request for a previously approved project which has encountered cost overruns due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means.

(d) Eligible loan purposes.

(1) Funds may be used:

(i) To construct, enlarge, extend, or otherwise improve water or waste disposal and other essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses would include facilities such as educational and other publicly owned facilities.  
(Revised 05-19-92, SPECIAL PN.)

(A) "Water or waste disposal facilities" include water, sanitary sewerage, solid waste disposal, and storm wastewater facilities.

(B) "Essential community facilities" are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including but not limited to: (Revised 11-4-87, PN 68.)

(1) Health services;

(2) Community, social, or cultural services;

(3) Transportation facilities, such as streets, roads, and bridges;

(4) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for Rural Electrification Administration (REA) financing;

(5) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for Rural Electrification Administration financing:

(6) Natural gas distribution systems; and

(7) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(C) "Otherwise improve" includes but is not limited to the following:

(1) The purchase of major equipment, such as solid waste collection trucks, and X-ray machines, which will in themselves provide an essential service to rural residents; (Revised 11-4-87, PN 68.)

(2) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service;

(3) Payment of tap fees and other utility connection charges as provided in utility purchase contracts prepared under section 1942.18(f) of this subpart.

(ii) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iii) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iv) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section:

(A) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(B) Interest on loans until the facility is self-supporting, but not for more than three years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than Rural Development.

(C) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control necessary for development of the facility.

(D) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(E) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(F) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(1) The debts being refinanced are a secondary part of the total loan;

(2) The debts are incurred for the facility or service being financed or any part thereof;

(3) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(G) Prepay costs for which Rural Development grant funds were obligated provided there is:



(1) No conflict with the loan resolution, State statutes, or any other loan requirements; and

(2) Full documentation showing that:

(i) Loan funds will only be utilized on a temporary basis; and

(ii) All Rural Development loan funds are restored at a later date for purpose(s) for which they were obligated.

(v) To pay obligations for construction incurred before loan approval. Construction work should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction before loan approval, applicants may request Rural Development approval to pay such obligations. Such requests may be approved if Rural Development determines that:

(A) Compelling reasons exist for incurring obligations before loan approval; and

(B) The obligations will be incurred for authorized loan purposes; and

(C) Contract documents have been approved by Rural Development; and

(D) All environmental requirements applicable to Rural Development and the applicant have been met; and

(E) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material or other liens that may attach to the security property. Rural Development may authorize payment of such obligations at the time of loan closing. Rural Development's authorization to pay such obligations, however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and Rural Development authorization for paying such obligations shall be in writing. If construction is started without Rural Development approval, post approval in accordance with this section may be considered.

(2) Funds may not be used to finance:

(i) On-site utility systems or business and industrial buildings in connection with industrial parks.

(ii) Facilities to be used primarily for recreation purposes.

(iii) Community antenna television services or facilities.

(iv) Electric generation or transmission facilities or telephone systems, except as provided in paragraph (d)(1)(i)(B)(4) or (d)(1)(i)(B)(5) of this section; or extensions to serve a particular essential community facility as provided in paragraph (d)(1)(ii) or (d)(1)(iii) of this section. (Revised 11-4-87, PN 68.)

(v) Facilities which are not modest in size, design, and cost.

(vi) Loan or grant finder's fees.

(vii) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in Section 6 of the Coastal Barriers Resource Act, P.L. 97-348.

(viii) New combined sanitary and storm water sewer facilities.

(ix) That portion of a water and/or waste disposal facility normally provided by a business or industrial user. (Added 05-19-92, SPECIAL PN.)

(e) Facilities for public use. All facilities financed under the provisions of this subpart shall be for public use. (Revised 05-19-92, SPECIAL PN.)

(1) Utility-type service facilities will be installed so as to serve any user within the service area who desires service and can be feasibly and legally served. Applicants and borrowers must obtain written concurrence of the Rural Development prior to refusing service to such user. Upon failure to provide service which is reasonable and legal, such user shall have direct right of action against the applicant/borrower. A notice of the availability of this service should be given by the applicant/borrower to all persons living within the area who can feasibly and legally be served by the phase of the project being financed.

(i) If a mandatory hookup ordinance will be adopted, the required bond ordinance or resolution advertisement will be considered adequate notification.

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(ii) When any portion of the income will be derived from user fees and a mandatory hookup ordinance will not be adopted, each potential user will be afforded an opportunity to request service by signing a Users Agreement. Those declining service will be afforded an opportunity to sign a statement to such effect. Rural Development has guides available for these purposes in all Rural Development offices.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, handicap, or national origin. (Revised 3-1-88, SPECIAL PN.)

(3) This does not preclude:

(i) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time, and

(ii) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system and not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service from the system; and potential users located in the areas not to be initially served received written notice from the applicant that service will not be provided until such time as it is economically feasible to do so, and (Revised 05-19-92, SPECIAL PN.)

(iii) Extending services to industrial areas when service is made available to users located along the extensions.

(4) The State Director will determine that, when feasibly and legally possible, inequities within the proposed project's service area for the same type service proposed (i.e., water or waste disposal) will be remedied by the owner on or before completion of the project that includes Rural Development funding. Inequities are defined as flagrant variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different financing, rates, terms or conditions, as determined by the State Director, do not necessarily constitute inequities.

(5) Before a loan is made to an applicant other than a public body, for other than utility type projects, the articles of incorporation or loan agreement will include a condition similar to the following:

"In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more non-profit corporations or public bodies as may be selected by the board of directors of this corporation and approved by at least 75 percent of the users or members to be used for, and devoted to, the purpose of a community facility project or other purpose to serve the public welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, directors, stockholders, or others having financial or managerial interest in the corporation either for the reimbursement of any sum subscribed, donated or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts."

(f) Rates and terms.

(1) General. Each loan will bear interest at the rate prescribed in RD Instruction 440.1, Exhibit B (available in any Rural Development office). The interest rates will be set by Rural Development at least for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of one percent. For each loan, the basis for determining what interest rate is appropriate will be completely documented on the automated Community Facilities Project Summary. The applicant may submit a written request prior to loan closing that the interest rate charged on the loan be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing. If the interest rate is to be that in effect at loan closing, the interest rate charged on a loan involving multiple advances of Rural Development funds, using temporary debt instruments, shall be that in effect on the date when the first temporary debt instrument is issued. If no written request is received from the applicant prior to loan closing, the interest rate charged on the loan will be the rate in effect at the time of loan approval. (Revised 03-19-03, PN 357.)

(2) Poverty line rate. The poverty line interest rate will not exceed 5 per centum per annum. The provisions of paragraph (f) (2) (i) of this section do not apply to health care and related facilities that provide direct health care to the public. Otherwise, all loans must comply with the following conditions: (Revised 05-19-92, SPECIAL PN.)

(i) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards. Documentation will be obtained from the appropriate regulatory agency with jurisdiction to establish the standard, to verify that a bona fide standard exists, what that standard is, and that the proposed improvements are needed and required to meet the standard; and (Revised 3-1-88, SPECIAL PN.)

(ii) The median household income of the service area is below the poverty line for a family of four, as defined in Section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or below 80 percent of the Statewide nonmetropolitan median household income. (Revised 3-25-86, SPECIAL PN.)

(3) Intermediate rate. The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate, not to exceed 7 percent per annum. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is below the poverty line or not more than 100 percent of the nonmetropolitan median household income of the State. (Revised 10-28-87, PN 67.)

(4) Market rate. The market interest rate will be set using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraph (f) (2) or (f) (3) of this section. It may be adjusted as provided in paragraph (f) (5) of this section.

(5) Prime farmland. For essential community facilities loans, the rate indicated by paragraphs (f) (2), (f) (3) or (f) (4) of this section will be increased by two per centum per annum if the project being financed will involve the use of, or construction on, prime or unique farmland in accordance with RD Instruction 440.1, Exhibits B and J (available in any Rural Development office).

(6) Income determination. The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by Rural Development. The median household income of the service area and the nonmetropolitan median household income of the State will be determined from income data from the most recent decennial census of the U.S. If there is a reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or Rural Development may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the Rural Development National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census, or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places. (Revised 10-28-87, PN 67.)

(7) Repayment terms. The loan repayment period shall not exceed the useful life of the facility, State statute or 40 years from the date of the note(s) or bond(s), whichever is less. Where Rural Development grant funds are used in connection with an Rural Development loan, the loan will be for the maximum term permitted by this subpart, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making an Rural Development loan for less than the maximum term permitted. In such cases, the reasons must be fully documented. In all cases, including those in which the Rural Development is jointly financing with another lender, the Rural Development payments of principal and interest should approximate amortized installments. (Revised 06-26-91, PN 168.)

(i) Principal payments may be deferred, in whole or in part, for a period not to exceed 36 months following the date the first interest installment is due. If for any reason it appears necessary to permit a longer period of deferment, the State Director may authorize such deferment with the prior approval of the National Office. Deferments of principal will not be used to: (Revised and Renumbered 03-01-88, SPECIAL PN.)

(A) Postpone the levying of taxes or assessments.

(B) Delay collection of the full rates which the borrower has agreed to charge users for its services as soon as major benefits or the improvements are available to those users.

(C) Create reserves for normal operation and maintenance.

(D) Make any capital improvements except those approved by Rural Development determined to be essential to the repayment of the loan or to the obtaining of adequate security thereof.

(E) Accelerate the payment of other debts.

(ii) Payment date. Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used.

Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided. (Revised 06-26-91, PN 168.)

(g) Security. Loans will be secured by the best security position practicable in a manner which will adequately protect the interest of Rural Development during the repayment period of the loan. Specific requirements for security for each loan will be included in a letter of conditions.



(1) Joint financing security. For projects utilizing joint financing, when adequate security of more than one type is available, the other lender may take one type of security with the United States taking another type. For projects utilizing joint financing with the same security to be shared by the United States and another lender, the United States will obtain at least a parity position with the other lender. A parity position is to ensure that with joint security, in the event of default, each lender will be affected on a proportionate basis. A parity position will conform with the following unless an exception is granted by the National Office:

(i) Terms. It is not necessary for loans to have the same repayment terms to meet the parity requirements. Loans made by other lenders involved in joint financing with the United States for facilities should be scheduled for repayment on terms similar to those customarily used in the State for financing such facilities.

(ii) Use of trustee or other similar paying agent. The use of a trustee or other similar paying agent by the other lender in a joint financing arrangement is acceptable to the United States. A trustee or other similar paying agent will not normally be used for the United States portion of the funding unless required to comply with State law. The responsibilities and authorities of any trustee or other similar paying agent on projects that include United States funds must be clearly specified by written agreement and approved by the State Director and Regional Attorney. The United States must be able to deal directly with the borrower to enforce the provisions of loan and grant agreements and perform necessary servicing actions.

(iii) Regular payments. In the event adequate funds are not available to meet regular installments on parity loans, the funds available will be apportioned to the lenders based on the respective current installments of principal and interest due.

(iv) Disposition of property. Funds obtained from the sale or liquidation of secured property or fixed assets will be apportioned to the lenders on the basis of the pro rata amount loaned, but not to exceed their respective outstanding balances; provided, however, funds obtained from such sale or liquidation for a project that included grant funds will be apportioned as may be required by the grant agreement.

(v) Protective advances. Protective advances are payments made by a lender for items such as insurance or taxes, to protect the financial interest of the lender,

and charged to the borrower's loan account. To the extent consistent with State law and customary lending practices in the area, repayment of protective advances made by either lender, for the mutual protection of both lenders, should receive first priority in apportionment of funds between the lenders. To ensure agreement between lenders, efforts should be made to obtain the concurrence of both lenders before one lender makes a protective advance.

(2) Public bodies. Loans to such borrowers will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant State statutes and by borrower's documents, resolutions, and ordinances.

(i) Utility-type facilities such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured by:

(A) The full faith and credit of the borrower when the debt is evidenced by general obligation bonds; and/or

(B) Pledges of taxes or assessments; and/or

(C) Pledges of facility revenue and, when it is the customary financial practice in the State, liens will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interest, used or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds; and/or (Revised 3-1-88, SPECIAL PN.)

(D) In those cases involving water and waste disposal projects where there is a substantial number of other than full-time users and facility costs result in a higher than reasonable rate for such full-time users, the loan will be secured by the full faith and credit of the borrower or by an assignment or pledge of taxes or assessments from public bodies or other organizations having the authority to issue or pledge such taxes or assessments. (Revised 05-19-92, SPECIAL PN.)

(ii) Solid waste projects. The type of security required will be based on State law and what is determined adequate to protect the interest of the United States during the repayment period of the loan. (Revised 03-01-95, PN 241.)

(iii) Other essential community facilities other than utility type, such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(1) General obligation bonds.

(2) Assessments.

(3) Bonds which pledge other taxes.

(4) Bonds pledging revenues of the facility being financed when such bonds provide for the mandatory levy and collection of taxes in the event revenues later become insufficient to properly operate and maintain the facility and to retire the loan.

(5) Assignment of assured income which will be available for the life of the loan, from such sources as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(6) Liens on real and chattel property when legally permissible and an assignment of the borrowers income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for five years immediately prior to loan application.

(7) Liens on real and chattel property when legally permissible and an assignment of income from an organization receiving Health and Human Services (HHS) operating grants under the "Memorandum of Understanding Between Health Resources and Services Administration, U. S. Department of Health and Human Services and Rural Development, U. S. Department of Agriculture" (see RD Instruction 2000-T, available in any Rural Development office.)

(8) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, Medicare or Medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(9) When the applicant cannot meet the criteria in paragraph (g) (2) (iii) (A) (1) through (8) of this section, such proposals may be considered when all the following are met:

(i) The applicant is a new organization or one that has not operated the type of facility being proposed.

(ii) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(iii) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(iv) Prior National Office review and concurrence is obtained.

(B) Real estate and chattel property taken as security in accordance with paragraphs (g) (2) (iii) (A) (6) through (9) of this section:

(1) Ordinarily will include the property that is used in connection with the facility being financed; and

(2) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(3) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or chattel property.

(C) When security is not available in accordance with paragraphs (g) (2) (iii) (A) (1) through (5) of this section and State law precludes securing the loan with liens on real or chattel property, the loan will be secured in the best manner consistent with State law and customary security taken by private lenders in the State, such as revenue bonds, and any other security the loan approval official determines necessary for a sound loan. Such loans will otherwise meet the requirements of (g) (2) (iii) (A) (6) through (9) of this section as appropriate.

(3) Other-than-public bodies. Loans to other-than-public body applicants will be secured as follows:

(i) Utility-type facilities eligible for financial assistance under paragraph (d) of this section such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured as follows:

(A) Assignments of borrower income will be taken and perfected by filing, if legally permissible; and

(B) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not feasible to obtain a lien on such land (such as land rights obtained from Federal or local government agencies, and from railroads) and the loan approval official determines that the interest of the United States otherwise is secured adequately, the lien requirement may be omitted as to such land rights. (Revised 3-1-88, SPECIAL PN.)

(C) When the loan is approved or the acquisition of real property is subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken if the loan approval official determines that the loan is adequately secured.

(D) Other security. Promissory notes from individuals, stock or membership subscription agreements, individual member's liability agreements, or other evidences of debt, as well as mortgages or other security instruments encumbering the private property of members of the association may be pledged or assigned to the United States as additional security in any case in which the interest of the United States will not be otherwise adequately protected.

(E) In those cases where there is a substantial number of other than full-time users and facility costs result in a higher than reasonable rate for such full-time users, the loan will be secured by an assignment or pledge of general obligation bonds, taxes, or assessments from public bodies or other organizations having the authority to issue bonds or pledge such taxes, or assessments. (Revised 05-19-92, SPECIAL PN.)

(ii) Solid waste projects. The type of security required will be based on State law and what is determined adequate to protect the interest of the United States during the repayment period of the loan. (Revised 03-01-95, PN 241.)

(iii) Essential community facilities other than utility type such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(1) An assignment of assured income that will be available for the life of the loan, from sources such as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(2) Liens on real and chattel property with an assignment of income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for at least the five years immediately prior to loan application.

(3) Liens on real and chattel property and an assignment of income from an organization receiving HHS operating grants under the "Memorandum of Understanding Between Health Resources and Services Administration, U.S. Department of Health and Human Services and Rural Development, U.S. Department of Agriculture" (see RD Instruction 2000-T, available in any Rural Development office).

(4) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, Medicare or Medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(5) When the applicant cannot meet the criteria in paragraphs (g) (3) (iii) (A) (1) through (4) of this section, such proposals may be considered when all the following are met:

(i) The applicant is a new organization or one that has not operated the type of facility being proposed.

(ii) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(iii) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(iv) Prior National Office review and concurrence is obtained.

(6) Additional security may be taken as determined necessary by the loan approval official.

(B) Real estate and chattel property taken as security:

(1) Ordinarily will include the property that is used in connection with the facility being financed; and

(2) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(3) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or the chattel property.

(h) Economic feasibility requirements. All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the Rural Development staff and approval official. If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed. The number of users for a rural business will be based on equivalent dwelling units, which is the level of service provided to a typical rural residential dwelling.

(Revised 05-19-92,  
SPECIAL PN.)

(1) Financial feasibility reports. All applicants will be expected to provide a financial feasibility report prepared by a qualified firm or individual. These financial feasibility reports will normally be:



(i) Included as part of the preliminary engineer/ architectural report using Guides 6 through 10 as applicable; or

(ii) Prepared by a qualified firm or individual not having a direct interest in the management or construction of the facility using Guide 5 when:

(A) The project will significantly affect the applicant's financial operations and is not a utility-type facility but is dependent on revenues from the facility to repay the loan; or

(B) It is specifically requested by Rural Development.

(2) Applicants for loans for utility-type facilities dependent on users fees for debt payment shall base their income and expense forecast on realistic user estimates in accordance with the following:

(i) In estimating the number of users and establishing rates or fees on which the loan will be based for new systems and for extensions or improvements to existing systems, consideration should be given to the following:

(A) An estimated number of maximum initial users should not be used when setting user fees and rates since it may be several years before all residents in the community will need the services provided by the system. In establishing rates a realistic number of initial users should be employed.

(B) User agreements from individual vacant property owners will not be considered when determining project feasibility unless:

(1) The owner has plans to develop the property in a reasonable period of time and become a user of the facility; and

(2) The owner agrees in writing to make a monthly payment at least equal to the proportionate share of debt service attributable to the vacant property until the property is developed and the facility is utilized on a regular basis. A bond or escrowed security deposit must be provided to guarantee this monthly payment and to guarantee an amount at least equal to the owner's proportionate share of construction costs. If a bond is provided, it must be executed by a surety company that appears on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State where the project is located. The guarantee shall be payable jointly to the borrower and Rural Development; and

(3) Such guarantee will mature not later than 4 years from the date of execution and will be finally due and payable upon default of a monthly payment or at maturity, unless the property covered by the guarantee has been developed and the facility is being utilized on a regular basis.

(C) Income from other vacant property owners will be considered only as extra income.

(ii) Realistic user estimates will be established as follows:

(A) Meaningful potential user cash contributions. Potential user cash contributions are required except:

- (1) For users presently receiving service, or
- (2) Where Rural Development determines that the potential users as a whole in the applicant's service area cannot make cash contributions, or
- (3) Where State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes, or ordinances.

(B) The amount of cash contributions required in paragraph (h) (2) (ii) (A) of this section will be set by the applicant and concurred in by Rural Development. Contributions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low income families. Contributions ordinarily should be an amount approximating one year's minimum user fee, and shall be paid in full before loan closing or commencement of construction, whichever occurs first. Once economic feasibility is ascertained based on a demonstration of meaningful potential user cash contributions, the contribution, membership fee or other fees that may be imposed are not a requirement of Rural Development under this section. However, borrowers do have an additional responsibility relating to generating sufficient revenues as set forth in paragraph (n) (2) (iii) of this section.

(C) Enforceable user agreement. Except for users presently receiving service, an enforceable user agreement with a penalty clause is required unless State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes or ordinances.

(iii) In those cases where all or part of the borrower's debt payment revenues will come from user fees, applicants must provide a positive program to encourage connection by all users as soon as service is available. The program will be available for review and approval by Rural Development before loan closing or commencement of construction, whichever occurs first. Such a program shall include:

- (A) An aggressive information program to be carried out during the construction period. The borrower should send written notification to all signed users

at least three weeks in advance of the date service will be available, stating the date users will be expected to have their connections completed, and the date user charges will begin.

(B) Positive steps to assure that installation services will be available. These may be provided by the contractor installing the system, local plumbing companies, or local contractors.

(C) Aggressive action to see that all signed users can finance their connections. This might require collection of sufficient user contributions to finance connections. Extreme cases might necessitate additional loan funds for this purpose; however, loan funds should be used only when absolutely necessary and when approved by Rural Development prior to loan closing.

(3) Utility-type facilities for new developing communities or areas. Developers are normally expected to provide utility-type facilities in new or developing areas and such facilities shall be installed in compliance with appropriate State statutes and regulations. Rural Development financing will be considered to an eligible applicant in such cases when failure to complete development would result in an adverse economic condition for the rural area (not the community being developed); the proposal is necessary to the success of an area development plan; and loan repayment can be assured by:

- (i) The applicant already having sufficient assured revenues to repay the loan; or
- (ii) Developers providing a bond or escrowed security deposit as a guarantee sufficient to meet expenses attributable to the area in question until a sufficient number of the building sites are occupied and connected to the facility to provide enough revenues to meet operating, maintenance, debt service, and reserve requirements. Such guarantees from developers will meet the requirements in paragraph (h) (2) (i) (B) of this section; or
- (iii) Developers paying cash for the increased capital cost and any increased operating expenses until the developing area will support the increased costs; or
- (iv) The full faith and credit of a public body where the debt is evidenced by general obligation bonds; or

(v) The loan is to a public body evidenced by a pledge of tax assessments; or

(vi) The user charges can become a tax lien upon the property being served and income from such lien can be collected in sufficient time to be used for its intended purposes.

(i) Reserve requirements. Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents and in assessments, tax levies, or rates charged for services. In those cases where statutes providing for extinguishing assessment liens of public bodies when properties subject to such liens are sold for delinquent State or local taxes, special reserves will be established and maintained for the protection of the borrower's assessment lien.

(1) General obligation or special assessment bonds. Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are used, and if such bonds provide for the annual collection of sufficient taxes or assessments to cover debt service, operation and maintenance, and a reasonable amount for emergencies and to offset the possible nonpayment of taxes or assessments by a percentage of the property owners, or a statutory method is provided to prevent the incurrence of a deficiency.

(2) Other than general obligation or special assessment bonds. Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, for emergency maintenance, for extensions to facilities, and for replacement of short-lived assets which have a useful life significantly less than the repayment period of the loan. It is expected that borrowers issuing bonds or other evidences of debt pledging facility revenues as security will ordinarily plan their reserve to provide for a total reserve in an amount at least equal to one average loan installment. It is also expected that ordinarily such reserve will be accumulated at the rate of at least one-tenth of the total each year until the desired level is reached.

(j) General requirements.

(1) Membership authorization. For organizations other than public bodies, the membership will authorize the project and its financing except that the State Director may, with the concurrence of OGC,

accept the loan resolution without such membership authorization when State statutes and the organization's charter and bylaws do not require such authorization; and

(i) The organization is well established and is operating with a sound financial base; or

(ii) For utility-type projects the members of the organization have all signed an enforceable user agreement with a penalty clause and have made the required meaningful user cash contribution, except for members presently receiving service or when State statutes or local ordinances require mandatory use of the facility.

(2) Planning, bidding, contracting, constructing. (See §1942.18).

(3) Insurance and fidelity bonds. The purpose of Rural Development's insurance and fidelity bond requirements is to protect the government's financial interest based on the facility financed. The requirements below apply to all types of coverage determined necessary. The National Office may grant exceptions to normal requirements when appropriate justification is provided establishing that it is in the best interest of the applicant/borrower and will not adversely affect the government's interest. (Revised 5-3-89, SPECIAL PN)

(i) General.

(A) Applicants must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the applicant/borrower and not that of Rural Development to assure that adequate insurance and fidelity bond coverage is maintained.

(B) Insurance and fidelity bond requirements by Rural Development shall normally not exceed those proposed by the applicant/borrower if the Rural Development loan approval or servicing official determines that proposed coverage is adequate to protect the government's financial interest. Applicants/borrowers are encouraged

to have their attorney, consulting engineer/architect, and/or insurance provider(s) review proposed types and amounts of coverage, including any deductible provisions. If the Rural Development official and the applicant/borrower cannot agree on the acceptability of coverage proposed, a decision will be made by the State Director.

(C) The use of deductibles, i.e., an initial amount of each claim to be paid by the applicant/borrower, may be allowed by Rural Development providing the applicant/borrower has financial resources which would likely be adequate to cover potential claims requiring payment of the deductible.

(D) Borrowers must provide evidence to Rural Development that adequate insurance and fidelity bond coverage is being maintained. This may consist of a listing of policies and coverage amounts in yearend reports submitted with management reports required under section 1942.17(q) (2) or other documentation. The borrower is responsible for updating and/or renewing policies or coverage which expire between submissions to Rural Development. Any monitoring of insurance and fidelity bond coverage by Rural Development is solely for the benefit of Rural Development, and does not relieve the applicant/borrower of its obligation under the loan resolution to maintain such coverage.

(ii) Fidelity bond. Applicants/borrowers will provide fidelity bond coverage for all persons who have access to funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. An exception may be granted by the State Director when funds relating to the facility financed are handled by another entity and it is determined that the entity has adequate coverage or the government's interest would otherwise be adequately protected.

(A) The amount of coverage required by Rural Development will normally approximate the total annual debt service requirements for the Rural Development loans.

(B) Form RD 440-24, "Position Fidelity Schedule Bond" may be used. Similar forms may be used if determined acceptable to Rural Development. Other types of coverage may be considered acceptable if it is determined by Rural Development that they fulfill essentially the same purpose as a fidelity bond.

(iii) Insurance. The following types of coverage must be maintained if appropriate for the type of project and entity involved:

(A) Property insurance. Fire and extended coverage will normally be maintained on all structures except as noted in §§(j) (3) (iii) (A) (1) and (2) below. Ordinarily, Rural Development should be listed as mortgagee on the policy when Rural Development has a lien on the property. Normally, major items of equipment or machinery located in the insured structures must also be covered. Exceptions:

(1) Reservoirs, standpipes, elevated tanks, and other structures built entirely of noncombustible materials if such structures are not normally insured.

(2) Subsurface lift stations except for the value of electrical and pumping equipment therein.

(B) Liability and property damage insurance, including vehicular coverage.

(C) Malpractice insurance. The need and requirements for malpractice insurance will be carefully and thoroughly considered in connection with each health care facility financed.

(D) Flood insurance. Facilities located in special flood- and mudslide-prone areas must comply with the eligibility and insurance requirements of Subpart B of Part 1806 of this chapter (RD Instruction 426.2).

(E) Worker's compensation. The borrower will carry worker's compensation insurance for employees in accordance with State laws.



(4) Acquisition of land, easements, water rights, and existing facilities. Applicants are responsible for acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair. Rural Development may require an appraisal by an independent appraiser or Rural Development employee.

(i) Title for land, rights-of-way, easements, or existing facilities. The applicant must certify and provide a legal opinion relative to the title to rights-of-way and easements. Form RD 442-21, "Rights-of-Way Certificate," and Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used.

(A) Rights-of-way and easements. Applicants are responsible for and will obtain valid, continuous and adequate rights-of-way and easements needed for the

construction, operation, and maintenance of the facility. Form RD 442-20, "Right-of-Way Easement," may be used. When a site is for major structures for utility-type facilities such as a reservoir or pumping station and the applicant is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the applicant to obtain and record such releases, consents or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and give Rural Development the required security.

(B) Title for land or existing facilities. Title to land essential to the successful operation of facilities or title to facilities being purchased, must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. Title opinions must be provided by the applicant's attorney. The opinions must be in sufficient detail to assess marketability of the property. Form RD 1927-9, "Preliminary Title Opinion," and Form RD 1927-10, "Final Title Opinion," may be used to provide the required title opinions. If other forms are used they must be reviewed and approved by Rural Development and OGC.  
(Revised 03-31-92 SPECIAL PN.)

(1) In lieu of receiving title opinions from the applicant's attorney, the applicant may use a title insurance company. If a title insurance company is used, the company must provide Rural Development a title insurance binder, disclosing all title defects or restrictions, and include a commitment to issue a title insurance policy. The policy should be in an amount at least equal to the market value of the property as improved. The title insurance binder and commitment should be provided to Rural Development prior to requesting closing instructions. Rural Development will be provided a title insurance policy which will insure Rural Development's interest in the property without any title defects or restrictions which have not been waived by Rural Development.

(2) The loan approval 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. If the District Director is the loan approval official and is unable to waive the defect or restriction, the title opinion or title insurance binder will be forwarded to the State Director. If the State Director, with the advice of the OGC, determines that the defect or restriction cannot be waived, the defect or restriction must be removed.

(ii) Water rights. When legally permissible, an assignment will be taken on water rights owned or to be acquired by the applicant. The following will be furnished as applicable:

(A) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(B) A copy of a contract with another company or municipality to supply water; or stock certificates in another company which represents the right to receive water.

(iii) Land purchase contract:

(A) A land purchase contract (known in some areas as a contract for deed) is an agreement between two or more parties which obligates the purchaser to pay the purchase price, gives the purchaser the rights of immediate possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specified part of the purchase price.

(B) Applicants may obtain land through land purchase contracts when all of the following conditions are met:

(1) The applicant has exhausted all reasonable means of obtaining outright fee simple title to the necessary land.

(2) The applicant cannot obtain the land through condemnation.

(3) There are no other suitable sites available.

(4) National Office concurrence is obtained in accordance with paragraph (j) (4) (iii) (D) (2) of this section.

(C) The land purchase contract must provide for the transfer of ownership by the seller without any restrictions, liens or other title defects. The contract must not contain provisions for future advances (except for taxes, insurance, or other costs needed to protect the security), summary cancellations, summary forfeiture, or other clauses that may jeopardize the Government's interest or the purchaser's ability to pay the Rural Development loan. The contract must provide that if the purchaser fails to make payment that Rural Development will be given at least 90 days written notice with an option to cure the default before the contract can be canceled, terminated or foreclosed. Then Rural Development must have the option of making the payment and charging it to the purchaser's account, making the payment and taking over the ownership of the purchase contract, or taking any other action necessary to protect the Government's interest.

(D) Prior to loan closing or the beginning of construction, whichever occurs first, the following actions must be taken in the order listed below:

(1) The land purchase contract and any appropriate title opinions must be reviewed by the Regional Attorney to determine if they are legally sufficient to protect the interest of the Government.

(2) The land purchase contract, the Regional Attorney's comments, and the State Director's recommendations must be submitted to the National Office for concurrence.

(3) The land purchase contract must be recorded.

(5) Lease agreements. Where the right of use or control of real property not owned by the applicant/borrower is essential to the successful operation of the facility during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the applicant/borrower. Lease agreements shall not contain provisions for restricted use of the site or facility, forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without restriction. Lease agreements will ordinarily be written for a term at least equal to the term of the loan. Such lease

contracts or agreements will be approved by the Rural Development loan approval official with the advice and counsel of the Regional Attorney, OGC, as to the legal sufficiency of such documents. A copy of the lease contract or agreement will be included in the loan docket.

(6) Notes and bonds. Notes and bonds will be completed on the date of loan closing except for the entry of subsequent multiple advances where applicable. The amount of each note will be in multiples of not less than \$100. The amount of each bond will ordinarily be in multiples of not less than \$1,000.

(i) Form RD 440-22, "Promissory Note (Association or Organization)," will ordinarily be used for loans to nonpublic bodies.

(ii) §1942.19 contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(7) Environmental review requirements. Loans made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. (Revised 04-01-16, SPECIAL PN.)

(8) Health care facilities. The applicant will be responsible for obtaining the following documents:

(i) A statement from the responsible State agency certifying that the proposed health care facility is not inconsistent with the State Medical Facilities Plan.

(ii) A statement from the responsible State agency or regional office of the Department of Health and Human Services certifying that the proposed facility meets the standards in §1942.18

(d) (4)

(9) Public information. Applicants should inform the general public regarding the development of any proposed project. Any applicant not required to obtain authorization by vote of its membership or by public referendum, to incur the obligations of the proposed loan or grant, will hold at least one public information meeting. The public meeting must be held after the preapplication is filed and not later than loan approval. The meeting must give the citizenry an opportunity to become acquainted with the proposed project and to comment on such items as economic and environmental impacts, service area, alternatives to the project, or any other issue identified by Rural Development. The applicant will be required, at least 10 days prior to the meeting, to publish a notice of the meeting in a newspaper of

general circulation in the service area, to post a public notice at the applicant's principal office, and to notify Rural Development. The applicant will provide Rural Development a copy of the published notice and minutes of the public meeting. A public meeting is not normally required for subsequent loans which are needed to complete the financing of the project.

(10) Service through individual installation. Community owned water or waste disposal systems may provide service through individual installations or small clusters of users within the applicant's service area. When individual installations or small clusters are proposed, the loan approval official should consider items such as: quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with the initial and long term user cost on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit and regulatory agency requirements.

(i) Applicants providing service through individual facilities must meet the eligibility requirements in §1942.17 (b).

(ii) Rural Development must approve the form of agreement between the owner and individual users for the installation, operation and payment for individual facilities.

(iii) If taxes or assessments are not pledged as security, owners providing service through individual facilities must obtain security as necessary to assure collection of any sum the individual user is obligated to pay the owner.

(iv) Notes representing indebtedness owed the owner by a user for an individual facility will be scheduled for payment over a period not to exceed the useful life of the individual facility or the loan, whichever is shorter. The interest rate will not exceed the interest rate charged the owner on the Rural Development indebtedness.

(v) Owners providing service through individual or cluster facilities must obtain:

(A) Easements for the installation and ingress to and egress from the facility; and

(B) An adequate method for denying service in the event of nonpayment of user fees.

(11) Funds from other sources. Rural Development loan funds may be used along with or in connection with funds provided by the applicant or from

other sources. Since "matching funds" is not a requirement for Rural Development loans, shared revenues may be used with Rural Development funds for project construction.

(k) Other Federal, State, and local requirements. Each application shall contain the comments, necessary certifications and recommendations of appropriate regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities. Proposals for facilities financed in whole or in part with Rural Development funds will be coordinated with appropriate Federal, State, and local agencies in accordance with the following:

(1) Compliance with special laws and regulations. Except as provided in paragraph (k)(2) of this section, applicants will be required to comply with Federal, State, and local laws and any regulatory commission rules and regulations pertaining to: (Revised 3-1-88, SPECIAL PN.)

- (i) Organization of the applicant and its authority to construct, operate, and maintain the proposed facilities;
- (ii) Borrowing money, giving security therefore, and raising revenues for the repayment thereof;
- (iii) Land use zoning; and
- (iv) Health and sanitation standards and design and installation standards unless an exception is granted by Rural Development.

(2) Compliance exceptions. If there are conflicts between this subpart and State or local laws or regulatory commission regulations, the provisions of this subpart will control. (Revised 3-1-88, SPECIAL PN.)

(3) State Pollution Control or Environmental Protection Agency Standards. Water and waste disposal facilities will be designed, installed, and operated in such a manner that they will not result in the pollution of water in the State in excess of established standards and that any effluent will conform with appropriate State and Federal Water Pollution Control Standards. A certification from the appropriate State and Federal agencies for water pollution control standards will be obtained showing that established standards are met. (Renumbered 3-1-88, SPECIAL PN.)

(4) Consistency with other development plans. Rural Development Financed facilities will not be inconsistent with any development plans of State, multijurisdictional areas, counties, or municipalities in which the proposed project is located. (Renumbered 3-1-88, SPECIAL PN.)

(5) State agency regulating water rights. Each Rural Development financed facility will be in compliance with appropriate State agency regulations which have control of the appropriation, diversion,



§ 1942.17(k) (5) (Con.)

storage and use of water and disposal of excess water. All of the rights of any landowners, appropriators, or users of water from any source will be fully honored in all respects as they may be affected by facilities to be installed. (Renumbered 03-01-88, SPECIAL PN.)

(6) Civil Rights Act of 1964. The Act states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits to, or be subject to discrimination under any program or activity receiving financial assistance. All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Act and Subpart E of Part 1901 of this chapter, etc. (Renumbered 03-01-88, SPECIAL PN.)

(7) Title IX of the Education Amendments of 1972. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or education activity receiving agency financial assistance except as otherwise provided for in the Education Amendments of Title IX. The State Director will provide guidance and technical assistance to carry out the intent of this paragraph. (Renumbered 03-01-88, SPECIAL PN.)

(8) 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 subject to discrimination under any program or activity receiving agency financial assistance. (Renumbered 03-01-88, SPECIAL PN.)

(9) Age Discrimination Act of 1975. This Act 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. This Act also applies to programs or activities funded under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et. seq.). This Act does not apply to:

- (a) age distinctions contained in Federal, State or local statutes or ordinances adopted by an elected, general purpose legislative body which provides benefits or assistance based on age;
- (b) established intended beneficiaries or target groups in age-related terms; and,
- (d) any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 et seq.).

(Renumbered 03-01-88, SPECIAL PN.)

(1) Professional services and contracts related to the facility.

(1) Professional services. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Professional services of the following may be necessary: engineer, architect, attorney, bond counsel, accountant, auditor, appraiser, and financial advisory or fiscal agent (if desired by applicant). Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to agency concurrence. Form RD 1942-19, "Agreement for Engineering Services," may be used when appropriate. Guide 20, "Agreement for Engineering Services (Agency/EPA - Jointly Funded Projects)," may be used on projects jointly funded by the Agency and EPA. Guide 14 may be used in the preparation of the legal services agreement. Guide 27, Attachment 1 to AIA Document B141, 1997 Edition, "Standard Form of Agreement Between owner and Architect," may be used when appropriate. (Revised 08-26-98, PN 296.)

(2) Bond counsel. Unless otherwise provided by § 1942.19(b), public bodies are required to obtain the services of recognized bond counsel in the preparation of evidence of indebtedness.

(3) Contracts for other services. Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to agency for review and approval. Management agreements should provide at least those items in Guide 24.

(4) Fees. Fees provided for in contracts or agreements shall be reasonable. They shall be considered to be reasonable if not in excess of those ordinarily charged by the professional for similar work when agency financing is not involved. An Engineer Fee Analysis described in the attached Automation Supplement may be used as an aid in reviewing the engineer fees described herein.

(m) Applying for Agency loans.

(1) Preapplication. Applicants desiring loans will file SF 424.2 and comments from the appropriate A-95 clearinghouse agency normally with the appropriate agency County Office. The County Supervisor will immediately forward all documents to the District Office. The District Director has prime responsibility for all community program loan making and servicing activities within the District. (Revised 04-11-90, SPECIAL PN.)

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(2) Preapplication review. Upon receipt of the preapplication, the agency will tentatively determine eligibility including the likelihood of credit elsewhere at reasonable rates and terms and availability of agency loan funds. The determination as to the availability of

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(Added 08-26-98, PN 296)

(02-06-85) PN 956

other credit will be made after considering present rates and terms available for similar proposals (not necessarily based upon rates and terms available from Rural Development); the repayment potential of the applicant; long-term cost to the applicant; and average user or other charges. In those cases where Rural Development determines that loans at reasonable rates and terms should be available from commercial sources, Rural Development will notify the applicant so that it may apply for such financial assistance. Such applicants may be reconsidered for Rural Development loans upon their presenting satisfactory evidence of inability to obtain commercial financing at reasonable rates and terms.

(3) Incurring obligations. Applicants should not proceed with planning nor obligate themselves for expenditures until authorized by Rural Development.

(4) Results of preapplication review. After Rural Development has reviewed the preapplication material and any additional material that may be requested, Form AD-622 will be sent to the applicant. Ordinarily the review will not exceed 45 days.

(5) Application conference. Before starting to assemble the application and after the applicant selects its professional and technical representatives, it should arrange with Rural Development for an application conference to provide a basis for orderly application assembly. Rural Development will provide applicants with a list of documents necessary to complete the application. Guide 15 may be used for this purpose. Applications will be filed with the District Office.

(6) Application completion and assembling. This is the responsibility of the applicant with guidance from Rural Development. The applicant may utilize their professional and technical representatives or other competent sources.

(7) Review of decision. If an application is rejected, the applicant may request a review of this decision under Subpart B of Part 1900 of this chapter.

(n) Actions prior to loan closing and start of construction.

(1) Excess Rural Development loan and grant funds. If there is a significant reduction in project cost, the applicant's funding needs will be reassessed before loan closing or the start of construction, whichever occurs first. In such cases applicable Rural Development forms, the letter of conditions, and other items will be revised. Decreases in Rural Development funds will be based on revised project costs and current number of users, however, other factors including Rural Development regulations used at the time of loan/grant approval will remain the same. Obligated loan or grant funds not needed to complete the proposed project will be deobligated.

(2) Loan resolutions. Loan resolutions will be adopted by both public and other-than-public bodies using Form RD 1942-47, "Loan Resolution (Public Bodies)," or Form RD 1942-9, "Loan Resolution (Security Agreement)." These resolutions supplement other provisions in this subpart. The applicant will agree:

(i) To indemnify the Government for any payments made or losses suffered by the Government on behalf of the association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.

(ii) To comply with applicable local, State and Federal laws, regulations, and ordinances.

(iii) To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, establishment of adequate reserves, and to continually operate and maintain the facility in good condition. Except for utility-type facilities, free service use may be permitted. If free services are extended, no distinctions will be made in the extension of those services because of race, color, religion, sex, national origin, marital status, or physical or mental handicap.

(iv) To acquire and maintain such insurance coverage including fidelity bonds, as may be required by the Government.

(v) To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof in such a manner as may be required by the Government and to provide the Government without its request, a copy of each such audit and to make and forward to the Government such additional information and reports as it may, from time to time, require.

(vi) To provide the Government at all reasonable times, access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain

that the association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

(vii) To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain Rural Development's concurrence prior to refusing new or adequate services to such persons. Upon failure of the applicant to provide services which are feasible and legal, such person shall have a direct right of action against the applicant organization.

(viii) To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds or notes or other debt instruments or other such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.

(ix) To refinance the unpaid balance, in whole or in part, of its debt upon the request of the Government if at any time it should appear to the Government that the association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms.

(x) To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which is to be incorporated in or attached as a rider to each construction contract and subcontract in excess of \$10,000.

(xi) To place the proceeds of the loan on deposit in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government as invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

(xii) Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof or interest therein, and not to permit others to do so, without the prior written consent of the Government.

(xiii) Not to borrow any money from any source, enter into any contract or agreement, or incur any other liabilities in connection with making enlargements, improvements or extensions to, or for any other purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to repay the debt to Rural Development.

(xiv) That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government, at its option, may:

(A) Declare the entire principal amount then outstanding and accrued interest, due and payable;

(B) For the account of the association (payable from the source of funds pledged to pay the bonds or notes or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default; and/or

(C) Take possession of the facility, repair, maintain and operate, or otherwise dispose of the facility. Default under the provisions of the resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the association and default under any such instrument may be construed by the Government to constitute default hereunder.

(3) Interim financing. In all loans exceeding \$50,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be obtained so as to preclude the necessity for multiple advances of Rural Development funds. Guide 1 or Guide 1a, as appropriate, may be used to inform the private lender of Rural Development's commitment. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the Rural Development loan would normally be closed, that is immediately prior to the start of construction. The Rural Development loan should be closed as soon as possible after the disbursement of all interim funds. Interim financing may be for a fixed term provided the fixed term does not extend beyond the time projected for completion of construction. For this purpose, a fixed term is when the interim lender cannot be repaid prior to the end of the stipulated term of the interim instruments. When an Rural Development Water and Waste Disposal grant is included, any interim financing involving a fixed term must be for the total Rural Development loan amount. Multiple advances may be used in conjunction with interim commercial financing when the applicant is unable to obtain sufficient funds through interim commercial financing in an amount equal to the loan. The Rural Development loan proceeds (including advances) will be used to retire

the interim commercial indebtedness. Before the Rural Development loan is closed, the applicant will be required to provide Rural Development with statements from the contractor, engineer, architect, and attorney that they have been paid to date in accordance with their contracts or other agreements and, in the case of the contractor, that any suppliers and subcontractors have been paid. If such statements cannot be obtained, the loan may be closed provided:

- (i) Statements to the extent possible are obtained; and
- (ii) The interest of Rural Development can be adequately protected and its security position is not impaired; and
- (iii) Adequate provisions are made for handling the unpaid accounts by withholding or escrowing sufficient funds to pay such claims.

(4) Obtaining closing instructions. After loan approval, the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(5) Applicant contribution. An applicant contributing funds toward the project cost shall deposit these funds in its construction account on or before loan closing or start of construction, whichever occurs first. Project costs paid prior to the required deposit time with applicant funds shall be appropriately accounted for.

(6) Evidence of and disbursement of other funds. Applicants expecting funds from other sources for use in completing projects being partially financed with Rural Development funds will present evidence of the commitment of these funds from such other sources. This evidence will be available before loan closing, or the start of construction, whichever occurs first. Ordinarily, the funds provided by the applicant or from other sources will be disbursed prior to the use of Rural Development loan funds. If this is not possible, funds will be disbursed on a pro rata basis. Rural Development funds will not be used to pre-finance funds committed to the project from other sources.



(o) Loan closing.

(1) Closing instructions. Loans will be closed in accordance with the closing instructions issued by OGC.

(2) Obtaining insurance and fidelity bonds. Required property insurance policies, liability insurance policies, and fidelity bonds will be obtained by the time of loan closing or start of construction, whichever occurs first.

(3) Distribution of recorded documents. The originals of the recorded deeds, easements, permits, certificates of water rights, leases, or other contracts and similar documents which are not to be held by Rural Development will be returned to the borrower. The original mortgage(s) and water stock certificates, if any, if not required by the recorder's office will be retained by Rural Development.

(4) Review of loan closing. In order to determine that the loan has been properly closed, the loan docket will be reviewed by the State Director and OGC.

(p) Project monitoring and fund delivery during construction.

(1) Coordination of funding sources. When a project is jointly financed, the State Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction, inspections and determinations of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the National Office for advice.

(2) Multiple advances. In the event interim commercial financing is not legally permissible or not available, multiple advances of Rural Development loan funds are required. An exception to this requirement may be granted by the National Office when a single advance is necessitated by State law or public exigency. Multiple advances will be used only for loans in excess of \$50,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period. Advances should not exceed 24 in number nor

extend longer than two years beyond loan closing. Normally, the retained percentage withheld from the contractor to assure construction completion will be included in the last advance.

(i) §1942.19 contains instructions for making multiple advances to public bodies.

(ii) Advances will be requested by the borrower in writing. The request should be in sufficient amounts to pay cost of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The applicant may use Form RD 440-11, "Estimate of Funds Needed for 30 Day Period Commencing \_\_\_\_\_," to show the amount of funds needed during the 30-day period.

(iii) Rural Development loan funds obligated for a specific purpose, such as the paying of interest, but not needed at the time of loan closing will remain in the Finance Office until needed unless State statutes require all funds to be delivered to the borrower at the time of closing. Loan funds may be advanced to prepay costs under paragraph (d) (1) (iv) (G) of this section. If all funds must be delivered to the borrower at the time of closing to comply with State statutes, funds not needed at loan closing will be handled as follows:

(A) Deposited in an appropriate borrower account, such as the debt service account, or

(B) Deposited in a supervised bank account under paragraph (p) (3) (i) of this section.

(3) Use and accountability of funds.

(i) Supervised bank account. Rural Development loan funds and any funds furnished by the applicant/borrower to supplement the loan including contributions to purchase major items of equipment, machinery, and furnishings may be deposited in a supervised bank account if determined necessary as provided in Subpart A of Part 1902 of this chapter. When Rural Development has a memorandum of understanding with another agency that provides for the use of supervised bank accounts, or when Rural Development is the primary source of funds for a project and has determined that the use of a supervised bank account is necessary, project funds from other sources may also be deposited in the supervised bank account. Rural Development shall not be accountable to the source of the other funds nor shall Rural Development undertake responsibility to administer the funding program of the other entity. Supervised bank accounts should not be used for funds advanced by an interim lender. (Revised 3-1-88, SPECIAL PN.)

(ii) Other than supervised bank account. If a supervised bank account is not used, arrangement will be agreed upon for the prior concurrence by Rural Development of the bills or vouchers upon which warrants will be drawn, so that the payments from loan funds can be controlled and Rural Development records are current. If a supervised bank account is not used, use Form RD 402-2, "Statement of Deposits and Withdrawals," or a similar form to monitor funds. Periodic reviews of nonsupervised accounts shall be made by Rural Development at the times and in the manner as Rural Development prescribes in the conditions of loan approval. State laws regulating the depositories to be used shall be complied with.

(iii) Use of minority owned banks. Applicants are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D.C. 20230 and is also available in all Rural Development offices.

(4) Development inspections. The District Director will be responsible for monitoring the construction of all projects being financed, wholly or in part, with Rural Development funds. Technical assistance will be provided by the State Director's staff. Project monitoring will include construction inspections and a review of each project inspection report, each change order and each partial payment estimate and other invoices such as payment for engineering/ architectural and legal fees and other materials determined necessary to effectively monitor each project. These activities will not be performed on behalf of the applicant/borrower, but are solely for the benefit of Rural Development and in no way are intended to relieve the applicant/borrower of corresponding obligations to conduct similar monitoring and inspection activities. Project monitoring will include periodic inspections to review partial payment estimates prior to their approval and to review project development in accordance with plans and specifications. Each inspection will be recorded using Form RD 1924-12, "Inspection Reports." The original Form RD 1924-12 will be filed in project case folder and a copy furnished to the State Director. The State Director will review inspection reports and will determine that the project is being effectively monitored. The District Director is authorized to review and accept partial payment estimates prepared by the contractor and approved by the borrower, provided the consulting engineer or architect, if one is being utilized for the project, has approved the estimates and certified that all material purchased or work performed is in accordance with the plans and specifications, or if a consulting engineer or architect is not being utilized, the District Director has determined that the funds requested are for authorized purposes. If there is any indication that construction

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is not being completed in accordance with the plans and specifications or that any other problems exist, the District Director should notify the State Director immediately and withhold all payments on the contract. (Revised 5-12-87, SPECIAL PN.)

(5) Payment for construction. Each payment for project costs must be approved by the borrower's governing body. Payment for construction must be for amounts shown on payment estimate forms. Form RD 1924-18, "Partial Payment Estimate," may be used for this purpose or other similar forms may be used with the prior approval of the State Director or designee. However, the State Director or designee cannot require a greater reporting burden than is required by Form RD 1924-18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project costs, including construction partial payment estimates by the agency, does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts. (Revised 5-12-87, SPECIAL PN.)

(6) Use of remaining funds. Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions. Applicant contributions will be considered as funds initially expended for the project. Funds remaining, with exception of applicant contributions, may be considered in direct proportion to the amounts obtained from each source. Remaining funds will be handled as follows:

(i) Agency loan and/or grant funds. Remaining funds may be used for purposes authorized by paragraph (d) of this section, provided the use will not result in major changes to the facility design or project and that the purpose of the loan and/or grant remains the same. (Revised 06-19-97, SPECIAL PN.)

(A) On projects that only involve an agency loan and no agency grant, 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.

(B) On projects that involve an agency grant, all remaining agency funds will be considered to be grant funds up to the full amount of the grant. Grant funds not expended under paragraph (p) (6) (i) of this section will be deobligated.

(ii) Funds from other sources. Funds remaining from other sources will be handled according to rules, regulations and/or the agreement governing their participation in the project.

(q) Borrower accounting methods, management reporting and audits.

(1) Accounting methods and records.

(i) Method of accounting and financial statements. Financial statements must be prepared on the accrual basis of accounting unless State statutes or regulatory agencies provide otherwise, or an exception is made by the agency. This requirement is for accrual basis financial statements and not for accrual basis accounting systems. Organizations may keep their books on an accounting basis other than accrual and then make adjustments so that the financial statements are presented on the accrual basis.

(ii) Approval requirement. Before loan closing or start of construction, whichever is first, each borrower shall provide to, and obtain approval from the agency loan approval official for its accounting and financial reporting system, including the agreement with its auditor, if an auditor is required.

(iii) Record retention. Each borrower shall retain all records, books, and supporting material for 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to the agency, the Comptroller General, or to their representatives. (Renumbered 02-24-05, SPECIAL PN.)

(2) Management reports. These reports will furnish the management with a means of evaluating prior decisions and serve as a basis for planning future operations and financial conditions. In those cases where revenues from multiple sources are pledged as security for an agency loan, two reports will be required; one for the project being financed by the agency and one combining the entire operation of the borrower. In those cases where agency loans are secured by general obligation bonds or assessments and the borrower combines revenues from all sources, one management report combining all such revenues will suffice. The following management data will be submitted by the borrower to the District Director.

(i) Financial information.

(A) Form RD 442-2, "Statement of Budget, Income and Equity," which includes Schedule I, "Statement of Budget, Income and Equity," and Schedule 2, "Projected Cash Flow."

(B) Prior to the beginning of each fiscal year, two copies, with data entered in column three only of Schedule 1, page one, "Annual Budget," and all of Schedule 2, will be submitted to the District Director. Twenty (20) days after the end of each of the first three quarters of each year, two copies with all information furnished on Schedule 1 will be submitted. For the fourth quarter of each year, submit together with the year-end financial requirements of paragraphs (q) (4) and (5) of this section. More frequent submissions may be required by Rural Development when necessary. The submission dates to the District Director will be 90 days following year-end for audited statements and 60 days following year-end for unaudited statements. The fourth quarter submission may serve the dual purpose of management report and year-end financial requirement for Statement of Income. (Revised 3-1-88, SPECIAL PN.)

(ii) Additional information.

(A) A list of the names and addresses of all members of the governing body as appropriate, also indicating the officers and their terms of office, will be included with the other information required at the end of the year.

(B) Borrowers delinquent on payment to Rural Development or experiencing financial problems, will develop a positive action plan to resolve financial problems. The plan will be reviewed with Rural Development and updated at least quarterly. Guide 22 may be used for developing a positive action plan.

(3) Substitute for management reports. When Rural Development loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State Director may authorize an annual audit to substitute for other management reports if the audit is received within 90 days following the period covered by the audit. (Revised 3-1-88, SPECIAL PN.)

(4) Audits. All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), using the publication, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," developed by the Comptroller General of the United States in 1981, and any subsequent revisions. In addition, the audits are also to be performed in accordance with various Office of Management and Budget (OMB) Circulars and Rural Development requirements as specified in the separate sections of this subpart. (Revised 3-1-88, SPECIAL PN.)

(i) Audits based upon Federal financial assistance received. The following requirements shall apply to audits of the years in which funds are received by the borrower.

(A) Local governments and Indian tribes. These organizations are to be audited in accordance with this subpart and OMB Circular A-128, with copies of the audits being forwarded by the borrower to the Rural Development District Director and the appropriate Federal cognizant agency. The Circular is attached as Exhibit A (available in any Rural Development office). For years in which an audit is not required by OMB Circular A-128, see paragraph (q)(4)(ii) of this section.

(1) Cognizant agency.

(i) "Cognizant agency" means the Federal agency assigned by OMB Circular A-128. Within the Department of Agriculture (USDA), the OIG shall fulfill cognizant agency responsibilities.

(ii) Cognizant agency assignments. Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that Rural Development provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted. Rural Development and the borrower shall coordinate all proposed audit plans with the appropriate USDA OIG. A list of OIG contact persons is attached as Exhibit B (available in any Rural Development office).

(2) Audit requirements. It is not intended that audits required by this subpart 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.

§1942.17 (q) (4) (i) (A) (2) (Con.)

(i) Local governments and Indian tribes that receive \$100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A-128.

(ii) Local governments and Indian tribes that receive between \$25,000 and \$100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A-128 or in accordance with Rural Development audit requirements. This is an option of the local government or Indian tribe. If the election is made to have an audit performed in accordance with Rural Development requirements, the audit shall be in accordance with paragraph (q) (4) (i) (B) of this section.

(iii) Local governments and Indian tribes that receive less than \$25,000 a year in Federal financial assistance shall be exempt from both OMB Circular A-128 audits and Rural Development audit requirements, except for those based upon annual gross income which may apply in paragraph (q) (4) (ii) of this section. However, any audits performed shall be governed by the requirements prescribed by State or local law or regulation. (Revised 05-26-93, PN 207.)

(iv) Public hospitals and public colleges and universities may be excluded from OMB Circular A-128 audit requirements. If such entities are excluded, audits shall be made in accordance with paragraph (q) (4) (i) (B) of this section.

(3) Fraud, abuse, and illegal acts. If the auditor becomes aware of any indication of fraud, abuse, or illegal acts in Rural Development financed projects, prompt written notice shall be given to the appropriate USDA OIG Regional Inspector General and the Rural Development District Director.



(B) Nonprofit organizations and others. These organizations are to be audited in accordance with Rural Development requirements, and OMB Circular A-110, "Uniform Requirements for Grants to Universities, Hospitals, and Other Nonprofit Organizations." These requirements also apply to public hospitals and public colleges and universities if they are excluded from the audit requirements of paragraph (q) (4) (i) (A) of this section.

(1) Audits shall be annual unless otherwise prohibited and supplied to the Rural Development District Director as soon as possible but in no case later than 150 days following the period covered by the audit. (Revised 05-26-93, PN 207.)

(2) Audit requirements.

(i) Borrowers which receive \$25,000 or more a year in Federal financial assistance shall have an audit. Also, refer to paragraph (q) (4) (ii) of this section for additional audit requirements.

(ii) Borrowers which receive less than \$25,000 a year in Federal financial assistance shall be exempt from audits, except for those based upon annual gross income which may apply in paragraph (q) (4) (ii) of this section. (Revised 05-26-93, PN 207.)

(iii) Indications of fraud, abuse, and illegal acts shall be processed in accordance with paragraph (q) (4) (i) (A) (3) of this section.

(ii) Audits based upon annual gross income. The following annual gross income audit requirements shall apply to all borrowers (local government, Indian tribes, and nonprofit organizations) for all years except the ones in which there is an audit requirement based upon the amount of Federal assistance received as required by paragraphs (q) (4) (i) (A) and (q) (4) (i) (B) of this section. Audits shall be on an annual basis unless otherwise prohibited and shall be supplied to the Rural Development District Director as soon as possible but in no case later than 150 days following the period covered by the audit. (Revised 05-26-93, PN 207.)

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(A) Gross annual income of \$500,000 or more and an unpaid loan balance exceeding \$100,000.

(1) Local governments and Indian tribes shall have audits made in accordance with State or local law or regulation or regulatory agency requirements. If no such requirements exist, audits shall be made in accordance with OMB Circular A-110 and paragraphs (q) (4) (i) (B) (1) and (2) (iii) of this section.

(2) All other organizations shall have audits in accordance with OMB Circular A-110 and paragraph (q) (4) (i) (B) (1) and (2) (iii) of this section.

(B) Gross annual income of less than \$500,000. For borrowers that have gross annual income of less than \$500,000, the requirements for audits shall be at the discretion of the State Director. However, when audits are required, they shall be in accordance with paragraph (q) (4) (ii) (A) of this section. (Revised 06-30-93, PN 208.)

(5) Borrowers exempt from audits. All borrowers who are exempt from Rural Development audit requirements and who do not otherwise have annual audits, will within 60 days following the end of each fiscal year, furnish the Rural Development District Director with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense by an appropriate official of the organization. Forms Rural Development 442-2 and 442-3 may be used. For borrowers using Form RD 442-2, the dual purpose of fourth quarter management reports, when required, and annual statements of income will be met with this one submission. (Revised 3-1-88, SPECIAL PN)

(r) Rural Development actions for borrower supervision and servicing.

(1) Management assistance and management reports. Management assistance will be based on such factors as observation of borrower operations and review of the periodic financial reports. The amount and type of assistance provided will be that needed to assure borrower success and compliance with its agreements with Rural Development.

(i) The District Director is responsible for obtaining all management report data from the borrower, promptly reviewing it and making any necessary recommendations to the borrower within 40 calendar days. However, after receiving management reports for borrowers whose Rural Development indebtedness exceeds \$1,000,000 and for delinquent and problem case borrowers, the District Director will forward them with comments to the State Director for review. (Revised 3-1-88, SPECIAL PN.)

(ii) District Director reviews of borrower operations.

(A) A review of the borrower's total operational and management practices, including records and accounts to be maintained, will be made between the beginning of the ninth and the end of the eleventh full month of the first year of operation. A report will be made to the State Director by sending a copy of Form RD 442-4, "District Director Report." Earlier reviews will be made when needed to resolve operational and management problems that may arise.

(B) Subsequent reviews will be made for all delinquent and other borrowers having financial problems and reported to the State Director by a copy of Form RD 442-4. These borrowers will adopt a positive action plan (see Guide 22). The plan will be reviewed quarterly by the District Director until the delinquency is eliminated or other servicing actions are recommended.

(C) The District Director may, after the end of the borrower's third fiscal year of operation, exempt it from submitting management reports provided it:

(1) Is current on its loan payments.

(2) Is meeting the conditions of its agreements with Rural Development.

(3) Has demonstrated its ability to successfully operate and manage the organization and has not obtained subsequent loans in the last 3 years which have significantly altered the scope of the project.

(4) Has the State Director's written concurrence for all borrowers whose Rural Development indebtedness exceeds \$1,000,000. (Revised 3-1-88, SPECIAL PN.)

(D) Borrowers qualifying for this exemption will still be required to submit a copy of their audits or annual financial statements.

(E) Ordinarily an exception will not be made to the requirement for the borrower to submit a copy of its annual budget.

(F) The District Director or State Director may reinstate the requirements for submission of periodic management reports for those borrowers who became delinquent or otherwise are not carrying out their agreements with Rural Development or require more frequent submission of management reports. This requirement will be reinstated for borrowers receiving a subsequent loan which will significantly alter the scope of the project.

(G) The District Director may accept management reports which are not prepared on page 1 of Form RD 442-2 Schedule 1 but contain like information. However, page 2 of this form must be used by all borrowers required to furnish management reports.

(iii) The State Director is responsible for:

(A) The review of the District Director's submission for all borrowers whose indebtedness exceeds \$1,000,000. The State Director will forward comments to the District Director in order that a response, if necessary, can be sent to the borrower within 40 calendar days after the borrower's submission of its management reports. (Revised 3-1-88, SPECIAL PN.)

(B) The review of all delinquent and problem case borrower management reports. Ordinarily, review findings and instructions regarding further management assistance will be determined and provided to the District Office within 20 calendar days of submission for delinquent and problem borrowers. (Revised 3-1-88, SPECIAL PN.)

(C) Forwarding to the National Office copies of review findings, instructions for further assistance, and positive action plans on delinquent borrowers and borrowers experiencing financial problems at the same time the findings and instructions are provided to the District Office. (Revised 3-1-88, SPECIAL PN.)

(2) Audits and financial statements.

(i) The District Director is responsible for obtaining all audit reports and financial statements from the borrower. Those received from borrowers whose Rural Development indebtedness exceeds \$1,000,000 and from delinquent and problem case borrowers will be promptly reviewed and forwarded to the State Director with appropriate comments. (Revised 3-1-88, SPECIAL PN.)

(ii) The District Director is responsible for the review of audits and financial statements and for recommendations and instructions for borrower assistance. For borrowers required to have audits, in accordance with paragraph (q) (4) (i) (A) of this section, the District Director is also responsible for any necessary follow up required because of audit resolution items received from the cognizant agencies. The borrower will be required to furnish any additional information necessary to satisfy the requirement. Guide 21 may be used in the audit review process. (Revised 3-1-88, SPECIAL PN.)

(iii) The State Director is responsible for the review of audits of borrowers whose indebtedness exceeds \$1,000,000 and delinquent and problem case borrowers. The State Director may recommend to the District Director any necessary actions to be taken. (Revised 3-1-88, SPECIAL PN)

(3) Security inspections. A representative of the borrower will ordinarily accompany the District Director during each inspection.

(i) Post construction inspection. The District Director will inspect each facility between the beginning of the ninth and the end of the eleventh full month of the first year of operation. This will normally coincide with the District Director's review of the borrower's total operational and management practices described in paragraph (r) (1) (ii) (A) of this section. The results of this inspection will be reported to the State Director on Form RD 1924-12. Earlier inspections will be made when operational or other problems indicate a need. The State Director will provide guidance to the District Director to assure that action will be taken to correct project deficiencies. (Revised 5-12-87, SPECIAL PN.)

(ii) Subsequent inspections. The District Director will make subsequent inspections of borrower security property and facilities during each third year after the post construction inspection. The results of this inspection will be reported to the State Director on Form RD 1924-12. (Revised 5-12-87, SPECIAL PN.)

(iii) Special inspections. The District Director may request, or the State Director may determine, the need for a member of the State staff to make certain security inspections. In such cases, the State Director will detail a staff member to make such inspections.

(iv) Follow-up inspections. If any inspection discloses deficiencies or exceptions, or otherwise indicates a need for subsequent inspections prior to the third year, the State Director will prescribe the type and frequency of follow-up inspections. These inspections will be made until all deficiencies and exceptions have been corrected.

(4) Civil rights compliance reviews will be performed under Subpart E of Part 1901 of this chapter for the life of the loan.

(5) Other loan servicing actions will be in accordance with Subpart E of Part 1951 of this chapter.

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§1942.18 Community Facilities - Planning, Bidding, Contracting, Constructing.

(a) General. This section is specifically designed for use by owners including the professional or technical consultants and/or agents who provide assistance and services such as architectural, engineering, inspection, financial, legal or other services related to planning, bidding, contracting, and constructing community facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this section, an owner is defined as an applicant, borrower, or grantee.

(b) Technical services. Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's "in house" engineer or architect or through contract, subject to Rural Development concurrence. Architects and engineers must be licensed in the State where the facility is to be constructed.

(c) Preliminary reports. Preliminary architectural and engineering reports must conform with customary professional standards. Preliminary report guidelines for water, sanitary sewer, solid waste, storm sewer, and other essential community facilities are available from Rural Development.

(d) Design policies. Facilities financed by Rural Development will be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies.

(1) Natural resources. Facility planning should be responsive to the owner's needs and should consider the long-term economic, social and environmental needs as set forth in this section. The Agency's environmental review requirements are found at 7 CFR part 1970.

(Revised 04-01-16, SPECIAL PN.)



(2) Historic preservation. Facilities should be designed and constructed in a manner which will contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, and archaeological significance. All facilities must comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C 470), as implemented by 36 CFR part 800, and Executive Order 11593, "Protection and Enhancement of the Cultural Environment." 7 CFR part 1970 sets forth procedures for the protection of historic and archaeological properties. (Revised 04-01-16, SPECIAL PN.)

(3) Architectural barriers. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (P.L. 90-480) as implemented by the General Services Administration regulations 41 CFR 101-19.6 and Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) as implemented by 7 CFR, Parts 15 and 15b.

(4) Health Care Facilities. The proposed facility must meet the minimum standards for design and construction contained in the American Institute of Architects Press Publication No. ISBN 0913962-96-1, "Guidelines for Construction and Equipment of

Hospital and Medical Facilities," 1987 Edition. The facility must also meet the life/safety aspects of the 1985 edition of the National Fire Protection Association (NFPA) 101 Life Safety Code, or any subsequent code that may be designated by the Secretary of HHS. All publications referenced in this section are available in all Agency State Offices. Under §1942.17(j) (8) (ii) of this subpart, a statement by the responsible regulatory agency that the facility meets the above standards will be required. Any exceptions must have prior National Office concurrence. (Revised 05-03-89,  
SPECIAL PN)

(5) Energy conservation. Facility design should consider cost effective energy saving measures or devices.

(6) Lead base paints. Lead base paints shall not be used in facilities designed for human habitation. Owners must comply with the Lead Base Paints Poisoning and Prevention Act of 1971 (42 U.S.C. 4801) and the National Consumer Health Information and Health Promotion Act of 1976 (Pub. L. 94-317) with reference to paint specifications used according to Exhibit H of Subpart A of Part 1924 of this chapter.

(7) Fire protection. Water facilities must have sufficient capacity to provide reasonable fire protection to the extent practicable.

(8) Growth capacity. Facilities must have sufficient capacity to provide for reasonable growth to the extent practicable.

(9) Water conservation. Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(10) Water quality. All water facilities must meet the requirements of the Safe Drinking Water Act (Pub. L. 93-523) and provide water of a quality that meets the current Interim Primary Drinking Water Regulations (40 CFR 141).

(11) Combined sewers. New combined sanitary and storm water sewer facilities will not be financed by the Agency. Extensions to existing combined systems can only be financed when separate systems are impractical.

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(12) Compliance. All facilities must meet the requirements of Federal, State, and local agencies having the appropriate jurisdiction.

(13) Dam safety. Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, should comply with the provisions for dam safety as discussed in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041-001-00187-5) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(14) Pipe. All pipe used shall meet current American Society for Testing Materials (ASTM) or American Water Works Association (AWWA) standards.

(15) Water system testing. For new water systems or extensions to existing water systems, leakage shall not exceed 10 gallons per inch of pipe diameter per mile of pipe per 24 hours when tested at 1 1/2 times the working pressure or rated pressure of the pipe, whichever is greater.

(16) Metering devices. Water facilities financed by RUS will have metering devices for each connection. An exception to this requirement may be granted by the Agency's State Director when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental consideration would not be adversely affected by not installing such devices.

(17) Seismic safety. (Added 01-10-97, SPECIAL PN.)

(i) All new building construction shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Program's (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(A) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(B) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

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(C) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(ii) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications will be evidence of compliance with the seismic requirements of the appropriate building code.

(e) Construction contracts. Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(1) Standard construction contract documents are available from the Agency. When the Agency's standard construction contract documents are used, it will normally not be necessary for the Office of the General Counsel (OGC) to perform a detailed legal review. If the construction contract documents utilized are not in the format of guide forms previously approved by the Agency, OGC's review of the construction contract documents will be obtained prior to their use.

(2) Contract review and approval. The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these documents have been properly authorized to do so. The contract documents, bid bonds, and bid tabulation sheets will be forwarded to the Agency for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by the Agency. The Agency State Director or designee is responsible for approving construction contracts with the legal advice and guidance of the OGC when necessary.

(3) Separate contracts. Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job), should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as prefabricated buildings and lift stations. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(f) Utility purchase contracts. Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and approved by the Rural Development State Director or designee. To the extent practical, Rural Development review and approval of such contracts should take place prior to their execution by the owner. Form RD 442-30, "Water Purchase Contract," may be used when appropriate. If the Rural Development loan will be repaid from system revenues, the contract will be pledged to Rural Development as part of the security for the loan. Such contracts will:

(1) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages. If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and approved provided adequate evidence is furnished to enable Rural Development to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

(iii) Prior approval is obtained from the National Office. The following information should be submitted to the National Office:

(A) Transmittal memorandum including:

(1) Alternative supplies considered; and

- (2) Recommendations and comments; and
- (3) Any other necessary supporting information.

(B) Copies of the following:

- (1) Proposed letter of conditions; and
- (2) Form RD 442-7, "Operating Budget"; and
- (3) Form RD 442-3, "Balance Sheet"; and
- (4) Preliminary Engineering Report; and
- (5) Proposed Contract.

(C) Owner and Rural Development engineer's comments and recommendations.

(D) Documentation and statement from the supplier that it has an adequate supply and treatment facilities available to meet the needs of its users and the owner for the foreseeable future.

(2) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.

(3) Specify the initial rates and provide some kind of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(4) Run for a period of time which is at least equal to the repayment period of the loan. State Directors may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

- (i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

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(ii) The contract contains adequate provisions for renewal; or

(iii) A determination is made that in the event the contract is terminated, there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.

(5) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless Rural Development determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(6) Provide for a pledge of the contract to Rural Development as part of the security for the loan.

(7) Not contain provisions for:

(i) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(ii) Options for the future sale or transfer. This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(g) Sewage treatment and bulk water sales contracts. Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to Rural Development concurrence. Paragraph (f) of this section should be used as a guide to prepare such contracts. (Revised 3-1-88, SPECIAL PN.)

(h) Performing construction. Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personal and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by paragraph (o) of this section. For other than utility-type facilities, inspection services may be provided by individuals as approved by the Rural Development State Director. In either case, the requirements of paragraph (j) of this section apply. Payments for construction will be handled under §1942.17(p) (5) of this part.

(i) Owner's contractual responsibility. This subpart does not relieve the owner of any contractual responsibilities under its contract. The owner is responsible for the settlement of all contractual and administrative issues arising out of procurements entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the local, State, or Federal authority as may have jurisdiction.

(j) Owner's procurement regulations. Owner's procurement regulations must comply with the following standards: (Revised 3-1-88, SPECIAL PN.)

(1) Code of conduct. Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Rural Development funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by Rural Development funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(i) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(ii) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(2) Maximum open and free competition. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the



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owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. For a water or waste disposal facility, Rural Development shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such a facility. If Rural Development determines that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, Rural Development shall provide such applicant or borrower with a comprehensive justification for such a determination. The justification will be documented in writing. (Revised 3-1-88, SPECIAL PN.)

(3) Owner's review. Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(4) Solicitation of offers, whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors shall be clearly stated.

(ii) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(5) Small, minority, and women's businesses and labor surplus area firms.

(i) Affirmative steps should be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(A) Include qualified small and minority businesses on solicitation lists.

(B) Assure that small and minority businesses are solicited whenever they are potential sources.

(C) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(D) Where the requirement permits, establish delivery schedules which will encourage participation by small and minority businesses.

(E) Use the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce.

(F) If any subcontracts are to be let, require the prime contractor to take the affirmative steps in paragraphs (j) (5) (i) (A) through (E) of this section.

(ii) Owners shall take similar appropriate affirmative action in support of women's businesses.

(iii) Owners are encouraged to procure goods and services from labor surplus areas.

(iv) Owners shall submit a written statement or other evidence to Rural Development of the steps taken to comply with paragraphs (j) (5) (i) (A) through (F), (j) (5) (ii), and (j) (5) (iii) of this section.

(6) Contract pricing. Cost plus a percentage of cost method of contracting shall not be used.

(7) Unacceptable bidders. The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(i) An engineer or architect as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

- (ii) Any firm or corporation in which the owner's architect or engineer is an officer, employee, or holds or controls a substantial interest;
- (iii) The governing body's officers, employees, or agents;
- (iv) Any member of the immediate family or partners in paragraphs (j) (7) (i), (j) (7) (ii) or (j) (7) (iii) of this section; or
- (v) An organization which employs, or is about to employ, any person in paragraph (j) (7) (i), (j) (7) (ii), (j) (7) (iii) or (j) (7) (iv) of this section.

(8) Contract award. Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred.  
(Revised 4-11-89, SPECIAL PN)

(k) Procurement methods. Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(1) Small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Competitive sealed bids. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

- (i) At a sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of qualified sources. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (j)(4) of this section.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest.

(v) Any or all bids may be rejected by the owner when it is in their best interest.

(3) Competitive negotiation. In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the Procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner, price and other factors considered. Unsuccessful offerors should be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation.

(4) Noncompetitive negotiation. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following: (Revised 3-1-88, SPECIAL PN.)

(i) The item is available only from a single source; or

(ii) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(iii) After solicitation of a number of sources, competition is determined inadequate; or

(iv) No acceptable bids have been received after formal advertising; or

(v) The procurement of architectural/engineering and other professional services; or

(vi) The aggregate amount does not exceed \$50,000. (Added 3-1-88, SPECIAL PN.)

(5) Additional procurement methods. Additional innovative procurement methods may be used by the owner with prior written approval of the Rural Development National Office.

(1) Alternate contracting methods. The services of the consulting engineer or architect and the general construction contractor shall normally be procured from unrelated sources in accordance with paragraph

(j) (7) of this section. Alternate contracting methods which combine or rearrange design, inspection or construction services (such as design/build or construction management/constructor) may be used with Rural Development written approval. (Revised 09-24-12, PN 458.)

(1) The owner will request Rural Development approval by providing the following information to the State Office for review and approval by the State Architect: (Revised 09-24-12, PN 458.)

(i) The owner's written request to use an unconventional contracting method with a description of the proposed method and the selection process used to acquire the CM or DB services. (Revised 09-24-12, PN 458.)

(ii) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. This would include a nontechnical statement summarizing the work to be performed by the contractor and the results expected. Also include the sequence in which the work is to be performed and a proposed construction schedule. (Revised 09-24-12, PN 458.)

(iii) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for any extra cost which may result from errors or omissions in the services provided under the contract and compliance with all Federal, State, and local requirements effective on the contract execution date. (Revised 09-24-12, PN 458.)

(iv) An evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity. (Revised 09-24-12, PN 458.) (Revised 09-24-12, PN 458.)

(v) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility. (Revised 09-24-12, PN 458.)

(vi) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired. (Revised 09-24-12, PN 458.)

(vii) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by Rural Development prior to the start of construction. (Revised 09-24-12, PN 458.)

(viii) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract. (Revised 09-24-12, PN 458.)

(2) The State Office may approve design/build or construction management/constructor projects if the contract amount is equal to or less than \$250,000. (Revised 09-24-12, PN 458.)

(3) If the contract amount exceeds \$250,000, National Office prior concurrence must be obtained in accordance with § 1942.9(b) of this subpart. Only that information required under § 1942.9(b) of this subpart and Guide 27, Attachment 7, completed by the State Office must be provided to National Office Program Support Staff for review. Additional information, such as plans and specifications, may be submitted by the State Office, if a review of those items is desired. (Revised 09-24-12, PN 458.)

(4) The Design/Build method of construction is one in which the architectural and engineering services, normally provided by an independent consultant to the owner, are combined with those of the General Contractor under a single source contract. These services are commonly provided by a design/build firm, a joint venture between an architectural firm and a construction firm, or a company providing pre-engineered buildings and design services. (Revised 09-24-12, PN 458.)

(5) The Construction Management/constructor (CMc) acts in the capacity of a General Contractor and is actually responsible for the construction. This type of construction management is also referred to as Construction Manager "At Risk". The construction contract is between the owner and the CMc. The CMc, in turn, may subcontract for some or all of the work. (Revised 09-24-12, PN 458.)

(7) All alternate contracting method projects must comply with the requirements for "maximum open and free competition" in paragraph (j)(2) of this section. Choosing an alternate contracting method is not a way to avoid competition. Further information on procurement methods, which must be followed, is provided in paragraph (k) of this section. (Revised 09-24-12, PN 458.)

(m) Contracts awarded prior to preapplications. Owners awarding construction or other procurement contracts prior to filing a preapplication with Rural Development must comply with the following:

(1) Evidence. Provide conclusive evidence that the contract was entered into without intent to circumvent the requirements of Rural Development regulations. The evidence will consist of at least the following:



(i) The lapse of a reasonable period of time between the date of contract award and the date of filing the preapplication which clearly indicates an irreconcilable failure of previous financial arrangements; or

(ii) A written statement explaining initial plans for financing the project and reasons for failure to obtain the planned credit.

(2) Modifications. Modify the outstanding contract to conform with the provisions of the subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Rural Development financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (m) (4) of this section.

(3) Consultant's certification. Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications.

(4) Owner's certification. Provide a certification by the owner that the contractor has complied with all statutory and executive requirements related to Rural Development financing for construction already performed even though the requirements may not have been included in the contract documents.

(n) Contract provisions. In addition to provisions defining a sound and complete contract, any recipient of Rural Development funds shall include the following contract provisions or conditions in all contracts.

(1) Remedies. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should also be included.

(2) Termination. All contracts exceeding \$10,000, shall contain suitable provisions for termination by the owner including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) Surety. In all contracts for construction or facility improvements exceeding \$100,000, the owner shall require bonds, a bank letter of credit or cash deposit in escrow assuring performance and payment each in the amount of 100 percent of the contract cost. The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety may be necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the National Office after submission of a justification by the State Director together with the proposed form of escrow agreement or letter of credit. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form RD 1924-10, "Release by Claimants," and Form RD 1924-9, "Certificate of Contractor's Release," may be obtained at the local Rural Development office and used for this purpose. The United States, acting through Rural Development, will be named as co-obligee on all surety unless prohibited by State law. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the facility is located. (Revised 5-3-89, SPECIAL PN)

(4) Equal Employment Opportunity. All contracts awarded in excess of \$10,000 by owners shall contain a provision requiring compliance with Executive Order 11246, entitled, "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR Part 60. (Revised 5-3-89, SPECIAL PN)

(5) Anti-kickback. All contracts for construction shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report suspected or reported violations to Rural Development.

(6) Records. All negotiated contracts (except those of \$2,500 or less) awarded by owners shall include a provision to the effect that the owner, Rural Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for 3 years after owners make final payments and all other pending matters are closed.

(7) State Energy Conservation Plan. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

(8) Change orders. The construction contract shall require that all contract change orders be approved by Rural Development.

(9) Rural Development concurrence. All contracts must contain a provision that they shall not be effective unless and until the Rural Development State Director or designee concurs in writing.

(10) Retainage. All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 10 percent of an approved partial payment estimate until 50 percent of the work has been completed. If the job is proceeding satisfactorily at 50 percent completion, further partial payments shall be made in full, however, previously retained amounts shall not be paid until construction is substantially complete. Additional amounts may be retained if the job is not proceeding satisfactorily, but in no event shall the total retainage be more than 10 Percent of the value of the work completed.

(11) Other compliance requirements. Contracts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR Part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to Rural Development and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 4 CFR Part 15.4 (c) as set forth in Guide 18 of this subpart which is available in all Rural Development offices.

(o) Contract administration. Owners shall be responsible for maintaining s contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) Preconstruction conference. Prior to beginning construction, the owner will schedule a preconstruction conference where Rural Development will review the planned development with the owner, its architect or

engineer, resident inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form RD 1924-16, "Record of Pre-construction Conference," and the discussions and agreements will be documented. Form RD 1924-16 may be used for this purpose. (Revised 5-12-87, SPECIAL PN.)

(2) Monitoring reports. Each owner will be required to monitor and provide reports to Rural Development on actual performance during construction for each project financed, or to be financed, in whole or in part with Rural Development funds to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify Rural Development as soon as any of the following conditions are known:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less Rural Development assistance.

(3) Inspection. Full-time resident inspection is required for all construction unless a written exception is made by Rural Development upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the resident inspector to the owner and to Rural Development for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project architect/engineer and Rural Development

for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the general supervision of the project architect/engineer. A guide format for preparing daily inspection reports (Guide 11 of this subpart) and Form RD 1924-18 "Partial Payment Estimate," are available on request from Rural Development. (Revised 5-12-87, SPECIAL PN.)

(4) Inspector's daily diary. The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports as follows:

- (i) A complete set of all daily construction records will be maintained and the original set furnished to the owner upon completion of construction.
- (ii) All entries shall be legible and shall be made in ink.
- (iii) Daily entries shall include but not be limited to the date, weather conditions, number and classification of personnel working on the site, equipment being used to perform the work, persons visiting the site, accounts of substantive discussions, instructions given to the contractors, directions received, all significant or unusual happenings involving the work, any delays, and daily work accomplished.
- (iv) The daily entries shall be made available to Rural Development personnel and will be reviewed during project inspections.

(5) Prefinal inspections. A prefinal inspection will be made by the owner, resident inspector, project architect or engineer, representatives of other agencies involved, the District Director and a Rural Development State Office staff representative, preferably the State staff architect or engineer. Prefinal inspections may be made without Rural Development State Office staff participation if the State Director or a designee determines that the facility does not utilize complicated construction techniques, materials or equipment for (facilities such as small fire stations, storage buildings or minor utility extensions, and that an experienced District Office staff representative will be present. The inspection results will be recorded on Form RD 1924-12, "Inspection Report," and a copy provided to all interested parties. (Revised 5-12-87, SPECIAL PN.)

(6) Final inspection. A final inspection will be made by Rural Development before final payment is made.

(7) Changes in development plans.

- (i) Changes in development plans may be approved by Rural Development when requested by owners, provided:

- (A) Funds are available to cover any additional costs; and
- (B) The change is for an authorized loan purpose; and
- (C) It will not adversely affect the soundness of the facility operation or Rural Development's security; and
- (D) The change is within the scope of the contract,

(ii) Changes will be recorded on Form RD 1924-7, "Contract Change Order," or, other similar forms may be used with the prior approval of the State Director or designee. Regardless of the form, change orders must be approved by the Rural Development State Director or a designated representative. (Revised 5-12-87, SPECIAL PN.)

(iii) Changes should be accomplished only after Rural Development approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

- (A) Any changes in labor and material and their respective cost.
- (B) Changes in facility design.
- (C) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule.
- (D) Any increase or decrease in the time to complete the project.

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

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§1942.19 Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants.

(a) General. This section includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, herein referred to as bonds). This section is made available to applicants as appropriate for application processing and loan docket preparation.

(b) Policies related to use of bond counsel. Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized bond counsel with respect to the validity of a bond issue, except as provided in (b) (1) through (3) below. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized bond counsel firm which has experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

(1) Issues of \$250,000 or less. At the option of the applicant for issues of \$250,000 or less, bond counsel may be used for the issuance of a final opinion only and not for the preparation of the bond transcript and other documents when the applicant, Rural Development, and bond counsel have agreed in advance as to the method of preparation of the bond transcript documents. Under such circumstances the applicant will be responsible for the preparation of the bond transcript documents.

(2) Issues of \$50,000 or less. At the option of the applicant and with the prior approval of the Rural Development State Director, the applicant need not use bond counsel if:

(i) The amount of the issue does not exceed \$50,000 and the applicant recognizes and accepts the fact that processing the application may require additional legal and administrative time.

(ii) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what bond counsel would charge as compared with what the local attorney will charge without bond counsel.

(iii) The local attorney is able and experienced in handling this type of legal work.

(iv) The applicant understands that, if it is required by Rural Development to refinance its loan pursuant to the statutory refinancing requirements, it will probably have to obtain at its expense a bond counsel's opinion at that time.



(v) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to the preferred methods of preparation stated in paragraph (e) of this section but still be consistent with State law.

(vi) Many matters necessary to comply with Rural Development requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions will be issued by the Office of the General Counsel of the U. S. Department of Agriculture for the guidance of Rural Development.

(3) For loans of less than \$500,000. The applicant shall not be required to use bond counsel in a straight mortgage-note situation where competitive bidding is not required for the sale of the debt instrument, unless a complicated financial situation exists with the applicant. In addition, if there is a known backlog in a particular OGC regional office the applicant will be advised of such backlog and it will be suggested to the applicant that the appointment of bond counsel may be more expeditious. However, it will be the decision of the applicant whether or not to appoint bond counsel. The applicant must comply with (b) (2) (iii) through (vi) of this section.

(c) Bond transcript documents. Any questions with respect to Rural Development requirements should be discussed with the Rural Development representatives. The bond counsel (or local counsel where no bond counsel is involved) is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to Rural Development:

- (1) Copies of all organizational documents.
- (2) Copies of general incumbency certificate.
- (3) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.
- (4) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.
- (5) Certified copies of the resolutions or ordinances or other documents, such as the bond authorizing resolutions or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

(6) Copies of official Notice of Sale and affidavit of publication of Notice of Sale where a public sale is required by State statute.

(7) Specimen bond, with any attached coupons.

(8) Attorney's no-litigation certificate.

(9) Certified copies of resolutions or other documents pertaining to the bond award.

(10) Any additional or supporting documents required by bond counsel.

(11) For loans involving multiple advances of Rural Development loan funds a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during the advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.

(12) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized bond counsel (or local counsel if no bond counsel is involved) including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinions to contain language referring to the last sentence of Section 306 (a) (1) or to Section 309A (h) of the Consolidated Farm and Rural Development Act [7 U.S.C. 1926 (a) (1) or 1929a (h)], and providing that if the bonds evidencing the indebtedness in question are acquired by the Federal Government and sold on an insured basis from the Agriculture Credit Insurance Fund, or the Rural Development Insurance Fund, the interest on such bonds will be included in gross income for the purpose of the Federal income tax statutes.

(d) Interim financing from commercial sources during construction period for loans of \$50,000 or more. In all cases where it is possible for funds to be borrowed at current market interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of Rural Development funds.

(e) Permanent instruments for Rural Development loans to repay interim commercial financing. Rural Development loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(1) First preference - Form RD 440-22, "Promissory Note (Association or Organization)". If legally permissible use Form RD 440-22 for insured loans.

(2) Second preference - single instruments with amortized installments. If Form RD 440-22 is not legally permissible, use a single instrument providing for amortized installments. Show the full amount of the loan on the face of the document and provide for entering the date and amount of each Rural Development advance on the reverse thereof or on an attachment to the instrument. Form RD 440-22 should be followed to the extent possible. When principal payment is deferred, no attempt should be made to compute in dollar terms the amount of interest due on these installment dates. Rather the instrument should provide that "interest only" is due on these dates. The appropriate amortized installment computed as follows will be shown due on the installment dates thereafter.

(i) Annual payments - Subtract the due date of the last annual interest only installment from the due date of the final installment to determine the number of annual payments applicable. When there are no interest only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in Rural Development Amortization Tables and round to the next higher dollar. Example of Computation of Annual Payment:

Date of Loan Closing:	7-5-1976
Amount of Loan:	\$100,000.00
Interest Rate:	5%
Amortization Period:	40 years
Interest Only Installments:	7-5-1977 and 7-5-1978
First Regular Installment:	7-5-1979
Final Installment:	7-5-2016

Computation:	2016-1978 =
	38 annual payments
$\$100,000.00 \times .05929 =$	\$5,929.00 annual payment due

(ii) Semiannual payments - Multiply by two the number of years between the due date of the last annual interest only installment and the due date of the final installment to determine the correct number of semiannual periods applicable. When there are no interest only installments, multiply by two the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in Rural Development Amortization Tables and round to the next higher dollar.

Example of Computation of Semiannual Payment:

Date of Loan Closing:	7-5-1976
Amount of Loan:	\$100,000.00
Interest Rate:	5%
Amortization Period:	40 years
Interest Only Installments:	7-5-1977 and 7-5-1978
First Regular Installment:	7-5-1979
Final Installment:	7-5-2016
Computation:	2016 - 1978 = 38 x 2 = 76 semiannual periods
$\$100,000.00 \times .02952 =$	\$2,952.00 semiannual payment due

(iii) Monthly payments - Multiply by twelve the number of years between the due date of the last annual interest only installment and the final installment to determine the number of monthly payments applicable. When there are no interest only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in Rural Development Amortization Tables and round to the next higher dollar.

Example of Computation of Monthly Payment:

Date of Loan Closing:	7-5-1976
Amount of the Loan:	\$100,000.00
Interest Rate:	5%
Amortization Period:	40 years
Interest Only Installments:	7-5-1977 and 7-5-1978

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First Regular Installment: 7-5-1979  
Final Installment: 7-5-2016  
Computation: 2016 - 1978 =  
38 x 12 = 456 monthly payments  
 $\$100,000.00 \times .00491 = \$491.00$  monthly  
payment due

(3) Third preference - single instrument with installments of principal plus interest. If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the unmatured principal balance. The principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal as required by the first two preferences.

(i) The repayment terms concerning interest only installments described in paragraph (e) (2) of this section, "Second preference" applies.

(ii) The instrument shall contain in substance the following provisions:

(A) A statement of principal maturities and due dates.

(B) Payments made on indebtedness evidenced by this instrument shall be applied to the interest due through the next installment due date and the balance to principal in accordance with the terms of the bond. Payments on delinquent accounts will be applied in the following sequence:

- (1) billed delinquent interest,
- (2) past due interest installments,
- (3) past due principal installments,
- (4) interest installment due, and
- (5) principal installment due.

Extra payments and payments made from security depleting sources shall be applied to the principal last to come due or as specified in the bond instrument.

(4) Fourth preference serial bonds with installments of principal plus interest. If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers. Such bonds will conform with the minimum requirements of paragraph (h) of this section. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (e) (3) of this section.

(f) Multiple advances of Rural Development funds using permanent instruments. Where interim financing from commercial sources is not available, Rural Development loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

(g) Multiple advances of Rural Development funds using temporary debt instrument. When none of the instruments described in paragraph (e) of this section are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of Rural Development loan funds and will be for the full amount of the Rural Development loan. The instrument will be prepared by bond counsel (or local counsel if bond counsel is not involved and approved by the State Director and OGC. At the same time Rural Development delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

- (1) The date from which each advance will bear interest.
- (2) The interest rate.
- (3) A payment schedule providing for interest on outstanding principal at least annually.
- (4) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(h) Minimum bond specifications. The provisions of this paragraph are minimum specifications only, and must be followed to the extent legally permissible.

(1) Type and denominations. Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than \$1000). Single bonds may provide for repayment of

principal plus interest or amortized installments; amortized installments are preferable from the standpoint of Rural Development. Coupon bonds will not be used unless required by State statute.

(i) To compute the value of each coupon when the bond denomination is consistent:

(A) Multiply the amount of the loan or advance by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment date.

(C) Divide the interest computed in (B) by the number of bonds securing the advance; this is the individual coupon amount.

(ii) To compute the value of each coupon when the bond denomination varies:

(A) Multiply the denomination of the bond by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment due date; this is the individual coupon amount.

(2) Bond registration. Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by Rural Development will be registered in the name of "United States of America, Rural Development," and will remain so registered at all time while the bonds are held or insured by the United States. The address of Rural Development for registration purposes will be that of the appropriate Rural Development State Office. (Revised 3-1-88, SPECIAL PN.)

(3) Size and quality. Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(4) Date of bond. Bonds will preferably be dated as of the day of delivery, however, may be dated another date at the option of the borrower and subject to approval by Rural Development. If the date of delivery is other than the date of the bond, the date of delivery will be stated in the bond. In all cases, interest will accrue from the date of delivery of the funds.

(5) Payment date. Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided. (Revised 06-26-91, PN 168.)

(6) Place of payment. Payments on bonds purchased by Rural Development should be submitted to the Rural Development District Office by the borrower. The District Office will then remit the payments to the Finance Office or deposit them in a Treasury General Account in accordance with Subpart B of Part 1951 of this chapter.

(7) Redemptions. Bonds should contain customary redemption provisions; subject, however, to unlimited right of redemption without premium of any bonds held by Rural Development except to the extent limited by the provisions under the "Third Preference" and "Fourth Preference" in paragraph (e) of this section.

(8) Additional revenue bonds. Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless the net revenues (that is, unless otherwise defined by the State statute, gross revenues less essential operation and maintenance expense) for the fiscal year preceding the year in which such parity bonds are to be issued, were 120 percent of the average annual debt service requirements on all bonds then outstanding and those to be issued; provided, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan agreement.

(9) Scheduling of Rural Development payments when joint financing is involved. In all cases in which Rural Development is participating with another lender in the joint financing of the project to supply funds required by one applicant, the Rural Development payments of principal and interest should approximate amortized installments.

(10) Precautions. The following types of provisions in debt instruments should be avoided.



(i) Provisions for the holder to manually post each payment to the instrument.

(ii) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than Rural Development, may post the date and amount of each advance or repayment on the instrument.

(iii) Defeasance provisions in loan or bond resolutions. When a bond issue is defeated, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes Rural Development from requiring graduation before the final maturity date, it represents a violation of the statutory refinancing requirement, therefore it is disallowed. (Revised 05-03-89, SPECIAL PN.)

(iv) Provisions that amend covenants contained in Forms RD 1942-47, "Loan Resolution (Public Bodies)," or RD 1942-9, "Loan Resolution Security Agreement." (Revised 06-26-91, PN 168.)

(11) Multiple Loan Instruments. The following will be adhered to when preparing debt instruments:

(i) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments.

(ii) Loan funds obligated in different fiscal years and those obligated with different interest rates or terms in the same fiscal year will be evidenced by separate debt instruments.

(iii) Loan funds obligated for the same loan type in the same fiscal year at the same interest rate and term may be combined in the same debt instrument; provided the borrower has been notified on Form RD 1940-1, "Request for Obligation of Funds," of the action.

(i) Bidding by Rural Development. Bonds offered for public sale shall be offered in accordance with State law, in such a manner to encourage public bidding. Rural Development will not submit a bid at the advertised sale unless required by State law, nor will reference to Rural Development's rates and terms be included. If no acceptable bid is received, Rural Development will negotiate the purchase of the bonds.

§ 1942.20 Community Facility Guides.

(a) The following documents are attached and made part of this subpart and may be used in administering this program.

- |      |                |   |
|------|----------------|---|
| (1)  | Guide 1 and 1a | GUIDE LETTER FOR USE IN INFORMING PRIVATE LENDER OF AGENCY'S COMMITMENT   |
| (2)  | Guide 2        | WATER USERS AGREEMENT   |
| (3)  | Guide 3        | SERVICE DECLINATION STATEMENT   |
| (4)  | Guide 4        | BYLAWS  |
| (5)  | Guide 5        | FINANCIAL FEASIBILITY REPORT  |
| (6)  | Guide 6        | PRELIMINARY ARCHITECTURAL FEASIBILITY REPORT  |
| (7)  | Guide 7        | PRELIMINARY ENGINEERING REPORT WATER FACILITY   |
| (8)  | Guide 8        | PRELIMINARY ENGINEERING REPORT SEWERAGE SYSTEMS   |
| (9)  | Guide 9        | PRELIMINARY ENGINEERING REPORT SOLID WASTE DISPOSAL SYSTEMS   |
| (10) | Guide 10       | PRELIMINARY ENGINEERING REPORT STORM WASTE-WATER DISPOSAL   |
| (11) | Guide 11       | DAILY INSPECTION REPORT   |
| (12) | Guide 12       | MEMORANDUM OF UNDERSTANDING BETWEEN THE ECONOMIC DEVELOPMENT ADMINISTRATION - DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF AGRICULTURE PERTAINING TO EPA PUBLIC WORKS PROJECTS ASSISTED BY AN AGENCY LOAN                                       |
| (13) | Guide 13       | MEMORANDUM OF UNDERSTANDING BETWEEN THE ECONOMIC DEVELOPMENT ADMINISTRATION - DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF AGRICULTURE REGARDING SUPPLEMENTARY GRANT ASSISTANCE FOR THE CONSTRUCTION OF PUBLIC WORKS AND DEVELOPMENT FACILITIES |

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- |      |           |  |
|------|-----------|--|
| (14) | Guide 14  | LEGAL SERVICES AGREEMENT   |
| (15) | Guide 15  | COMMUNITY FACILITY BORROWERS APPLICATION   |
| (16) | Guide 16  | COMMUNITY FACILITY LOAN DOCKET   |
| (17) | Guide 17  | CONSTRUCTION CONTRACT DOCUMENTS - SHORT<br>FORM  |
| (18) | Guide 18  | AGENCY SUPPLEMENTAL GENERAL CONDITIONS   |
| (19) | Guide 19  | CONSTRUCTION CONTRACT DOCUMENTS  |
| (20) | Guide 20  | AGREEMENT FOR ENGINEERING SERVICES<br>(AGENCY/EPA JOINTLY FUNDED PROJECTS)                     |
| (21) | Guide 21  | REVIEW OF AUDIT REPORTS  |
| (22) | Guide 22  | DELINQUENT ACCOUNTS POSITIVE ACTION PLAN   |
| (24) | Guide 24  | MINIMUM SUGGESTED CONTENTS OF MANAGEMENT<br>AGREEMENTS   |
| (25) | Guide 25  | JOINT POLICY STATEMENT BETWEEN<br>ENVIRONMENTAL PROTECTION AGENCY AND AGENCY                   |
| (26) | Guide 26  | COMMUNITY PROGRAMS PROJECT SELECTION<br>CRITERIA   |
| (27) | Guide 27  | ATTACHMENTS TO AIA DOCUMENT<br>(Revised 09-24-12, PN 458.)                                     |
| (28) | Exhibit A | CIRCULAR NO. A-128 (Added 03-01-88,<br>SPECIAL PN.)  |
| (29) | Exhibit B | DEPARTMENT OF AGRICULTURE REGIONAL<br>INSPECTOR GENERAL (OIG) (Added 03-01-88,<br>SPECIAL PN.) |

## § 1942.20 (Con.)

(b) These guides and exhibits are for use by agency officials, applicants and applicant's officials and agents on certain matters related to the planning, development, and operation of essential community facilities which involve the use of loans and grants from the agency. This includes activities related to applying for and obtaining such financial assistance. These guides and exhibits are not published in the Federal Register; however, they are available in any agency office. (Revised 08-26-98, PN 296.)

## § 1942.21 Statewide Nonmetropolitan Median Household Income

Statewide Nonmetropolitan Median Household Income means the median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places, of 50,000 or more population. (Added 11-17-04, SPECIAL PN.)

## §§ 1942.22 - 1942.29 [Reserved]

§ 1942.30 Re-lending. (Revised 09-19-18, PN 516.)

The provisions in this section establish the process by which the Agency may make loans to eligible re-lenders who then in turn re-loan the funds to eligible applicants for eligible projects under this subpart. This section may be supplemented by provisions in annual notices published in the FEDERAL REGISTER. In such notices, the Agency may impose, among other things, limits on the total amount of funds to be used through this process and the amount of the loan funding that will be provided to each re-lender.

(a) Re-lender eligibility. Re-lenders must meet each of the following requirements:

(1) Demonstrate the legal authority necessary to make and service loans involving community infrastructure and development similar to the type of projects listed in § 1942.17(d);

(2) Meet federal, state and local requirements in accordance with § 1942.17(k);

(3) As specified in the annual FEDERAL REGISTER notice, demonstrate that a percent of its portfolio is for projects located in or serving Persistent Poverty County(ies) or High Poverty Areas, or that the Re-lender has a minimum amount of experience making loans for projects located in or serving Persistent Poverty County(ies) or High Poverty Area(s);

## § 1942.30(a) (Con.)

(4) Agree to provide adequate collateral, as determined by the Agency, to support the loan request;

(5) Provide a Letter of Intent from a financial institution that an Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency will be issued by the financial institution if the Re-lender is approved for funding;

(6) As specified in the annual FEDERAL REGISTER notice, agree to provide an Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency in the minimum amount equal to the principal and interest installments due the Agency during the first five (5) years of the loan, prior to receiving loan disbursements;

(7) Demonstrate one of the following, as provided in the annual FEDERAL REGISTER notice:

(i) Re-lender is regulated and supervised by a Federal or State Banking Regulatory Agency that is subject to credit examination, AND the institution, its subsidiaries, holding companies, and affiliates are not on their respective regulatory agency's watch list and have no regulatory actions outstanding against them;

(ii) Re-lender has a strong Financial Strength and Performance Rating as specified in the annual FEDERAL REGISTER notice. The achieved rating must indicate financial strength, performance, and risk management practices that consistently provide for safe and sound operations; or

(iii) At the time of application, Relender provides written documentation, acceptable to the Agency, from a financial institution that an Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency will be issued by the financial institution, if the Re-lender is approved for funding; and the Re-lender:

(A) Obtains a strong Financial Strength and Performance Rating as specified in the Annual FEDERAL REGISTER notice prior to any funds being advanced; or

(B) Proves to be a financially sound institution as determined by the Agency in accordance with the annual FEDERAL REGISTER notice;

§ 1942.30(a) (Con.)

(8) Be a legal, non-governmental entity at the time of application (with the exception of Tribal governmental entities);

(9) Be a member of a national organization that provides training, technical assistance and credit evaluation of member organizations, such as FDIC, NCUA or other similar organizations; or be certified by a Government agency as having a primary mission of promoting community development in low-income target markets and perform training and technical assistance as part of that mission;

(10) Agrees to loan a majority of Agency funds, as specified in the annual FEDERAL REGISTER notice, to applicants whose projects are located in or serve Persistent Poverty County(ies) or High Poverty Area(s); and

(11) Meet any other criteria specified by the Agency in the annual Notice published in the FEDERAL REGISTER.

(b) Applicant and project eligibility. To be eligible for a CF Direct loan from a re-lender under this section,

(1) The applicant must meet the eligibility requirements found in this subpart, including but not limited to those in § 1942.2(a)(2) regarding the inability to obtain credit elsewhere and § 1942.17(b) and (k);

(2) The applicant must comply with any other criteria specified by the Agency in the annual Program Notice published in the FEDERAL REGISTER; and

(3) The project must:

(i) Meet all of the eligibility requirements for a project found in this subpart, including but not limited to § 1942.17(b)(2), (d), (e), and (g) and all environmental review requirements as specified in § 1942.2(b) and 7 CFR part 1970; and

(ii) Meet any additional requirements that may be specified in the program's annual Notice published in the FEDERAL REGISTER.

(c) Application submission requirements. To apply for funds under this section, a Re-lender must timely submit all items as specified in the annual FEDERAL REGISTER notice.

§ 1942.30 (Con.)

(d) Evaluation criteria. The Agency will score and rank all eligible and complete Re-lender applications based upon the evaluation factors set out in the annual FEDERAL REGISTER notice, including but not limited to: Lending experience and strength of the re-lender, poverty and project service area, and Administrator's discretionary points.

(e) Other Re-lender requirements. Prior to receiving a direct loan from the Agency, the eligible re-lender must:

- (1) Enter into a Re-lender's agreement provided by the Agency;
- (2) Execute a promissory note;
- (3) Provide an Agency approved Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency in the minimum amount equal to the principal and interest installments due during the first five (5) years of the loan, prior to receiving any loan disbursements;
- (4) Provide adequate collateral satisfactory to the agency; and
- (5) Meet any other loan conditions as described in the annual Notice published in the FEDERAL REGISTER.

(f) Loan origination and servicing.

(1) *Re-lenders.* After the Agency loan is made to the Re-lender, the Re-lender is responsible for:

- (i) Presenting to the Agency eligible CF direct loan applications in accordance with this subpart and any additional terms established in the applicable annual Notice published in the FEDERAL REGISTER;
- (ii) Underwriting and servicing each loan reviewed and approved by the Agency under this section;
- (iii) Submitting reports to the Agency after any loan disbursement as specified in the annual FEDERAL REGISTER notice;
- (iv) Certifying to the Agency that the Re-lender and Borrower have met the requirements of 7 CFR 3575.42 and 3575.43 for planning, bidding, contracting and construction, as specified in the annual FEDERAL REGISTER Notice;

§ 1942.30(f)(1) (Con.)

(v) Complying with other Agency requirements as specified in the annual FEDERAL REGISTER notice concerning environmental, civil rights, and other applicable Federal state, and local law;

(vi) Obtaining disbursement of loan funds according to this section and the annual FEDERAL REGISTER notice within 5 years. Any loan funds not disbursed within that time will be deobligated and become unavailable for disbursement.

(2) Agency responsibilities.

(i) Based on the information presented by the Relender and any additional information that may be requested by the Agency, the Agency will determine the eligibility of the applicant and project under this subpart.

(ii) The Agency will notify the relender of its determination and any administrative review or appeal rights for Agency decisions made under this subpart. Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). The applicant and re-lender may appeal any Agency decision that directly and adversely impacts them. For an adverse decision that impacts the applicant, the re-lender and applicant must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the re-lender may be appealed by the re-lender only. A decision by a re-lender adverse to the interest of an applicant or borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by USDA NAD and will be handled in accordance with 7 CFR part 11.

(iii) For approved eligible borrowers and projects, the Agency will confirm that all environmental requirements as specified in this subpart and 7 CFR part 1970 have been met and that the Relender has provided adequate security for its loan, before the Agency will disburse funds to the Re-lender;



§ 1942.30(f)(2) (Con.)

(iv) The Agency will service each relender's loan in accordance with 7 CFR part 1951, subpart E. The Agency may suspend further disbursements, and pursue any other available and appropriate remedies, if any of the re-lender loans become troubled, delinquent, or otherwise in default status, or if the relender is not meeting the terms of its Relender's Agreement.

§§ 1942.31 - 1942.49 [Reserved]

§ 1942.50 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0015. Public reporting burden for this collection of information is estimated to vary from five minutes to 15 hours per response, with an average of 2.7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0015), Washington, D.C. 20503.

Attachments: Guides 1 through 22 and 24 through 27  
Exhibits A and B

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110D  
(Added 09-19-18, PN 516)

(02-06-85) PN 956

GUIDE LETTER FOR USE IN INFORMING PRIVATE LENDER OF  
RURAL DEVELOPMENT'S COMMITMENT

(Name and Address of Private Lender)

\_\_\_\_\_

Dear \_\_\_\_\_:

Reference is made to a request from the \_\_\_\_\_ (Town of Friendly) through \_\_\_\_\_ (John Smith) its Mayor, for interim financing from your bank to construct its water (and/or sewer) system at the interest rate and terms and conditions agreed upon, as reflected in the attached copy of your letter.

This letter is to confirm certain understandings on behalf of Rural Development.

Final plans and specifications have been prepared and approved, bids have been taken, and the town council is prepared to award the construction contract to the qualified low bidder. It has been determined by the applicant and Rural Development that the conditions of loan (and/or grant) closing can be met.

Funds have been obligated for the project, as evidenced by the attached copy of Form RD 440-57, "Acknowledgment of Obligated Funds/Check Request."

It is proposed by the town with the approval of Rural Development that the bank advance funds, in accordance with the agreed terms and conditions stated in the attached letter, as needed to pay for construction and other authorized and legally eligible expenses incurred by the town, upon presentation of proper statements or work estimates approved by the town's authorized representative and the authorized official of Rural Development.

We have scheduled Rural Development loan to be closed when construction to be financed with loan funds is substantially complete, so that funds will be available to pay off the total amount of advances your bank has made for authorized approved purposes, including accrued interest to the date of closing.

We appreciate your assistance to the community and look forward to working with you on this project.

Sincerely,

State Director or District Director  
Farmers Home Administration

RD Instruction 1942-A  
(Guide 1a)

GUIDE LETTER FOR USE IN INFORMING OTHER LENDERS OF RURAL DEVELOPMENT'S  
COMMITMENT

TO: \_\_\_\_\_ (NAME AND ADDRESS OF LENDER)

SUB: INTERIM FINANCING FOR THE (TOWN OF FRIENDLY)

The (Town of Friendly) (the "applicant") proposes to sell (type of debt instrument) in order to obtain interim financing for the construction of a (description of project). The (debt instrument), in the aggregate principal amount of \$\_\_\_\_\_, is being issued pursuant to a certain (authorizing document) Resolution adopted by the applicant on \_\_\_\_\_, 19\_\_. On the same date the applicant adopted a bond resolution pursuant to which it will issue bonds for permanent financing.

This letter is to confirm certain understandings on behalf of Rural Development.

Final plans and specifications have been prepared and approved, bids have been taken and the applicant has awarded the construction contract to the qualified low bidders. It has been determined by the applicant and Rural Development that the conditions of a permanent loan closing can be met. Presently, Rural Development has no reason to believe that such conditions will not be met.

Funds have been obligated for the project, as evidenced by the attached copy of Form RD 440-57, "Acknowledgment of Obligated Funds/Check Request."

It is proposed by the applicant, with the approval of Rural Development, that the proceeds from the purchase of the (type of debt instrument) will be used to provide for interest on the (type of debt instrument) to maturity and to pay for construction and other authorized and legally eligible expenses incurred by the applicant upon presentation of proper statements or work estimates approved by the applicant, its authorized representatives and the District Director, or other authorized official of Rural Development.

We have scheduled disbursement of the permanent loan to the applicant for later than \_\_\_\_\_, 19\_\_\_\_, in immediately available funds, so that funds will be available to pay the \_\_\_\_\_ (type of debt instrument) in full upon their maturity on \_\_\_\_\_, 19\_\_\_\_. Upon meeting the loan conditions, at the permanent loan closing Rural Development will disburse the permanent loan by purchasing the applicant's (permanent debt instrument) issued pursuant to the Bond Resolution.

We appreciate your assistance to the applicant and look forward to working with you on this project.

Sincerely yours,

State Director or District Director  
Rural Development

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RD Instruction 1942-A  
(Guide 2)

WATER USERS AGREEMENT

This agreement entered into between the \_\_\_\_\_, a nonprofit corporation, hereinafter called the "Association," and \_\_\_\_\_, member(s) of the Association, hereinafter called "Member."

W I T N E S S E T H

Whereas, the Member desires to purchase water from the Association and to enter into a water users agreement as required by the Bylaws of the Association.

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, it is hereby understood and agreed by the parties hereto as follows:

The Association shall furnish, subject to the limitation set out in its Bylaws and Rules and Regulations now in force or as hereafter amended, such quantity of water as Member may desire in connection with Member's occupancy of the following described priority:

EXAMPLE: Lot 1 Section 1 of the Green Valley Subdivision  
fronting 52 feet on Highway No. 620 containing 1/2 acre  
joined on the East by John Jones and on the West by Pete  
Smith; or 162 N. South Street, Springfield, Virginia

The Member agrees to grant to the Association, its successors and assigns, a perpetual easement in, over, under and upon the above-described and, with the right to erect, construct, install, and lay, and thereafter use, operate, inspect, repair, maintain, replace, and remove water pipelines and appurtenant facilities, together with the right to utilize adjoining lands belonging to the Member for the purpose of ingress to and egress from the above-described lands.

The Member shall install and maintain at the member's expense a service line which shall begin at the meter and extend to the dwelling or place of use. The service line shall connect with the distribution system of the Association at the nearest place of desired use by the Member, provided the Association has determined in advance that the system has sufficient capacity to permit delivery of water at that point.

The Member agrees to comply with and be bound by the Articles, Bylaws, Rules and Regulations of the Association, now in force, or as hereafter duly and legally supplemented, amended, or changed. The

(Guide 2) (Page 3)

Member also agrees to pay for water at such rates, time, and place as shall be determined by the Association, and agrees to the imposition of such penalties for noncompliance as are now set out in the Association's Bylaws and Rules and Regulations, or which may be hereafter adopted and imposed by the Association.

The Member agrees to pay a deposit in the amount of \$\_\_\_\_\_. In the event service to the Member is terminated, either voluntarily by the Member, or by the Association for cause, the deposit shall be held and applied by the Association to any unpaid balance then owing on the Member's account. Should the account be fully paid at the time of termination of service to the Member, the deposit shall be refunded by the Association within a reasonable time thereafter.

The Association shall purchase and install a cutoff valve and may also include a water meter in each service. The Association shall have exclusive right to use such cutoff and water meter.

The Association shall have final authority in any question of location of any service line connection to its distribution system; shall determine the allocation of water to Members in the event of a water shortage; and may shut off water to a Member who allows a connection or extension to be made of the member's service line for the purpose of supplying water to another user. In the event the total water supply shall be insufficient to meet

all of the needs of the Members, or in the event there is a shortage of water, the Association may prorate the water available among the various Members on such basis as is deemed equitable by the Board of Directors, and may also prescribe a schedule of hours covering use of water for garden purposes by particular Members and require adherence thereto or prohibit the use of water for garden purposes; provided that, if at any time the total water supply shall be insufficient to meet all of the needs of all of the Members, the Association must first satisfy all of the needs of all Members for domestic purposes before supplying any water for livestock purposes and must satisfy all the needs of all Members for both domestic and livestock purposes before supplying any water for garden purposes.

The Member agrees that no other present or future source of water will be connected to any waterlines served by the Association's waterlines and will disconnect from the present water supply prior to connecting to and switching to the Association's system and shall eliminate their present or future cross-connections in the member's system.

The Member shall connect the service lines to the Association's distribution system and shall commence to use water from the system on the date the water is made available to the Member by the Association. Water charges to the Member shall commence on the date service is made available, regardless of whether the Member connects to the system.



(Guide 2) (Page 5)

In the event the Member shall breach this contract by refusing or failing, without just cause, to connect a service line to the Association's distribution system as set forth above, the Member agrees to pay the Association a lump sum of Three Hundred Dollars (\$300.00) as liquidated damages. It is expressly understood and agreed by the parties hereto that the said amount is agreed upon as liquidated damages in that a breach by the Member in either of the respects set forth above would be difficult, if not impossible, to prove the amount of such damages. The parties hereto have computed, estimated, and agreed upon said sum in an attempt to make a reasonable forecast of probable actual loss because of the difficulty of estimating with exactness the resulting damages.

The failure of a customer to pay water charges duly imposed shall result in the automatic imposition of the following penalties:

1. Nonpayment within ten days from the due date will be subject to a penalty of ten percent of the delinquent account.
2. Nonpayment within thirty days from the due date will result in the water being shut off from the customer's property.

(1-15-79) SPECIAL PN

3. In the event it becomes necessary for the Association to shut off the water from a Member's property, a fee set by the corporation in its rate schedule will be charged for a reconnection of the service.

IN WITNESS WHEREOF, we have executed this agreement this \_\_\_\_\_  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

SEAL

\_\_\_\_\_  
(Name of Association)

ATTEST:

By:

\_\_\_\_\_  
President

\_\_\_\_\_

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

oOo

(Guide 3)

SERVICE DECLINATION STATEMENT

I understand that the \_\_\_\_\_ (Name of Association) proposes to build a (water) (sewer) system to serve my area. I have been given an opportunity to sign a (Water) (Sewer) Users Agreement so that I might obtain service. I do not wish to be served because \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_ Signature

\_\_\_\_\_ (Mailing Address)

\_\_\_\_\_ (Location)

The information inserted above is correct to the best of my knowledge. It was not possible to obtain the signature of this potential user because

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_ \*Signature

\*To be completed and signed by a representative of the association when applicable.

oOo

BYLAWS

of

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ARTICLE I

General Purposes

The purposes for which this corporation is formed, and the powers which it may exercise are set forth in the articles of incorporation of the corporation.

ARTICLE II

Name and Location

Section 1. The name of this corporation is the \_\_\_\_\_.

Section 2. The principal office of this corporation shall be located in the City (Village) or \_\_\_\_\_, County of \_\_\_\_\_ State of \_\_\_\_\_.

ARTICLE III

Seal

Section 1. The seal of the corporation shall have inscribed thereon the name of the corporation, the year of its organization and the words, "Corporation Not For Profit, \_\_\_\_\_."

Section 2. The secretary of the corporation shall have custody of the seal.

Section 3. The seal may be used for causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE IV

Fiscal Year

The fiscal year of the corporation shall begin the \_\_\_\_\_ day of \_\_\_\_\_ in each year.

ARTICLE V

Membership

Section 1. Membership will be limited to those who obtain the organization's services, acquire a tangible interest in its assets in proportion to the business done with the organization and have a voice in its management.

Section 2. Every person (which word as used herein includes any legal entity) who is a record owner of a fee or undivided fee interest, or having a substantial possessory interest, in a property served by the water system may become a member of the corporation upon signing such applications and agreements for the purchase of water as may be provided and required by the corporation and upon the payment of such connection fee as may be imposed by the board of directors provided that only one membership at a time may be held for each property served. A single membership may be issued to all persons owning or having a substantial possessory interest in the property. Only one membership may be held with respect to property at one time. The board of directors shall cause to be issued appropriate certificates of membership, provided that membership shall not be denied because of the applicant's race, color, creed, sex, age, marital status, or national origin. Membership may be denied if capacity of the corporation's water system is exhausted by the need of its existing members, or, if the proposed use of the applicant is such that it would interfere with existing uses previously authorized by the board of directors.

A. A substantial possessory interest is one where the person or persons have a legal right to control and occupancy of a property but do not have the legal or the equitable ownership of the property. It may be under a lease or similar right to possession.

(1) Before membership is allowed to one or more persons claiming such an interest, the corporation will endeavor to obtain the application for membership from the owner of such property.

(2) Where membership is granted to one or more persons having a substantial possessory interest, the corporation, as a condition to the membership, may require such applicant to post such collateral or bond as the directors determine necessary to fully protect the corporation from any additional risk that may be involved to the corporation by reason of the lack of legal ownership in the applicant.

Section 3. Each member shall have only one membership for each property served, regardless of the number of service connections the member may obtain to serve the property. Each membership certificate shall represent one vote. When more than one person holds the interest in a property served, the vote shall be exercised by the person in whose name the certificate is registered or by such person as the several persons may designate, but in no event shall more than one vote be cast with respect to any property.

Section 4. Membership shall be transferable but the transfer will be effective only when noted on the books of the corporation. Such transfer will be made only to a person who obtains a qualifying interest in the property. A member will transfer membership in the corporation to a successor in interest as part of the transaction whereby the member disposes of any interest to said property. The secretary, upon request, will make note of such transfer upon the records of the corporation but need not issue a new certificate to the successor in interest of the previous existing member.

Section 5. When membership in the corporation is not transferred, it shall terminate upon the disposition or other termination of the member's interest in the property, regardless of whether or not the certificate is surrendered to the corporation. Membership also may be terminated by action of the board of directors where the use of the property is changed so as to materially increase the amount of water consumed to the prejudice of other existing members or to the prejudice of the orderly operation of the system.

Section 6. Termination of membership will not result in forfeiture of the former member's rights and interest in the organization's assets and the former member will not be precluded from receiving a proportionate share of any subsequent distribution of such assets by the organization.

Section 7. The termination of the membership of any member shall not disqualify for membership any other person who has or obtains an interest in the property of the terminated member and who otherwise meets the requirements of these bylaws.

Section 8. In the event a member's property interest is divested other than by voluntary means, such member's membership will pass to the trustee, receiver, executor, or the like who will be entitled either in person or through a designated representative to exercise all of the rights incident to such membership, but subject to such duties and liabilities also applicable to the membership. The trustee, receiver, executor, or the like, may terminate such membership by written notice to such effect delivered or mailed to the secretary of the corporation. Upon the final disposition of such property rights, the owner thereof shall be entitled to membership in like manner as if the membership had been transferred to the owner by the original member as set forth in Section 4 above.

Section 9. Upon the transfer of a membership, the corporation will not look to the successor in interest for the payment of any past due amounts. The corporation will seek collection only from the individual who incurred such charges or assessments or from the property itself if a judgment lien had been duly perfected against such property.

## ARTICLE VI

### Membership Certificates

Section 1. This corporation shall not have capital stock. Membership in the corporation shall be represented by membership certificates. Such certificates shall represent the right to use and enjoy the benefits of the corporation's water supply system upon the payment of necessary assessments, if any, and of reasonable charges based upon such use, provided such use and enjoyment are consistent with the rules, regulations, and contracts affecting the same as may from time to time be prescribed by the board of directors.

Section 2. A membership certificate shall be issued to each holder of fully paid membership, numbered consecutively in accordance with the order of issue, and bear on its face the following statement:

This membership certificate is issued and accepted in accordance with and subject to the conditions and restrictions stipulated in the articles of incorporation and bylaws and amendments to the same  
of the \_\_\_\_\_  
Water Association.

ARTICLE VII

Meetings of Members

Section 1. The annual meeting of the members of this corporation shall be held at the City (Village) of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_m., on the \_\_\_\_\_ in \_\_\_\_\_ of each year, if not a Sunday or legal holiday, or if a Sunday or legal holiday on the next business day following. The place, day, and time of the annual meeting may be changed to any other convenient place, day, and time in the county by the board of directors giving notice thereof to each member not less than ten (10) days in advance thereof.

Section 2. Special meetings of the members may be called at any time by the action of the board of directors and such meetings must be called whenever a petition requesting such meetings is signed by at least ten percent of the members and presented to the secretary or to the board of directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted thereat except such as is specified in the notice.

Section 3. Notice of meetings of members of the corporation, both regular and special, shall be given by notice mailed by first-class mail to each member of record, directed to the address shown upon the books of the corporation, not less than ten (10) nor more than forty (40) days prior to such meeting. Such a notice shall state the nature, time, place and purpose of the meeting, but no failure or irregularity of notice of any annual meeting, regularly held, shall affect any proceedings taken thereat.

Section 4. The presence at a meeting of members entitled to cast in their own right or by proxy \_\_\_\_\_ percent of the total number of votes shall constitute a quorum. All proxies shall be in writing and filed with the secretary. Such proxies may be general or restrictive. Proxies shall be revocable and shall not be valid beyond 11 months, nor after termination of the membership by cessation of the member's interest in the property.

Section 5. Directors of this corporation shall be elected at the annual meeting of the members as provided in Article VIII, Section 1. No cumulative voting shall be allowed.

Section 6. The order of business at the regular meetings and so far as possible at all other meetings shall be:



1. Calling to order and proof of quorum
2. Proof of notice of meeting
3. Reading and action on any unapproved minutes
4. Reports of officers and committees
5. Election of directors
6. Unfinished business
7. New business
8. Adjournment

#### ARTICLE VIII

##### Directors and Officers

Section 1. The board of directors of this corporation shall consist of five members, all of whom shall be members of the corporation. The directors named in the articles of incorporation shall serve until the first annual meeting of the members and until their successors are elected and have qualified. At the first annual meeting of the members, one director shall be elected for a term of one year; two directors for a term of two years; and two directors for a term of three years. At each annual meeting thereafter, the members shall elect for a term of three years the number of directors whose terms of office have expired. Each director shall hold office for the term for which elected and until a successor shall have been elected and qualified.

Section 2. The board of directors shall meet within ten (10) days after the annual election of directors and shall elect a president and vice-president from among themselves and secretary-treasurer who need not be a member of the board of directors, each of whom shall hold office until the next annual meeting and until the election and qualification of a successor unless sooner removed by death, resignation, or for cause.

Section 3. If the office of any director becomes vacant by reason of death, resignation, retirement, disqualification, or otherwise, except by removal from office, a majority of the remaining directors, shall by a majority vote, choose a successor who shall hold office until the next regular meeting of the members of the corporation, at which time the members shall elect a director for the unexpired term or terms.

Section 4. A majority of the board of directors shall constitute a quorum at any meeting of the board. The affirmative vote of the majority of the directors at a meeting at which a quorum is present shall be the act of the board.

Section 5. Compensation of officers may be fixed only at any regular or special meeting of the members of the corporation. Directors shall receive no compensation for their services as such.

Section 6. Officers and directors may be removed from office in the following manner: Any member, officer, or director may present charges against a director or officer by filing them in writing with the secretary of the corporation. If presented by a member, the charges must be accompanied by a petition signed by ten percent of the members of the corporation. Such removal shall be voted on at the next regular or special meeting of the members and shall be effective if approved by a vote of a majority of those voting if a quorum is present. The director or officer against whom such charges have been presented shall be informed, in writing, of such charges at least twenty days prior to the meeting, and shall have the opportunity at such meeting to be heard in person or by counsel and to present witnesses; and the person or persons presenting such charges shall have the same opportunity. If the removal of a director is approved, such action shall also vacate any other office held by the removed director in the corporation. A vacancy in the board thus created shall immediately be filled by a vote of a majority of the members present and voting at such meeting. A vacancy in any office thus created shall be filled by the board of directors from among their number so constituted after the vacancy in the board has been filled.

#### ARTICLE IX

##### Duties of Directors

Section 1. The board of directors, subject to restrictions of law, the articles of incorporation, and these bylaws, shall exercise all of the powers of the corporation, and, without prejudice to or limitation upon their general powers, it is hereby expressly provided that the board of directors shall have, and are hereby given full power and authority in respect to the matters as hereinafter set forth to be exercised by resolution duly adopted by the board:

A. To approve membership applications and to cause to be issued appropriate certificates and to permit the connection of properties to the system in the future in cases involving proposed construction or may issue such certificates prior to the commencement of the proposed construction.

B. To select and appoint all agents or employees of the corporation, remove such agents or employees of the corporation, prescribe such duties and designate such powers as may not be inconsistent with these bylaws, fix their compensation and pay for faithful services.

C. To borrow from any source, money, goods, or services and to make and issue notes and other negotiable or nonnegotiable instruments evidencing indebtedness of the corporation; to make and issue mortgages, deeds of trust, pledges of revenue, trust agreements, security agreements and financing statements and other instruments evidencing a security interest in the assets of the corporation; and, to do every act and thing necessary to effectuate the same.

D. To prescribe, adopt and amend, from time to time such equitable uniform rules and regulations as, in its discretion, may be deemed essential or convenient for the conduct of the business and affairs of the corporation and the guidance and control of its officers and employees, and to prescribe adequate penalties for the breach thereof.

E. To order, at least once each year, an audit of the books and accounts of the corporation by a competent public auditor or accountant. The report prepared by such auditor or accountant shall be submitted to the members of the corporation at their annual meeting, together with a proposed budget for the ensuing year. Copies of such audits and budgets shall be submitted to such parties as may be required by other agreements.

F. To fix and alter the charges to be paid by each member for services rendered by the corporation to the member, including connection or reconnection fees where such are deemed to be necessary by the directors, and to fix and alter the method of billing, time of payment, manner of connection, and penalties for late or nonpayment of the same. The board may establish one or more classes of users. All charges shall be uniform and nondiscriminating within each class of users.

G. To require all officers, agents, and employees charged with responsibility for the custody of any of the funds of the corporation to give adequate bonds, the cost thereof to be paid by the corporation, and it shall be mandatory upon the directors to so require.

H. To select one or more banks to act as depositories of the funds of the corporation and to determine the manner of receiving, depositing, and disbursing the funds of the corporation and the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.

I. To levy assessments against the members of the corporation in such manner and upon such proportionate basis as the directors deem equitable, and to enforce collection of such assessments by the suspension of water service or other legal methods. The board of directors shall have the option to suspend the service of any member who has not paid such assessment within 30 days from the date the assessment was due, provided the corporation must give the member at least 15 days' written notice at the address of the member on the books of the corporation of its intention to suspend such service if the assessment is not paid. Upon payment of such assessments, any penalties applicable thereto, and a reconnection charge, if one is in effect, service will be promptly restored to such a member.

## ARTICLE X

### Duties of Officers

Section 1. Duties of President. The President shall preside over all meetings of the corporation and the board of directors, call special meetings of the board of directors, perform all acts and duties usually performed by an executive and presiding officer, and sign all membership certificates and such other papers of the corporation as may be authorized or directed to sign by the board of directors, provided the board of directors may authorize any person to sign any or all checks, contracts, and other instruments in writing on behalf of the corporation. The President shall perform such other duties as may be prescribed by the board of directors.

Section 2. Duties of the Vice-President. In the absence or disability of the President, the Vice-President shall perform the duties of the President; provided, however, that in case of death, resignation, or disability of the President, the board of directors may declare the office vacant and elect a successor.

Section 3. Duties of the Secretary-Treasurer. The Secretary-Treasurer shall keep a complete record of all meetings of the corporation and of the board of directors and shall have general charge and supervision of the books and records of the corporation. The Secretary-Treasurer shall attest the President's signature on all membership certificates and other papers pertaining to the corporation unless otherwise directed by the board of directors. The Secretary-Treasurer shall serve, mail, or deliver all notices required by law and by these bylaws and shall make a full report of all matters and business pertaining to the office to the members at the annual meeting or at such other time or times as the board of directors may require. The Secretary-Treasurer shall keep the corporate seal and membership certificates issued and affix said corporate seal to all papers requiring a seal. The Secretary-Treasurer shall keep a proper membership certificate record, showing the name of each member of the corporation and date of issuance, surrender, transfer, termination, cancellation, or forfeiture. The Secretary-Treasurer shall make all reports required by law and shall perform such other duties as may be required by the corporation or the board of directors. Upon the election of a successor, the Secretary-Treasurer shall turn over to the successor all books and other property belonging to the corporation that the Secretary Treasurer may possess. The Secretary-Treasurer shall also perform such duties with respect to the finances of the corporation as may be prescribed by the board of directors.

#### ARTICLE XI

##### Benefits and Duties of Members

Section 1. The corporation will install, maintain and operate a main distribution pipeline or lines from the source of the water supply and service lines from the main distribution pipeline or lines to the property line of each member of the corporation, at which points, designated as delivery points, meters to be purchased, installed, owned, and maintained by the corporation shall be placed. The cost of the service line or lines from the main distribution pipeline or lines of the corporation to the property line of each member shall be paid by the corporation. The corporation also may purchase and install a cutoff valve in each service line from its main distribution line or lines, such cutoff valve to be owned and maintained by the corporation and to be installed on some portion of the service line owned by the corporation. The corporation shall have the sole and exclusive right to use of such cutoff valve. However, the provisions of this section shall not be construed to require the acquisition or installation of meters or cutoff valves where the directors determine under the circumstances of the system and the nature of the membership that the use of either or both devices is impractical, unnecessary to protect the system and the rights of the membership, and/or economically not feasible.

Section 2. Each member will be required, at the members expense, to have dug a ditch for the connection of the service line or lines from the property line of the member to member's dwelling or other portion of the member's premises, and to purchase and have installed the portion of the service line or lines from the member's property line to the place of use on the member's premises. The member will maintain such portion of such service line or lines which shall be owned by the member, at the member's own expense. The corporation may, if the board of directors so determines, purchase the pipe for and install such portion of such service line or lines, the cost of which will, however, be paid by the individual members. In addition, each member shall pay such connection charge, if any, as may have been imposed by the board of directors before such member will be entitled to receive water from the system.

Section 3. Each member may be permitted to have additional service lines from the corporation's water system in the discretion of the board of directors upon proper application therefore and the tender or payment not to exceed the then existing connection charge. The approval by the board of directors of additional service lines to an existing member may be made conditional upon such provisions as the board of directors determines necessary to protect the interests of other members and to allow for the orderly expansion and extension of the system. Each service line shall connect with the corporation's water system at the nearest available place to the place of desired use by the member if the corporation's water system has sufficient capacity to permit the delivery of water through a service line at that point without interfering with the delivery of water through a prior service line. If the corporation's water system is inadequate to permit the delivery of water through a service line installed at such place without interfering with the delivery of water through a prior service line, then such service line shall be installed at such place designated by the corporation.

Section 4. Each member may be permitted to purchase from the corporation, pursuant to such agreement as may from time to time be provided and required by the corporation, such water as is needed for domestic, commercial, agricultural, industrial or other purposes as a member may desire, subject, however, to the provisions of these bylaws and to such rules and regulations as may be prescribed by the board of directors. Each member shall be entitled to have delivered, through the member's service lines, only such water as may be necessary to supply the needs of each member, including the member's family, business, agricultural or industrial requirements. The water delivered through each service line may be metered separately, irrespective of the number of service lines owned by a member.

Section 5. In the event the total water supply shall be insufficient to meet all of the needs of the members or in the event there is a shortage of water, the corporation may prorate the water available among the various members on such basis as is deemed equitable by the board of directors, and may also prescribe a schedule of hours covering use of water for commercial, agricultural or industrial purposes by particular members and require adherence thereto or prohibit the use of water for commercial, agricultural or industrial purposes; provided, that if at any time the total water supply shall be insufficient to meet all of the needs of all of the members for domestic, livestock, commercial, agricultural or industrial purposes, the corporation must first satisfy all of the reasonable needs of the members for domestic purposes before supplying any water for livestock purposes and must satisfy all of the needs of all of the members for domestic and livestock purposes before supplying any water for commercial or industrial purposes; and, provided further, that where a member has more than one service line, the corporation may cut off the flow of water to the nondomestic service lines until such time as the supply of water from the system is sufficient to meet the needs of all of the members for domestic and livestock purposes. During such periods of shutoff of additional service lines there shall be no minimum fee charged to the members having such additional service lines and the cost, if any, of resuming the flow of water to such additional service lines shall be borne by the corporation.

Section 6. The board of directors shall, with the consent of Rural Development, so long as it shall either hold any obligations or insure any financing of the system, prior to the beginning of each calendar year, determine the flat minimum monthly rate to be charged each member during the following calendar year for a specified quantity of water, such flat minimum monthly rate to be payable irrespective of whether any water is used by a member during any month, the amount of additional charges, if any, for additional water which may be supplied the members, and the amount of penalty for late payments, and shall fix the date for the payment of such charges. A member to be entitled to the delivery of water shall pay such charges at the office designated by the corporation at or prior to the dates fixed by the board of directors. The failure to pay water charges duly imposed shall result in the automatic imposition of the following penalties.

A. Nonpayment within ten days from the due date will be subject to a penalty of ten (10) percent of the delinquent account, which percent may be changed at the discretion of the board of directors.

B. Nonpayment within thirty days from the due date will result in the water being shut off from the member's property without any notice thereof to such delinquent member. Upon the payment by the delinquent member of past due water charges, penalties thereon and any reconnection charge, such member shall be entitled to resumption of the water supply. During the time of such suspension of water to a member, such member shall have no right to vote in the affairs of the corporation.

Section 7. The board of directors shall be authorized to require each member to enter into water users agreements which shall embody the principles set forth in the foregoing provisions of these bylaws.

## ARTICLE XII

### Distribution of Surplus Funds

Section 1. It is not anticipated that there will be any surplus funds or net income to the corporation at the end of the fiscal year after provisions are made for the payment of the expenses of operation and maintenance and the funding of the various reserves for depreciation, debt retirement, and other purposes, including those required by the terms of any borrowing transaction. The occurrence in subsequent fiscal years of surplus funds or net income above the requirements of the corporation as above mentioned, including, if any, a reserve for improvements and extension of the facilities shall be taken into consideration by the board of directors in determining the water rates to be charged the members.

Section 2. The organization will provide services substantially at cost. Dividends shall not be paid on the basis of membership or shares of stock in the organization. All funds from whatever sources remaining at the end of the year in excess of those needed to meet current losses and expenses will be distributed to members in proportion to the amount of business done by them during the year subject to concurrence of Rural Development or will be retained for such purposes as retiring indebtedness incurred in acquiring assets, expanding the organization's services, maintaining reserves for necessary purposes or reducing subsequent year's water rates. However, the organization will maintain records from which each member's rights and interest in the retained funds and assets acquired with such funds in proportion to the member's business with the organization can be determined at any time. Required records for this purpose include financial records that show the organization's revenues from all sources for each year and records, such as bills or receipts, showing the amount of each member's business annually with the organization.



Section 3. Upon dissolution, after paying off all debts and obligations, members and former members will be entitled to receive their equitable share of all the proceeds remaining to the extent practicable as reflected by the records.

ARTICLE XIII

Amendments

These bylaws may be repealed or amended by a vote of the majority of the members present at any regular meeting of the corporation, or at any special meeting of the corporation called for that purpose, except that so long as any indebtedness is held by or guaranteed by Rural Development, the members shall not have the power to change the purposes of the corporation so as to decrease its rights and powers under the laws of the State, or to waive any requirement of bond or other provision for the safety and security of the property and funds of the corporation or its members, or so to amend the bylaws as to effect a fundamental change in the policies of the corporation without the prior approval of Rural Development in writing.

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We certify that the foregoing bylaws were duly adopted by the members on \_\_\_\_\_, 19\_\_\_\_, that the same are in full force and

Given under our hands and the seal of the corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

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Secretary-Treasurer

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President

FINANCIAL FEASIBILITY REPORT

I General.

The following may be used as a guide for the preparation of financial feasibility reports as required for Rural Development financed facilities. The guide contains minimal requirements and the report writer is expected to fully disclose and analyze all significant factors which will likely have a favorable or adverse effect on the financial success of the proposed facility.

A Need for the facility.

B Existing facilities.

Explain current capacities, rates or usage, activities, suitability for continued use, alternate usage, deficiencies in services, staffing, physical conditions, and any other pertinent information.

C Proposed facility.

1 Description of construction and renovation by component parts including capacity of each component part and physical limiting factors.

2 Explain and document the need for the facility. Include comments regarding the following:

- a Service area
- b Population trends
- c Similar facilities and services in the area
- d Usage trends
- e Community support
- f Regulatory agency approval
- g Economy in the service area
- h Analysis of staff and consultants

D Financial information.

1 Explain all assumptions underlying the expected demand, use, and projections of financial data, such as:

RD Instruction 1942-A  
(Guide 5) (Page 2)

- a Changes in usage
- b All income and expense
- c Rate structure
- d Allowance for uncollectible accounts
- e Depreciation life and method
- f Description of long-term debts

2 Financial statements. The following financial statements must be prepared reflecting five years projections:

- a Balance sheet for all funds
- b Statement of income and expense
- c Statement of cash flow (cash receipts and disbursements)
- d Comparison data for facilities in service area (latest year only)

PRELIMINARY ARCHITECTURAL FEASIBILITY REPORT

I GENERAL. The following may be used as a guide for preparation of the Preliminary Architectural Feasibility Report as required for Rural Development financed facilities.

A Need for the facility.

B Existing facilities. Describe - include condition, adequacy, suitability for continued use and other pertinent information.

C Proposed facility. General description of proposed facility including design criteria adopted for continued use and other pertinent information.

D Building sites.

- 1 Amount of land required.
- 2 Location - Alternate locations.
- 3 Site plan.
- 4 Site suitability.

E Cost estimate.

- 1 Development and construction.
- 2 Land and rights.
- 3 Legal.
- 4 Architect fees.
- 5 Interest.
- 6 Equipment.
- 7 Contingencies.
- 8 Refinancing.
- 9 Other (described).

F Annual operating budget.

1 Income - Include rate schedule. Project income realistically.

2 Operation and maintenance costs - Project costs realistically.

In the absence of other data, base on actual costs of other existing facilities of similar size and complexity. Include facts in the report to substantiate operation and maintenance cost estimates.

G Maps, drawings, sketches, and photographs.

1 Maps - Show locations, boundaries, elevations, population distribution, existing and proposed facility, right-of-way, and land ownership.

2 Drawings and sketches - Show preliminary design and layout elevations.

3 Photographs - As needed.

H Construction problems. Discuss in detail - Include information on items which may affect the cost of construction.

I Conclusions and recommendations. Discuss possible alternatives to proposed plans.

PRELIMINARY ENGINEERING REPORT

WATER FACILITY

I. GENERAL. A Preliminary Engineering Report should clearly describe the owner's present situation, analyze alternatives, and propose a specific course of action, from an engineering perspective. The level of effort required to prepare the report and the depth of analysis within the report are proportional to the size and complexity of the proposed project. Rural Development projects must be modest in design, size and cost, and be constructed and operated in an environmentally responsible manner. The following should be used as a guide for the preparation of Preliminary Engineering Reports for Rural Development financed water systems.

II. PROJECT PLANNING AREA. Describe the area under consideration. The project planning area may be larger than the service area determined to be economically feasible. The description should include information on the following:

A. Location. Maps, photographs, and sketches. These materials should indicate legal and natural boundaries, major obstacles, elevations, etc.

B. Environmental Resources Present. Maps, photographs, studies and narrative. These materials should provide information on the location and significance of important land resources (farmland, rangeland, forestland, wetlands and 100/500 year floodplains, including stream crossings), historic sites, endangered species/critical habitats, etc., that must be considered in project planning.

C. Growth Areas and Population Trends. Specific areas of concentrated growth should be identified. Population projections for the project planning area and concentrated growth areas should be provided for the project design period. These projections should be based on historical records with justification from recognized sources.

III. EXISTING FACILITIES. Describe the existing facilities including at least the following information:

A. Location Map. Provide a schematic layout and general service area map (may be identified on project planning area maps).

B. History.

C. Condition of Facilities. Describe present condition; suitability for continued use; adequacy of water supply; and, if any existing central facilities, the treatment, storage, and distribution capabilities. Also, describe compliance with Safe Drinking Water Act and applicable State requirements.

D. Financial Status of any Operating Central Facilities. Provide information regarding rate schedules, annual operating and maintenance (o&m) cost, tabulation of users by monthly usage categories and revenue received for last three fiscal years. Give status of existing debts and required reserve accounts.

IV. NEED FOR PROJECT. Describe the needs in the following order of priority:

A. Health and Safety. Describe concerns and include relevant regulations and correspondence from/to Federal, and State regulatory agencies.

B. System O&M. Describe the concerns and indicate those with the greatest impact. Investigate water loss, management adequacy, inefficient designs, and problem elimination prior to adding additional capacity.

C. Growth. Describe the reasonable growth capacity that is necessary to meet needs during the planning period. Facilities proposed to be constructed to meet future growth needs should generally be supported by additional revenues. Consideration should be given to designing for phased capacity increases. Provide number of new customers committed to this project.

V. ALTERNATIVES CONSIDERED. This section should contain a description of the reasonable alternatives that were considered in planning a solution to meet the identified need. The description should include the following information on each alternative:

A. Description. Describe the facilities associated with the alternative. Describe all feasible water supply sources and provide comparison of such sources. Also, describe treatment, storage and distribution facilities.

B. Design Criteria. State the design parameters used for evaluation purposes. These parameters must follow the criteria established in RD Instruction 1942-A.

C. Map. Schematic layout.

D. Environmental Impacts. Do not duplicate the information in the applicant's submittal of environmental information. Describe unique direct and indirect impacts on floodplains, wetlands, other important land resources, endangered species, historical and archaeological properties, etc., as they relate to a specific alternative. Rural Development must conduct an environmental assessment prior to project approval.

E. Land Requirements. Identify sites and easements required. Further specify whether these properties are currently owned, to be acquired or leased.

F. Construction Problems. Discuss concerns such as subsurface rock, high water table, limited access, or other conditions which may affect cost of construction or operation of facility.

G. Cost Estimates.

1. Construction.
2. Non-Construction and Other Projects.
2. Annual Operation and Maintenance.
3. Present Worth, based on Federal discount rates.

H. Advantages/Disadvantages. Describe the specific alternative's ability to meet the owner's needs within its financial and operational resources, comply with regulatory requirements, compatibility with existing comprehensive area\_wide development plans, and satisfy public and environmental concerns. A matrix rating system could be useful in displaying the information.

VI. PROPOSED PROJECT (RECOMMENDED ALTERNATIVE). This section should contain a fully developed description of the proposed project based on the preliminary description under the evaluation of alternatives. At least the following information should be included:

A. Project Design.

1. Water Supply. Include requirements for quality and quantity. Describe recommended source, including site.
2. Treatment. Describe process in detail and identify location of plant and site of any process discharges.
3. Storage. Identify size, type and site location.
4. Pumping Stations. Identify size, type, site location and any special power requirements.
5. Distribution Layout. Identify general location of line improvements: lengths, sizes and key components.
6. Hydraulic Calculations. This information should provide sufficient detail in a tabular format to determine compliance with Rural Development design requirements. Automation tools may be used by the engineer. The submittal should include a map with a list of nodes and pipes and the associated characteristics, such as elevation of node, pipe diameter, pipe segment length, reservoir elevation, domestic and industrial water demands, fire flow, etc.

B. Cost Estimate. Provide an itemized estimate of the project cost based on the anticipated period of construction. Include development and construction, land and rights, legal, engineering, interest, equipment, contingencies, refinancing, and other costs associated with the proposed project. (For projects containing both water and waste disposal systems, provide a separate cost estimate for each system.)



C. Annual Operating Budget.

1. Income. Provide a rate schedule. Project income realistically, based on user billings, water treatment contracts, and other sources of incomes. In the absence of other reliable information, for budget purposes, base water use on 60 gallons per capita per day, or 150 gallons per residential\_sized connection per day, or 4,500 gallons per residential\_sized connection per month. When large agricultural or commercial users are projected, the report should include facts to substantiate such projections and evaluate the impact of such users on the economic viability of the project. The number of users should be based on equivalent dwelling units, which is the level of service provided to a typical rural residential dwelling.

2. Operations and Maintenance Costs. Project costs realistically. In the absence of other reliable data, base on actual costs of other existing facilities of similar size and complexity. Include facts in the report to substantiate operation and maintenance cost estimates. Include salaries, wages, taxes, accounting and auditing fees, legal fees, interest, utilities, gasoline, oil and fuel, insurance, repairs and maintenance, supplies, chemicals, office supplies and printing, and miscellaneous.

3. Capital Improvements. If purchasing water or if water is being treated by other, these costs should be included in o&m costs.

4. Debt repayments. Describe existing and proposed project financing from all sources. All estimates of Rural Development funding should be based on loans, not grants. Rural Development will evaluate the proposed project for the possible inclusion of Rural Development grant funds.

5. Reserve. Unless otherwise required by State statute establish at one-tenth (1/10) of annual debt repayment requirement.

VII. CONCLUSIONS AND RECOMMENDATIONS. Provide any additional findings and recommendations that should be considered in development of the project. This may include recommendations for special studies, highlight the need for special coordination, a recommended plan of action to expedite project development, etc.

PRELIMINARY ENGINEERING REPORT

SEWERAGE SYSTEMS

I. GENERAL. A Preliminary Engineering Report should clearly describe the owner's present situation, analyze alternatives, and propose a specific course of action, from an engineering perspective. The level of effort required to prepare the report and the depth of analysis within the report are proportional to the size and complexity of the proposed project. Rural Development projects must be modest in design, size and cost, and constructed and operated in an environmentally responsible manner. The following should be used as a guide for the preparation of Preliminary Engineering Reports for Rural Development financed wastewater systems.

II. PROJECT PLANNING AREA. Describe the area under consideration. The project planning area may be larger than the service area determined to be economically feasible. The description should include information on the following:

A. Location. Maps, photographs, and sketches. These materials should indicate legal and natural boundaries, major obstacles, elevations, etc.

B. Environmental resources present. Maps, photographs, studies and narrative. These materials should provide information on the location and significance of important land resources (farmland, rangeland, forestland, wetlands and 100/500 year floodplains, including stream crossings), historic sites, endangered species/critical habitats, etc. that must be considered in project planning.

C. Growth areas and population trends. Specific areas of concentrated growth should be identified. Population projections for the project planning area and concentrated growth areas should be provided for the project design period. These projections should be based on historical records with justification from recognized sources.

III. EXISTING FACILITIES. Describe the existing facilities, including at least the following information:

A. Location map. Provide a schematic layout and general service area map (may be identified on project planning area maps).

B. History.

C. Condition of facilities. Describe present condition; suitability for continued use; adequacy of current facilities; and, if there are any existing central facilities, the treatment, storage, and disposal capabilities. Also, describe compliance with Clean Water Act and other applicable State requirements.

D. Financial status of any operating central facilities. Provide information regarding rate schedules, annual operating and maintenance cost (O&M), tabulation of users by monthly usage categories and revenue received for last three fiscal years. Give status of existing debts, and required reserve accounts.

IV. NEED FOR PROJECT. Describe the needs in the following order of priority:

A. Health and safety. Describe concerns and include relevant regulations and correspondence from/to Federal, and State regulatory agencies.

B. System O&M. Describe the concerns and indicate those with the greatest impact. Investigate infiltration and inflow, management adequacy, inefficient designs, and problem elimination prior to adding additional capacity.

C. Growth. Describe the reasonable growth capacity that is necessary to meet needs during the planning period. Facilities proposed to be constructed to meet future growth needs should generally be supported by additional revenues. Consideration should be given to designing for phased capacity increases. Provide number of new customers committed to this project.

V. ALTERNATIVES CONSIDERED. This section should contain a description of the reasonable alternatives that were considered in planning a solution to meet the identified need. The description should include the following information on each alternative:

A. Description. Describe the facilities associated with the alternative. Describe all feasible wastewater treatment technologies and provide comparison of such. Also, describe collection facilities. A feasible alternative may be a combination of central facilities and management of on-site facilities or only the latter.

B. Design criteria. State the design parameters used for evaluation purposes. These parameters must follow the criteria established in RD Instruction 1942-A.

C. Map. Schematic layout.

D. Environmental impacts. Do not duplicate the information in the applicant's submittal of environmental information. Describe unique direct and indirect impacts on floodplains, wetlands, other important land resources, endangered species, historical and archaeological properties, etc., as they relate to a specific alternative. Rural Development must conduct an environmental assessment prior to project approval.

E. Land requirements. Identify sites and easements required. Further specify whether these properties are currently owned, to be acquired, or leased.

F. Construction problems. Discuss concerns such as subsurface rock, high water table, limited access, or other conditions which may affect cost of construction or operation of facility.

G. Cost estimates (Separate estimates for collection and treatment).

1. Construction.
2. Non-Construction and Other Projects.
3. Annual Operation and Maintenance.
4. Present Worth, based on Federal discount rates.

H. Advantages/disadvantages. Describe the specific alternative's ability to meet the owner's needs within its financial and operational resources, comply with regulatory requirements, compatibility with existing comprehensive area\_wide development plans, and satisfy public and environmental concerns. A matrix rating system could be useful in displaying the information.

VI. PROPOSED PROJECT (RECOMMENDED ALTERNATIVE). This section should contain a fully developed description of the proposed project based on the preliminary description under the evaluation of alternatives. At least the following information should be included:

A. Project design.

1. Treatment. Describe process in detail and identify location of plant and site of any discharges.
2. Pumping Stations. Identify size, type, site location and any special power requirements.
3. Collection System Layout. Identify general location of line improvements: lengths, sizes and key components.
4. Hydraulic Calculations. This information should provide sufficient detail in a tabular format to determine compliance with Rural Development design requirements. Automation tools may be used by the engineer. The submittal should include a map with a list of manholes and pipes and the associated characteristics, such as elevation of inverts, pipe diameter, pipe segment length, etc.

B. Cost estimate. Provide an itemized estimate of the project cost based on the anticipated period of construction. Include development and construction, land and rights, legal, engineering, interest, equipment, contingencies, refinancing, and any other costs associated with the proposed project. (For projects containing both water and waste disposal systems, provide a separate cost estimate for each system.)

C. Annual operating budget.

1. Income. Provide a rate schedule. Project income realistically, based on user billings, wastewater treatment contracts, and other sources of income. In the absence of other reliable information, for budget purposes, base wastewater generation on 60 gallons per capita per day, or 150 gallons per residential\_sized connection per day, or 4,500 gallons per residential\_sized connection per month. When large users are projected, the report should include facts to substantiate such projections and evaluate the impact of such users on the economic viability of the project. The number of users should be based on equivalent dwelling units, which is the level of service provided to a typical rural residential dwelling.

2. Operations and Maintenance Costs. Project costs realistically. In the absence of other reliable data, base on actual costs of other existing facilities of similar size and complexity. Include facts in the report to substantiate operation and maintenance cost estimates. Include salaries, wages, taxes, accounting and auditing fees, legal fees, interest, utilities, gasoline, oil and fuel, insurance, repairs and maintenance, supplies, chemicals, office supplies and printing, and miscellaneous.

3. Capital Improvements.

4. Debt Repayments. Describe existing and proposed project financing from all sources. All estimates of Rural Development funding should be based on loans, not grants. Rural Development will evaluate the proposed project for the possible inclusion of Rural Development grant funds.

5. Reserve. Unless otherwise required by State statute establish at one-tenth (1/10) of annual debt repayment requirement.

VII. CONCLUSIONS AND RECOMMENDATIONS. Provide any additional findings and recommendations that should be considered in development of the project. This may include recommendations for special studies, highlight the need for special coordination, a recommended plan of action to expedite project development, etc.

PRELIMINARY ENGINEERING REPORT

SOLID WASTE DISPOSAL SYSTEMS

I. GENERAL. A Preliminary Engineering Report should clearly describe the owner's present situation, analyze alternatives, and propose a specific course of action, from an engineering perspective. The level of effort required to prepare the report and the depth of analysis within the report are proportional to the size and complexity of the proposed project. Rural Development projects must be modest in design, size and cost, and constructed and operated in an environmentally responsible manner. The following should be used as a guide for the preparation of Preliminary Engineering Reports for Rural Development financed solid waste disposal facilities.

II. PROJECT PLANNING AREA. Describe the area under consideration. The project planning area may be larger than the service area determined to be economically feasible. The description should include information on the following:

A. Location. Maps, photographs, and sketches. These materials should indicate legal and natural boundaries, major obstacles, etc.

B. Environmental resources present. Maps, photographs, studies and narrative. These materials should provide information on the location and significance of important land resources (farmland, rangeland, forestland, wetlands and 100/500 year floodplains) historic sites, endangered species/critical habitats, etc., that must be considered in project planning.

C. Growth areas and population trends. Specific areas of concentrated growth should be identified. Population projections for the project planning area and concentrated growth areas should be provided for the project design period. These projections should be based on historical records with justification from recognized sources.

III. EXISTING FACILITIES. Describe the existing facilities, including at least the following information:

A. Location map. Provide a schematic layout and general service area map (may be identified on project planning area maps).

B. History.

C. Condition of facilities. Describe present condition and suitability for continued use and any existing central facilities used for collection, storage, and disposal. Also, describe compliance with applicable Federal and State requirements.

D. Financial status of any operating central facilities. Provide information regarding rate schedules, annual operating and maintenance cost (O&M), tabulation of users by monthly usage categories and revenue received for last three fiscal years. Give status of existing debts and required reserve accounts.

IV. NEED FOR PROJECT. Describe the needs in the following order of priority:

A. Health and safety. Describe concerns and include relevant regulations and correspondence from/to Federal, and State regulatory agencies.

B. System O&M. Describe the concerns and indicate those with the greatest impact. Investigate management adequacy, inefficient designs, and problem elimination prior to adding additional capacity.

C. Growth. Describe the reasonable growth capacity that is necessary to meet needs during the planning period. Facilities proposed to be constructed to meet future growth needs should generally be supported by additional revenues. Consideration should be given to designing for phased capacity increases. Provide number of new customers committed to this project.

V. ALTERNATIVES CONSIDERED. This section should contain a description of the reasonable alternatives that were considered in planning a solution to meet the identified need. The description should include the following information on each alternative:

A. Description. Describe the facilities associated with the alternative, including collection, storage and disposal facilities.

B. Design criteria. State the design parameters used for evaluation purposes. These parameters must follow the criteria established in RD Instruction 1942-A.

C. Map. Schematic layout.

D. Environmental impacts. Do not duplicate the information in the applicant's submittal of environmental information. Describe unique direct and indirect impacts on floodplains, wetlands, other important land resources, endangered species, historical and archaeological properties, etc., as they relate to a specific alternative. Rural Development must conduct an environmental assessment prior to project approval.

E. Land requirements. Identify sites and easements required. Further specify whether these properties are currently owned, to be acquired, or leased.

F. Construction problems. Discuss concerns such as subsurface rock, high water table, limited access, or other conditions which may affect cost of construction or operation of facility.

G. Cost estimates.

1. Construction.
2. Non-Construction and Other Projects.
3. Annual Operation and Maintenance.
4. Present Worth, based on Federal discount rates.

H. Advantages/disadvantages. Describe the specific alternative's ability to meet the owner's needs within its financial and operational resources, comply with regulatory requirements, compatibility with existing comprehensive area\_wide development plans, and satisfy public and environmental concerns. A matrix rating system could be useful in displaying the information.

VI. PROPOSED PROJECT (RECOMMENDED ALTERNATIVE). This section should contain a fully developed description of the proposed project based on the preliminary description under the evaluation of alternatives. At least the following information should be included:

A. Project design.

1. Collection. Describe process in detail and identify quantities of material, length of transport, and any special handling requirements. Describe equipment required and plans for equipment rotation.
2. Storage. If any, identify size, type and site location.
3. Disposal System. Describe process in detail and identify permit requirements, quantities of material, recycling processes, location of plant and site of any process discharges.

B. Cost estimate. Provide an itemized estimate of the project cost based on the anticipated period of construction. Include development and construction, land and rights, legal, engineering, interest, equipment, contingencies, refinancing, and any other costs associated with the proposed project.



C. Annual operating budget.

1. Income. Provide a rate schedule. Project income realistically, based on user billings, disposal contracts and other sources of income. When large users are projected, the report should include facts to substantiate such projections and evaluate the impact of such users on the economic viability of the project.

2. Operations and Maintenance Costs. Project costs realistically. In the absence of other reliable data, base on actual costs of other existing facilities of similar size and complexity. Include facts in the report to substantiate operation and maintenance cost estimates. Include salaries, wages, taxes, accounting and auditing fees, legal fees, interest, utilities, gasoline, oil and fuel, insurance, repairs and maintenance, supplies, chemicals, office supplies and printing, and miscellaneous.

3. Capital Improvements.

4. Debt Repayments. Describe existing and proposed project financing from all sources. All estimates of Rural Development funding should be based on loans, not grants. Rural Development will evaluate the proposed project for the possible inclusion of Rural Development grant funds.

5. Reserve. Unless otherwise required by State statute establish at one-tenth (1/10) of annual debt repayment requirement.

VII. CONCLUSIONS AND RECOMMENDATIONS. Provide any additional findings and recommendations that should be considered in development of the project. This may include recommendations for special studies, highlight the need for special coordination, a recommended plan of action to expedite project development, etc.

PRELIMINARY ENGINEERING REPORT

STORM WASTE-WATER DISPOSAL

I. GENERAL. A Preliminary Engineering Report should clearly describe the owner's present situation, analyze alternatives, and propose a specific course of action, from an engineering perspective. The level of effort required to prepare the report and the depth of analysis within the report are proportional to the size and complexity of the proposed project. Rural Development projects must be modest in design, size and cost, and constructed and operated in an environmentally responsible manner. The following should be used as a guide for the preparation of Preliminary Engineering Reports for Rural Development financed storm water facilities.

II. PROJECT PLANNING AREA. Describe the area under consideration. The project planning area may be larger than the service area determined to be economically feasible. The description should include information on the following:

A. Location. Maps, photographs, and sketches. These materials should indicate legal and natural boundaries, major obstacles, elevations, etc.

B. Environmental resources present. Maps, photographs, studies and narrative. These materials should provide information on the location and significance of important land resources (farmland, rangeland, forestland, wetlands and 100/500 year floodplains) historic sites, endangered species/critical habitats, etc. that must be considered in project planning.

C. Growth areas and population trends. Specific areas of concentrated growth should be identified. Population projections for the project planning area and the concentrated growth areas should be provided for the project design period. These projections should be based on historical records with justification from recognized sources.

III. EXISTING FACILITIES. Describe the existing facilities, including at least the following information:

A. Location map. Provide a schematic layout and general service area map (may be identified on project planning area maps).

B. History.

C. Condition of facilities. Describe present condition and suitability for continued use. Also, describe compliance with applicable Federal and State requirements.

D. Financial status of any operating facilities. Provide information regarding annual operating and maintenance cost and revenue received for last three fiscal years. Give status of existing debts and required reserve accounts.

IV. NEED FOR PROJECT. Describe the needs in the following order of priority:

A. Health and safety. Describe concerns and include relevant regulations and correspondence from/to Federal, and State regulatory agencies.

B. System O&M. Describe the concerns and indicate those with the greatest impact. Investigate management adequacy, inefficient designs, and problem elimination prior to adding additional capacity.

C. Growth. Describe the reasonable growth capacity that is necessary to meet needs during the planning period. Facilities proposed to be constructed to meet future growth needs should generally be supported by additional revenues. Consideration should be given to designing for phased capacity increases.

V. ALTERNATIVES CONSIDERED. This section should contain a description of the reasonable alternatives that were considered in planning a solution to meet the identified need. The description should include the following information on each alternative:

A. Description. Describe the facilities associated with the alternative. Also, describe collection, storage and disposal facilities.

B. Design criteria. State the design parameters used for evaluation purposes. These parameters must follow the criteria established in RD Instruction 1942-A.

C. Map. Schematic layout.

D. Environmental impacts. Do not duplicate the information in the applicant's submittal of environmental information. Describe unique direct and indirect impacts on floodplains, wetlands, other important land resources, endangered species, historical and archaeological properties, etc., as they relate to a specific alternative. Rural Development must conduct an environmental assessment prior to project approval.

E. Land requirements. Identify sites and easements required. Further specify whether these properties are currently owned, to be acquired or leased.

F. Construction problems. Discuss concerns such as subsurface rock, high water table, limited access, or other conditions which may affect cost of construction or operation of facility.

G. Cost estimates.

1. Construction.
2. Non-Construction and Other Projects.
3. Annual Operation and Maintenance.
4. Present Worth, based on Federal discount rates.

H. Advantages/disadvantages. Describe the specific alternative's ability to meet the owner's needs within its financial and operational resources, comply with regulatory requirements, compatibility with existing comprehensive area\_wide development plans, and satisfy public and environmental concerns. A matrix rating system could be useful in displaying the information.

VI. PROPOSED PROJECT (RECOMMENDED ALTERNATIVE). This section should contain a fully developed description of the proposed project based on the preliminary description under the evaluation of alternatives. At least the following information should be included:

A. Project design.

1. Collection Layout. Identify general location of line improvements: lengths, sizes and key components.
2. Pumping Stations. Identify size, type, site location and any special power requirements.
3. Storage. Identify size, type and site location.
4. Treatment, if required. Describe process in detail and identify location of plant and site of any process discharges in addition to storm water.
5. Hydraulic Calculations. This information should provide sufficient detail in a tabular format to determine compliance with Rural Development design requirements. Rural Development may use automation tools to evaluate collection and storage systems. The submittal should include a map with a list of inlets and pipes and the associated characteristics, such as elevation of inverts, pipe diameter, pipe segment length, reservoir elevation, etc.

B. Cost estimate. Provide an itemized estimate of the project cost based on the anticipated period of construction. Include development and construction, land and rights, legal, engineering, interest, equipment, contingencies, refinancing, and any other costs associated with the proposed project.

C. Annual operating budget.

1. Income. Project income realistically.
2. Operations and Maintenance Costs. Project costs realistically. In the absence of other reliable data, base on actual costs of other existing facilities of similar size and complexity. Include facts in the report to substantiate operation and maintenance cost estimates. Include salaries, wages, taxes, accounting and auditing fees, legal fees, interest, utilities, gasoline, oil and fuel, insurance, repairs and maintenance, supplies, chemicals, office supplies and printing contracts, and miscellaneous.
3. Capital Improvements.
4. Debt Repayments. Describe existing and proposed project financing from all sources. All estimates of Rural Development funding should be based on loans, not grants. Rural Development will evaluate the proposed project for the possible inclusion of Rural Development grant funds.
5. Reserve. Unless otherwise required by State statute establish at one-tenth (1/10) of annual debt repayment requirement.

VII. CONCLUSIONS AND RECOMMENDATIONS. Provide any additional findings and recommendations that should be considered in development of the project. This may include recommendations for special studies, highlight the need for special coordination, a recommended plan of action to expedite project development, etc.

DAILY INSPECTION REPORT

Job No. \_\_\_\_\_  
(1)

Borrower Information

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Street County State Zip  
Date \_\_\_\_\_  
Report No. \_\_\_\_\_  
(2)

Project Information

Type of Project \_\_\_\_\_ Project Location \_\_\_\_\_  
Contractor(s) Name \_\_\_\_\_ Superintendent \_\_\_\_\_

Weather Conditions \_\_\_\_\_

Description of Work Accomplished \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Items of Interest Occurred \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Delays or Work Restraining Orders \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Change Orders \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional Remarks \_\_\_\_\_  
(Include problems, delays and controversies on orders)  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Resident Inspector

BY \_\_\_\_\_

Note to Resident Inspector:

The original Daily Inspection Report shall be submitted to the borrower at intervals not exceeding one (1) week with copies of the report furnished the project engineer, Contractor(s), and Rural Development District Director.

- (1) Assigned by Rural Development.
- (2) Assigned by Resident Inspector in consecutive order beginning with No. 1.

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MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE ECONOMIC DEVELOPMENT ADMINISTRATION -  
DEPARTMENT OF COMMERCE  
AND  
RURAL DEVELOPMENT -  
DEPARTMENT OF AGRICULTURE  
PERTAINING TO  
EDA PUBLIC WORKS PROJECTS ASSISTED BY AN FHA LOAN

I INTRODUCTION. In order to provide efficient service to Grantee/Borrowers, eliminate duplication of effort, and reduce administrative costs during the construction of projects jointly financed by a grant from the Economic Development Administration and a loan from Rural Development, EDA Area Directors and FHA State Directors are authorized to enter into Project Management Agreements, as they deem appropriate, covering the project construction phase. Projects involving an EDA supplementary grant to an FHA grant are covered under a separate Memorandum.

II GENERAL.

A Prior to authorizing advertisement for bids, it is the responsibility of each agency to assure the other that all approval conditions have been met.

B The total project cost for the purpose of this Memorandum will include only those costs eligible for EDA financial assistance.

C Any changes in location, scope, line items or cost of the project shall be approved by both EDA and FHA.

D All construction contracts for project work financed in any part by EDA shall contain binding provisions for payment of prevailing wage rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 USC 267a - 276a-5).

E Certifications:

1. EDA will obtain required certifications from the Federal Water Pollution Control Administration under Section 106 of Public Law 89-136.

2. FHA will be responsible for assuring that the applicant has obtained the required certifications from the State Water Pollution Control Agency under Section 306(a) (9&10) of the Consolidated Rural Development Act of 1961 (Public Law 87-128, as amended).

F All bidders and subcontractors must sign certifications of compliance with Executive Order 11246 (EDA Forms 119 and 120).

III SUGGESTED ITEMS FOR INCLUSION IN A PROJECT MANAGEMENT AGREEMENT.

A EDA will have primary responsibility for managing the project during the construction phase.

B The EDA Area Office will notify the FHA State Director of the date, time and location of the Planning Conference.

C FHA will be represented at the Planning Conference.

D EDA will obtain FHA concurrence of the approval of final plans, specifications and bid documents.

E EDA will notify FHA of the date of advertising for construction bids.

F EDA will notify FHA of the date, time and location of bid opening.

G FHA will be represented at the bid opening.

H Both EDA and FHA will concur in the awarding of construction contracts.

I EDA will notify FHA of the date, time and location of the Pre Construction Conference.

J EDA will notify FHA of the date of start of construction.

K EDA will notify FHA of any unusual problems which may be encountered during the construction phase.



L     FHA will concur on the progress of construction and final inspection. EDA will furnish FHA with copies of Progress Reports and will permit FHA to make any additional inspections necessary in connection with the FHA loan.

M     EDA will advise the State Director of the date and time of final inspection. Such inspection will be conducted by both EDA and FHA.

N     The FHA County Supervisor will establish an FHA Supervised Bank Account for the Grantee/Borrower and will be responsible for disbursement of both the EDA grant funds and FHA loan funds.

    a     EDA will be responsible for timely deposits of the grant funds. However, since EDA grant funds are not made available until all construction contracts have been awarded, and then only for project costs incurred, it is recognized that some, if not all, of the FHA loan funds may be disbursed before receipt of any or all of the EDA grant funds.

    b     Funds will be disbursed only on certification of the EDA field engineer of "Costs incurred to date."

O     Final determination of the eligibility of costs incurred will be made by EDA after completion of the project and final audit. The EDA Area Office will furnish the FHA State Director a copy of any EDA audit findings.

IV    Services performed by either agency for the other shall be without cost to the other agency.

FOR THE  
ECONOMIC DEVELOPMENT  
ADMINISTRATION

FOR THE  
FARMERS HOME  
ADMINISTRATION

/s/ Ross Davis  
Assistant Secretary for  
Economic Development

/s/ Howard Bertsch  
Administrator

August 27, 1968  
Date

October 11, 1968  
Date

oOo

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE ECONOMIC DEVELOPMENT ADMINISTRATION -  
DEPARTMENT OF COMMERCE  
AND  
RURAL DEVELOPMENT -  
DEPARTMENT OF AGRICULTURE  
REGARDING  
SUPPLEMENTARY GRANT ASSISTANCE FOR THE CONSTRUCTION OF  
PUBLIC WORKS AND DEVELOPMENT FACILITIES

I INTRODUCTION.

1 Section 101 of the Public Works and Economic Development Act of 1965 (Public Law 89-136, as amended) authorizes the Secretary of Commerce to make direct grants, grants supplementary thereto, and grants supplementary to basic grants from other Federal programs. Notwithstanding any requirement that may otherwise be applicable to the Federal program involved, supplementary grants shall be used for the sole purpose of increasing the Federal contribution to specific projects in eligible areas under such programs above the fixed maximum portion of the cost of such project otherwise authorized by the applicable law, but in no event shall the non-Federal share of the aggregate cost of any project be less than 20 percent of such cost.

2 In determining the amount of any supplementary grant available to any project, consideration will be given to the (a) relative needs of the area, (b) the nature of the project to be assisted, and (c) the amount of such fair user charges or other revenues as the project may reasonably be expected to generate in excess of those which would amortize the local share of initial costs and provide for its successful operation and maintenance (including depreciation).

II PROJECTS RECEIVING A BASIC GRANT FROM RURAL DEVELOPMENT UNDER THE CONSOLIDATED FmHA ACT OF 1961 (Public Law 87-128, as amended):

1 If an area qualifies under Public Law 89-136, as amended, for a maximum grant rate in excess of the fixed maximum portion authorized under Public Law 87-128, as amended, for development costs, as defined in Section 306(a) (4) (A) of that Act, the applicant may request additional grant funds from the Economic Development Administration to supplement the basic grant requested from Rural Development. Total Federal participation may not exceed the maximum grant rate established by EDA for the area in which the project is located.

2 If the amount of grant assistance requested from FHA is available and the project appears approvable, the Rural Development State Office will refer the applicant to the appropriate EDA Area Office to discuss the proposed project and the need for supplementary grant assistance.

3 At the time EDA decides it will consider the project for a supplementary grant, it will advise FHA and furnish the applicant with EDA application forms, together with pertinent instructions, and advise the applicant to show on these forms the amount of the basic grant being requested from FHA. The method of financing and project costs shown on both the FHA application and the EDA application must be identical.

4 Prior to EDA approval of a supplementary grant, FHA will provide EDA with the following statements:

a That the estimated cost of the project is reasonable and that the requested basic grant and the supplementary grant, together with the funds to be supplied by the applicant, are, in Rural Development's judgment, sufficient to complete the project.

b That the funds to be supplied by the applicant are available or that FHA is reasonably satisfied that the applicant has the capability of supplying such funds.

c That FHA is reasonably satisfied that the applicant will provide sufficient operating funds to assure the successful and continuing operation of the facility.

d That adequate safeguards have been established to eliminate the possibility of the supplementary grant exceeding the authorized percentage relationship to the total cost of the project.

e That the amount of the supplementary grant will be reduced to the extent actual costs of a project fall below estimated costs; however, the savings in such cases may be applied to a proportionate reduction of the supplementary grant and basic grant when necessary to conform to limitations imposed by statute.

f That the amount of the FHA grant for the particular project is as great as would have been approved in the absence of the supplementary grant. If the basic grant is less than the 50% maximum portion authorized under Public Law 87-128, as amended, FHA will include a statement certifying that grant funds uncommitted for its current fiscal year are insufficient to permit approval of the maximum authorized portion.

(Guide 13) (Page 3)

g That the construction contract(s) for project work will contain binding provisions for payment of prevailing wage rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended, (40 USC 276a - 276a-5).

5 If EDA will not make a supplementary grant, it will advise FHA and the applicant accordingly.

6 Prior to approval of the supplementary grant, EDA will obtain from the applicant and substantial beneficiaries, if any, executed assurances of compliance with the regulations of Title 15, Subtitle A, Part 8, of the Code of Federal Regulations issued by the Department of Commerce in effectuation of Title VI of the Civil Rights Act of 1964. EDA will also obtain executed Certificates of Non-Relocation from the applicant and substantial beneficiaries, where applicable.

7 When EDA approves a supplementary grant, it will inform FHA of such approval and will take immediate steps to transfer the funds to the U. S. Treasury account of Rural Development on Standard Form 1151. At the same time, EDA will inform the applicant that an EDA supplementary grant has been authorized, and that the EDA Grant Offer, together with the terms and conditions of the EDA Offer, will be transmitted to the applicant by FHA.

8 FHA will tender the EDA Grant Offer within a sufficient period of time to allow acceptance of the offer before the end of the fiscal year within which the EDA project has been approved. The FHA State Director will notify the EDA Area Director immediately upon receipt of acceptance of the offer.

9 After acceptance of the EDA grant offer, FHA will assume full responsibility for the supervision of the project and disbursement of the grant funds.

10 FHA will supply the EDA Area Office at reasonable intervals with progress reports on the project and advise the Area Office whenever unusual problems are encountered. The EDA Area Office will advise the FHA State Office of the reports needed.

11 FHA will comply with the reporting requirements for transferred funds as outlined in Economic Development Memorandum 2.03-7, "Reporting of Funds Transfers by Participating Agencies," a copy of which is attached hereto.

12 Should an EDA loan also be involved, FHA will, upon request of EDA, furnish a current construction status report to EDA at the time loan advances are requested and at the time of the loan closing. FHA will notify the EDA Area Office when final inspection is to take place and permit an EDA representative to be present at the final inspection. Also, FHA will, upon request of the EDA Area Office, permit an EDA representative to inspect the project during construction where such inspection is necessary in connection with the loan.

13 FHA will advise EDA of the completion of the project and submit a final report on the costs of the project in sufficient detail to permit a reasonable review of expenditures.

14 Since maximum use of local labor in construction of the project will facilitate attainment of the objectives of the Public Works and Economic Development Act of 1965, this matter should be given consideration in arrangements with all contractors retained in connection with project construction.

FOR THE  
ECONOMIC DEVELOPMENT  
ADMINISTRATION

FOR THE  
FARMERS HOME  
ADMINISTRATION

/s/ Ross D. Davis  
Assistant Secretary for  
Economic Development

/s/ Howard Bertsch  
Administrator

August 27, 1968  
Date

October 11, 1968  
Date

Attachment 1

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

ASSISTANT SECRETARY AND DIRECTOR OF ECONOMIC DEVELOPMENT

MANUAL OF ECONOMIC DEVELOPMENT ORDERS

ECONOMIC DEVELOPMENT ORDER 2.03-7

SUBJECT

REPORTING OF FUND TRANSFERS BY PARTICIPATING AGENCIES

REFERENCES

EFFECTIVE DATE: 3-3-67  
SUPPLEMENT: \_\_\_\_\_  
SUPERSEDES: MEDO Memorandum  
2.03-7, "Reporting by Participating Agencies," dated  
August 1, 1966

APPROVED

Chief, Accounting Division

Director, Office of Administration

<u>Section</u>	<u>Section Title</u>	<u>Page</u>
1	Purpose-----	1
2	General-----	2
3	Transfers of Supplementary Grant Funds-----	2
4	Transfers of Funds for Administrative Support, and for Specific Projects or Studies Pertaining to Technical Assistance, Management, or Research-----	3
5	Mailing Address for Reports-----	4
6	Effect on Other Orders-----	4

SECTION 1. PURPOSE

The purpose of the Order is to prescribe reporting requirements which must be included in all agreements to advance funds to other Federal agencies for:

- a. Supplementary grants.

2.03-7  
3-3-67

1b

b. Technical assistance and management research projects and/or studies.

c. Support activity (administrative and operating expenses).

## SECTION 2. GENERAL

This Order, which provides a schedule showing financial reporting requirements, shall be made a part of each agreement to transfer funds to another agency for the purposes listed in Section 1. Performing agencies need not submit reports for work performed on a reimbursable basis if EDA is billed monthly and bills are received by the tenth of the following month. Such billings will suffice as a source of accrued expenditure data.

## SECTION 3. TRANSFERS OF SUPPLEMENTARY GRANT FUNDS

.01 SF-1151, "Nonexpenditure Transfer Authorization":

SF-1151, "Nonexpenditure Transfer Authorization," will be used for transfers of supplementary grant funds.

.02 Required Reports:

The following reports shall be required in all agreements involving transfers of supplementary grant funds:

a. Monthly Reports due by the tenth day after the end of the month showing cumulative totals, first by appropriation, and then by projects thereunder, of:

- (1) Obligations.
- (2) Accrued expenditures.
- (3) Cash disbursements.

Estimated amounts may be reported for obligations and accrued expenditures, but actual amounts which agree with the SF-224 "Statement of Transactions," must be reported for cash disbursements. Attached as Exhibit 1 is the suggested form for the monthly report.

3.02

2.03-0  
3-3-67

b. Quarterly Report on SF-133, "Report of Budget Status," due by the 15th day after the end of the quarter, supported by a schedule showing by project:

- (1) Obligations.
- (2) Accrued expenditures.
- (3) Cash disbursements in agreement with those reported on the SF-224, "Statement of Transactions."

NOTE: A supporting schedule for SF-133 will not be required if the monthly report shows actual obligations and accrued expenditures.

c. Annual Reports, as follows:

- (1) SF-220, "Statement of Financial Condition," as required by Treasury Circular No. 966, due by September 20 for the year ending June 30.
- (2) Treasury Form BA-R 2108, as required by Treasury Circular No. 965, due by September 20 for the year ending June 30.
- (3) Report on Federal grants-in-aid to States and payments to individuals, as required by Treasury Circular No. 1014, due by September 20 for the year ending June 30.
- (4) Report to be submitted by May 31, showing estimated unobligated funds as of June 30. Upon receipt of the report, the Accounting Division will make a determination as to disposal of the unobligated funds.

SECTION 4. TRANSFERS OF FUNDS FOR ADMINISTRATIVE SUPPORT, AND FOR SPECIFIC PROJECTS OR STUDIES PERTAINING TO TECHNICAL ASSISTANCE, MANAGEMENT, OR RESEARCH

.01 Use of SF-1081, "Voucher and Schedule of Withdrawals and Credits":

SF-1081 will be used for transfers of funds for administrative support and for specific projects or studies pertaining to technical assistance, management, or research.

(1-15-79) SPECIAL PN



2.03-0  
3-3-67

4.02

.02        Required Reports

The following reports shall be required in agreements involving transfers of funds for the purposes cited in paragraph 4.01:

- a.    Monthly Report, due by the 10th day after the end of the month, listing estimated accrued expenditures by appropriation and projects thereunder.
- b.    Quarterly Report, due by the 15th day after the end of the quarter, listing actual accrued expenditures by appropriation and projects thereunder.
- c.    Annual Report, due by May 31, showing estimated unobligated funds as of June 30. Upon receipt of the report, the Accounting Division will make a determination as to disposal of the unobligated funds.

SECTION 5. MAILING ADDRESS FOR REPORTS

Agencies should mail the reports required in this Order to the following address:

Chief, Accounting Division  
Office of Administration  
Economic Development Administration  
U.S. Department of Commerce  
Washington, D.C. 20230

SECTION 6. EFFECT ON OTHER ORDERS

This Order supersedes MEDO Memorandum 2.03-7, "Reporting by Participating Agencies," dated August 1, 1966, and any other instructions which may be in conflict with its provisions.

INDEX CHANGE

Change M/2.03-7 to 2.03-7 (page 20)

Exhibit 1

Guide 13, Attachment 1, page 5 not automated see manual

UNITED STATES DEPARTMENT OF AGRICULTURE  
Rural Development

LEGAL SERVICES AGREEMENT

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_\_ between \_\_\_\_\_

\_\_\_\_\_  
(sponsors) (organizing committee) (Name of organization)  
hereinafter referred to as "Owners," and \_\_\_\_\_,  
attorney at law, of \_\_\_\_\_, hereinafter referred  
to as "Attorney":

WHEREAS, Owners are intending to \_\_\_\_\_ (have formed)  
("public water supply  
\_\_\_\_\_  
district," "public service district," "not for profit corporation," or  
\_\_\_\_\_, a \_\_\_\_\_  
other official designation) ("body politic," "municipal  
\_\_\_\_\_  
corporation," "nonprofit corporation," or other organization)  
in \_\_\_\_\_ County \_\_\_\_\_  
under the provisions of \_\_\_\_\_  
(Cite statute(s) under which applicant will be  
\_\_\_\_\_; and  
organized)

WHEREAS, the Attorney agrees to perform all legal services necessary  
to organize and incorporate said \_\_\_\_\_  
\_\_\_\_\_ under the provisions of

said statutes and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of a \_\_\_\_\_ system;

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SECTION A - LEGAL SERVICES

That the Attorney will perform such services as are necessary to accomplish the above recited objectives including, but not limited to, the following:

1. Preparation and filing of petition for incorporation and supervision and assistance in the taking of such other actions as may be necessary or incidental to cause the Owners to become duly organized and incorporated and to be authorized to undertake the proposed system.
2. Furnish advice and assistance to the governing body of the duly incorporated association in connection with (a) the notice for and conduct of meetings; (b) the preparation of minutes of meetings; (c) the preparation and enactment of such resolutions as may be necessary in connection with the authorization, financing, construction, and initial operation of the system; (d) the preparation of such affidavits, publication notices, ballots, reports, certifications, and other instruments and advice as may be needed in the conduct of such bond elections as may be necessary; (e) the preparation and completion of such bonds or other obligations as may be necessary to finance the system; (f) the completion and execution of documents for obtaining a loan made or insured or a grant made by the United States of America, acting through the Rural Development, U. S. Department of Agriculture; (g) entering into construction contracts; (h) preparation and adoption of By-Laws, Rules and Regulations, and rate schedules; (i) such other corporate action as may be necessary in connection with the financing, construction, and initial operation of the system.

3. Review of construction contracts, bid-letting procedure, and surety and contractual bonds in connection therewith.
4. Preparation, negotiation, or review of contract with a city or other source of water supply when necessary.
5. Preparation, where necessary, and review of deeds, easements and other rights-of-way documents, and other instruments for sites for source of water supply, pumping stations, treatment plants, and other facilities necessary to the system and to provide continuous rights-of-way therefore; rendering title opinions with reference thereto; and providing for the recordation thereof.
6. Obtain necessary permits and certificates from county and municipal bodies, from State regulatory agencies, and from other public or private sources with respect to the approval of the system, the construction and operation thereof, pipeline crossings, and the like.
7. Cooperate with the engineer employed by Owners in connection with preparation of tract sheets, easements, and other necessary title documents, construction contracts, water supply contracts, health permits, crossing permits, and other instruments.
8. When applicable, secure assistance of and cooperate with recognized bond counsel in the preparation of the documents necessary for the financing aspects of the system. The attorney shall pay all bond counsel in perfecting the financing aspects, e.g., assessment procedures and completion of documents. Where bond counsel is retained, the Attorney will not be responsible for the preparation and approval of those documents pertaining to the issuance of the Owner's obligations.

SECTION B - COMPENSATION

1. Owners will pay to the Attorney for professional services rendered in accordance herewith, fees as follows:

---

Said fees to be payable in the following manner and at the following times:

---

---

---

SECTION C - OTHER PROVISIONS

1. That upon organization and incorporation the association shall by appropriate resolution adopt and ratify this Agreement, that the association shall be substituted for the individual Owners as a party to this Agreement, and that the Owners as individuals shall thereupon be relieved of all personal liability existing or arising from this Agreement.
  
2. That upon organization and incorporation should the association fail or refuse to adopt and ratify this Agreement by appropriate resolution within \_\_\_\_\_ days from the date of the commencement of its legal existence, this Agreement shall terminate and Owners shall be liable to the Attorney for payment of \$\_\_\_\_\_, which sum represents payment in full for the organization and incorporation of the association and for all other legal services rendered to Owners under the terms of this Agreement to the date of said termination.

Attorney:

\_\_\_\_\_

Owners:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

UNITED STATES DEPARTMENT OF AGRICULTURE  
Rural Development

**COMMUNITY FACILITY BORROWERS**  
**APPLICATION**

1. SF 424.2, "Application for Federal Assistance (For Construction)."
2. Clearinghouse Comments.
3. Financial Feasibility Study.
4. Form RD 442-7, "Operating Budget," including projected cash flow.
5. Form RD 442-3, "Balance Sheet," or a financial statement or audit that includes a balance sheet.
6. Evidence of organization: Articles of Incorporation and Bylaws; special legislation creating an entity; general legislation under which it is created, charter, court order; or other basic data of similar nature.
7. Written evidence of compliance with State statutes.
8. Written evidence of compliance with Federal, State, areawide, local and municipal requirements, as appropriate.
9. Contracts for professional services.
10. Environmental review documentation as required in accordance with 7 CFR part 1970. (Revised 04-01-16, SPECIAL PN.)
11. Preliminary engineering or architectural report.

This Guide is prepared only for use by State Directors in the preparation of documents which will inform applicants and Rural Development personnel of the items to be included in the application. State Directors will need separate documents for each different type applicant such as municipalities, districts, and nonprofit corporations.

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COMMUNITY FACILITY LOAN DOCKET

SF 424.2, "Application for Federal Assistance (For Construction)" (for preapplication submission)

Form RD 1910-11, "Application Certification, Federal Collection Policies for Consumer or Commercial Debts"

Clearinghouse Comments

Environmental review documentation as required in accordance with 7 CFR part 1970. (Revised 04-01-16, SPECIAL PN.)

SF 424.2 (For application submission)

Letter of Conditions

Form RD 1942-46, "Letter of Intent to Meet Conditions"

Any required agreement for services such as engineering, architectural, legal, accounting, auditing, maintenance, management, plant operations, water purchase or water treatment.

Construction contract and bidding documents

Required evidence of compliance with any required State and local laws or regulations and not inconsistent with applicable development plans.

Legal Documents:

Promissory note/bond                      Notice of sale of bond (if applicable)

Bond Transcript                      Form RD 442-28, "Bond Registration Book"

Evidence of title to pledged assets

Form RD 442-20, "Right-of-way Easement"



RD Instruction 1942-A  
(Guide 16)  
(Page 2)  
(Revision 1)

Form RD 442-21, "Right-of-way Certificate"

Form RD 442-22, "Opinion of Counsel Relative to Rights-of-way"

Form RD 440-34, "Option to Purchase Real Property"

Deeds Leases                      Liens                      Benefit Assessment Rolls

Assignment of Water Rights

Evidence of Organization:

Other than public body:

Articles of Incorporation

Bylaws

Rules and regulations

Charter

List of applicant officers

Membership or user  
certificate

Certified List of all members of the governing body indicating the  
officers and term of office

Certified List of users or members (utility type projects only)

Form RD 1942-8, "Resolution of Members or Stockholders"

Form RD 1942-9, "Loan Resolution (Security Agreement)"

Other basic organization data

Public Body:

Legislation, court order, referendum, evidencing organization and  
authority.

Certified List of users. Benefit assessment roll. (Utility type  
projects only)

Form RD 1942-47, "Loan Resolution (Public Bodies)"

Fiscal:

Form RD 442-3, "Balance Sheet"

Form RD 442-7, "Operating Budget," including projected cash flow

Evidence of user cash contribution and user agreements

Automated Community Facility Project Summary (Added 03-19-03, PN 357.)

Provision for interim financing

Evidence of collateral pledge

Additional Forms:

Form RD 400-1, "Equal opportunity Agreement"

Form RD 440-4, "Assurance Agreement"

Form RD 440-8, "Compliance Review" (Added 04-02-98, SPECIAL PN.)

Form RD 400-6, "Compliance Statement"

Form AD-622, "Notice of Preapplication Review Action"

Form RD 1942-39, "Processing Check List (Other Than Public Bodies)"

Form RD 1942-40, "Processing Check List (Public Bodies)"

Form RD 442-10, "Appraisal Report - Water and Waste Disposal System"

Form RD 1940-1, "Request for obligation of Funds"

Form RD 440-57, "Acknowledgement of Obligated Funds/Check Request"

Form RD 1924-16, "Record of Pre-Construction Conference"

Form RD 2006-38, "Civil Rights Impact Analysis"  
(Added 04-02-98, SPECIAL PN.)

This Guide is prepared only for use by State Directors in the preparation of documents which will inform applicants and Agency. personnel on the items to be included in the docket. State Directors will need separate documents for each different type applicant such as municipalities, districts and nonprofit corporations.

oOo

CONSTRUCTION CONTRACT DOCUMENTS

ITEM I

NOTICE AND INSTRUCTIONS TO BIDDERS

Date: \_\_\_\_\_

1. Sealed bids will be received by the \_\_\_\_\_,  
hereinafter referred to as the "Owner," for performing the work

as described as follows: \_\_\_\_\_

\_\_\_\_\_

as described more fully in the Plans and Specifications attached  
hereto, on or before \_\_\_\_\_ o'clock, in the \_\_\_\_\_  
\_\_\_\_\_, at which time said bids will be  
publicly opened and read.

2. All bids must be made on the blank form of proposal attached hereto.
3. If the contract bid exceeds \$10,000, a bidder must submit Form RD  
400-6. "Compliance Statement," with the bid. "Equal Opportunity Clause,"  
will be a part of all construction contracts exceeding \$10,000.
4. A bidder may withdraw any proposal submitted prior to the hour set  
for the closing of the bids provided the request is signed in a manner  
identical with the proposal being withdrawn.
5. It is understood that Rural Development must concur in this contract.
6. The owner will be responsible for payment in accordance with the  
terms of the contract when the work is completed.

\_\_\_\_\_  
(Owner)

By \_\_\_\_\_

Title \_\_\_\_\_

ITEM II

BIDDER'S PROPOSAL

Place \_\_\_\_\_

Date \_\_\_\_\_

1. In compliance with your invitation for bids dated \_\_\_\_\_ and subject to all the conditions thereof, the undersigned \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ (hereinafter called BIDDER) \_\_\_\_\_ doing business as \_\_\_\_\_\*, "  
 \_\_\_\_\_  
 of the City of \_\_\_\_\_, State of \_\_\_\_\_  
 \_\_\_\_\_ hereby proposes to furnish and complete work required by the Contract Documents for the construction of all structures listed at the prices shown for each bid item on the Bid Schedule. Any total cost found inconsistent with the unit cost when the bids are examined will be deemed in error and corrected to agree with the unit cost which shall be considered correct.
2. The undersigned BIDDER does hereby declare and stipulate that this proposal is made in good faith, without collusion or connection with any other person or persons bidding for the same work, and that it is made in pursuance of and subject to all the terms and conditions of the Notice and Instructions to Bidders, the Construction Contract, the Detailed Specifications, and the Plans pertaining to the work to be done, all of which have been examined by the undersigned.
3. The undersigned BIDDER agrees to abide by the requirements of Executive Order No. 11246, as amended. To that end, the BIDDER submits a completed Form RD 400-6, "Compliance Statement," as ITEM (X) of the Contract Documents. The BIDDER agrees to execute "Equal Opportunity Clause," as part of the Construction Contract.
4. If the work to be performed under this contact is in hometown plan or imposed plan area the undersigned BIDDER agrees to abide by the "Model Special Bid Conditions" attached hereto as item VI.
5. All the various phases of work enumerated in the Detailed Specifications with their individual jobs and overhead, whether specifically mentioned, included by implication or appurtenant thereto, are to be performed by the BIDDER under one of the items listed in the Bid Schedule, irrespective of whether it is named in said list.
6. Payment for work performed will be in accordance with the bid Schedule, subject to changes as provided for in the Construction Contract.

(Guide 17) (Page 3)

- 7. The undersigned BIDDER understands that this contract must be concurred in by Rural Development.
- 8. The BIDDER will submit a construction schedule and execute the contract within 10 days after notification of contract award.
- 9. It is understood that time is of the essence in this contract and the BIDDER agrees to commence within 10 days after the Notice to Proceed and complete work within \_\_\_\_\_ calendar days.

\_\_\_\_\_  
BIDDER'S License No. (if applicable)

\_\_\_\_\_  
BIDDER

Seal (if a corporation)

By \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
(Business Address)

\*Insert: "a corporation incorporated in the State of \_\_\_\_\_," "a partnership" or an individual, as applicable.

BID SCHEDULE

NOTE: Bids shall include sales tax and all other applicable taxes and fees.

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Item No.	Description	Estimated Quantity	Total Price	Unit Price	Total
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TOTAL BID PRICE \$ \_\_\_\_\_

ITEM III

NOTICE OF AWARD

Description of work: Construction of \_\_\_\_\_  
\_\_\_\_\_ for the \_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_

The Owner has considered the Proposal submitted by you for the above described work in response to its Notice and Instructions to Bidders dated \_\_\_\_\_ 19\_\_.

It is to the best interest of said Owner to accept your Proposal in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_); you are hereby notified that your Proposal has been accepted for items \_\_\_\_\_

You are required by the Notice and Instruction to Bidders to execute the contract within ten days from the date of the delivery of this Notice to you.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Owner

ACCEPTANCE OF NOTICE

By \_\_\_\_\_

Receipt of the above Notice of Award is hereby acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Title \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_

Title \_\_\_\_\_

ITEM IV

C O N T R A C T

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
by and between \_\_\_\_\_,  
hereinafter referred to as the OWNER, and \_\_\_\_\_  
\_\_\_\_\_, hereinafter referred to as the  
CONTRACTOR:

WITNESSETH:

That for and in consideration of the mutual covenants and promises  
between the parties hereto, it is hereby agreed that:

1. The CONTRACTOR will furnish all of the materials and supplies,  
equipment, and labor and other services necessary in conformance with  
these contract documents for the construction and completion of the  
project described in general as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. COMPLETION OF WORK. The Contractor shall commence the work  
covered by this contract within ten (10) calendar days after the date of  
receipt of the Notice to Proceed and shall complete the same within  
\_\_\_\_\_ calendar days unless the period for completion is extended  
as provided for in the General Conditions.



(Guide 17) (Page 7)  
(Revision 1)

3. CONTRACT SUM. The Owner shall pay the Contractor for the performance of said work, subject to additions or deductions provided herein \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in conformity with the bid schedule in Item II.

4. The Contract Documents include the following:
- (a) Notice and Instructions to Bidders - Item I
  - (b) Bidder's Proposal - Item II
  - (c) Notice of Award - Item III
  - (d) Contract - Item IV
  - (e) General Conditions - Item V
  - (f) Model - Special Bid Conditions - Item VI (for hometown or imposed plan areas)
  - (g) Rural Development Supplemental General Conditions.
  - (h) Plans prepared by \_\_\_\_\_, numbered \_\_\_\_\_ through \_\_\_\_\_, and dated \_\_\_\_\_, 19\_\_.
  - (i) Specifications prepared or issued by \_\_\_\_\_, dated \_\_\_\_\_, 19\_\_.

5. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions and in such amounts as required by the Contract Documents.

6. This contract shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

RD Instruction 1942-A  
(Guide 17) (Page 8)  
(Revision 1)

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Contract in duplicate, on the date first above written.

OWNER:

\_\_\_\_\_

By \_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

ATTEST:

\_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

CONTRACTOR:

\_\_\_\_\_

By \_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

Approved as lender or insurer of fund to defray the costs of this contract, and without liability for any payments thereunder, the Farmers Home Administration hereby concurs in the award of this contract to

Employer Identification  
Number \_\_\_\_\_

\_\_\_\_\_ .

U. S. Department of Agriculture  
Rural Development

By \_\_\_\_\_ Title \_\_\_\_\_

This contract shall not be effective unless and until approved by the State Director of Rural Development, U. S. Department of Agriculture, or a delegated representative.

## ITEM V

## GENERAL CONDITIONS

1. The contractor shall furnish and pay the cost, including sales tax and all other applicable taxes and fees, of all the necessary materials and shall furnish and pay for all the superintendence, labor, tools, equipment and transportation and perform all the work required for the construction of all items listed and itemized under the bid schedule of the Bidder's Proposal attached hereto as Item II in strict accordance with the Plans, Specifications and requirements, general conditions and special conditions which are attached hereto and made a part hereof, and any amendments thereto and such supplemental plans and specifications which may hereafter be approved.
2. The Owner shall provide the land upon which the work under this contract is to be done, and will, so far as is convenient, permit the Contractor to use as much of the land as is required for the erection of temporary construction facilities and storage of materials, together with the right of access to same, but beyond this, the Contractor shall provide at the contractor's cost and expense any additional land required.
3. In the event the Owner is dissatisfied with the slow progress or incompetency in the performance of the work in accordance with the schedule for completion of the various aspects of construction, the Owner shall give the Contractor written notice in which the owner shall specify in detail the cause of dissatisfaction. Should the Contractor fail or refuse to remedy the matters complained of within five days after the written notice is received by the Contractor the Owner shall have the right to take control of the work and either make good the deficiencies of the Contractor itself or direct the activities of the Contractor in doing so, employing such additional help as the Owner deems advisable. In such event the Owner shall be entitled to collect from the Contractor any expenses in completing the work.
4. The owner will withhold \$\_\_\_\_\_ as liquidated damages from the amount payable to the Contractor for each calendar day that the contractor is in default after the time of completion stipulated in these Contract Documents. It is understood that the amount is approximately equal to the interest and other charges incurred by the Owner.
5. The Contractor guarantees all material and equipment furnished and all work performed for a period of 1 year from the date of substantial completion of the contract. The contractor's guarantees that the facility is free from defects due to faulty materials or workmanship and the contractor shall make the necessary corrections to correct these defects.

6. The contractor should give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work as specified in the Contract Documents. If the contractor observes that the Contract Documents are at variation with any laws, ordinances, rules or regulations, the contractor should promptly notify the owner in writing and any necessary changes shall be adjusted through the use of contract change orders.
7. The Contractor agrees to pay all claims for labor, materials, services and supplies and agrees to allow no such charge to be fixed on the property of the Owner.
8. The Contractor agrees to comply with all laws, rules and regulations that apply to related work.
9. The actual performance of work and superintendence shall be performed by the Contractor but the owner shall, at all times, have access to the premises for the purpose of observing or inspecting the work performed by the Contractor.
10. It is fully understood and agreed that none of the requirements of this contract shall be considered as waived unless changes are made in writing and then only by the persons executing this contract upon concurrence of Rural Development.
11. The Contractor agrees not to sublet or assign this work without the written consent of the owner.
12. The Contractor shall have full responsibility under these conditions, general provisions, Plans and Specifications for any subcontracts which the Contractor may let.
13. All questions or controversies which may arise between the Contractor and the Owner, under or in reference to this contract, should be resolved, to the fullest extent possible at a meeting between the Contractor, the Owner, and a representative of Rural Development. The agreements reached at such meetings shall be carefully documented and become final and binding on all parties concerned. However, should the Owner and Contractor be unable to agree, a board of three arbitrators shall be chosen. One shall be chosen by the Contractor, one shall be chosen by the Owner, and the third shall be selected through mutual agreement by the first two. Should either party neglect or fail to select an arbitrator within ten days, the arbitrator selected by the other party shall have power to decide the dispute in the same manner as though a board of three arbitrators had been selected.
14. The Contractor shall indemnify and save harmless the Owner and the Owner's agents and employees, from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature, and description brought or recovered against them by reasons of any act or omission of the said Contractor, its agents, or employees, in the execution of the work or in guarding the same.

(Guide 17) (Page 11)

15. Payment. Final payment shall be made to the Contractor when the work is completed and accepted by the owner and Rural Development. The total amount of the payment shall be the amount of the contract plus the value of all changes as reflected in approved contract change orders. The entire balance found to be due the Contractor but excepting such sums as may be lawfully retained by the Owner, shall be paid to the Contractor. Such payment shall be conditioned, however, upon the submission by the Contractor of evidence satisfactory to the Owner that all claims for labor, material, and any other outstanding indebtedness in connection with this Contract have been paid.

The Owner will make payments as follows: (Check (X) proper payment clause and effectively cross out all of the clauses not applicable.)

\_\_\_\_\_ A. ONE LUMP SUM will be made for the whole contract, upon  
 \_\_\_\_\_ acceptance by the owner and Rural Development, of all work  
 required hereunder and compliance by the Contractor with all the  
 terms and conditions of this contract.

\_\_\_\_\_ B. PARTIAL PAYMENTS NOT TO EXCEED 60 PERCENT of the value  
 \_\_\_\_\_ of the work in place (less the aggregate of previous payments)  
 will be made at intervals of \_\_\_\_\_. The value of work in place  
 shall be as estimated by the contractor and approved by Rural  
 Development. Prior to receiving any partial payment, the  
 contractor must furnish the owner with a statement showing the  
 total amount owed to date for materials and labor procured under  
 this contract and, if required by the owner or Rural  
 Development, must also submit evidence showing that previous  
 partial payments were properly applied and that the current  
 payment will be properly applied. Upon completion of the whole  
 contract and acceptance of the work as required hereunder, by  
 the owner and Rural Development, and compliance by the  
 contractor with all terms and conditions of this contract, the  
 amount due the contractor will be paid.

16. Upon completion or termination of the work, the Contractor shall remove from the vicinity of the work all equipment and all temporary structures, waste materials and rubbish resulting from its operations, leaving the premises in a neat and presentable condition. In the event of failure to do so, the same may be done by the Owner at the expense of the Contractor.

ITEM VI

MODEL

SPECIAL BID CONDITIONS

AFFIRMATIVE ACTION REQUIREMENTS

EQUAL EMPLOYMENT OPPORTUNITY

THE FOLLOWING NOTICE SHALL BE INCLUDED IN ALL INVITATIONS AND OTHER SOLICITATIONS FOR BIDS ON (NON-EXEMPT) FEDERAL AND FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS TO BE AWARDED ON THE \_\_\_\_\_, TO INSURE EQUAL EMPLOYMENT OPPORTUNITY.

NOTICE OF REQUIREMENT

EACH BIDDER, CONTRACTOR OR SUBCONTRACTOR (HEREINAFTER THE CONTRACTOR) MUST FULLY COMPLY WITH THE REQUIREMENTS, TERMS AND CONDITIONS OF THE \_\_\_\_\_ AFFIRMATIVE ACTION PLAN (HEREINAFTER \_\_\_\_\_ PLAN) INCLUDING THE GOALS FOR MINORITY MANPOWER UTILIZATION AS TO EACH CONSTRUCTION TRADE IT INTENDS TO USE ON THIS CONSTRUCTION CONTRACT AND ALL OTHER CONSTRUCTION WORK (BOTH FEDERAL AND NONFEDERAL) IN THE \_\_\_\_\_ AREA DURING THE PERFORMANCE OF THIS CONTRACT OR SUBCONTRACT. THE CONTRACTOR COMMITS ITSELF TO THE GOALS FOR MINORITY MANPOWER UTILIZATION CONTAINED HEREIN AND ALL OTHER REQUIREMENTS, TERMS AND CONDITIONS OF THESE BID CONDITIONS BY SUBMITTING A PROPERLY SIGNED BID.

THE CONTRACTOR WILL APPOINT A COMPANY EXECUTIVE TO ASSUME THE RESPONSIBILITY FOR THE IMPLEMENTATION OF SUCH REQUIREMENTS, TERMS AND CONDITIONS.

PART 1 (GOALS FOR MINORITY UTILIZATION)

A. THE FOLLOWING GOALS FOR MINORITY MANPOWER UTILIZATION SHALL EXPRESS THE CONTRACTOR'S COMMITMENT TO THE PERCENTAGE OF MINORITY WORKHOURS TO BE WORKED IN EACH SPECIFIED CRAFT ON ALL WORK PERFORMED BY THE CONTRACTOR IN THE \_\_\_\_\_ AREA DURING THE PERFORMANCE OF THIS CONTRACT. "MINORITY" IS DEFINED AS INCLUDING BLACKS, SPANISH-SURNAMED AMERICANS, ORIENTALS, AND AMERICAN INDIANS AND INCLUDES BOTH MINORITY MEN AND WOMEN.

FOR ALL TRADES THE FOLLOWING GOALS AND TIMETABLES SHALL BE APPLICABLE:

	GOALS FOR MINORITY UTILIZATION _____
UNTIL DECEMBER 31, 19 _____	-
FROM JANUARY 1, 19 _____ to DECEMBER 31, 19 _____	-
FROM JANUARY 1, 19 _____ to DECEMBER 31, 19 _____	-
FROM JANUARY 1, 19 _____ to DECEMBER 31, 19 _____	-
FROM JANUARY 1, 19 _____ to DECEMBER 31, 19 _____	-

B. THE GOALS FOR MINORITY MANPOWER UTILIZATION ABOVE ARE EXPRESSED IN TERMS OF WORKHOURS OF TRAINING AND EMPLOYMENT AS A PROPORTION OF THE TOTAL WORKHOURS TO BE WORKED BY THE CONTRACTOR'S AGGREGATE WORKFORCE IN THAT TRADE ON ALL PROJECTS (BOTH FEDERAL AND NON-FEDERAL) IN THE \_\_\_\_\_ AREA DURING THE PERFORMANCE OF ITS CONTRACT OR SUBCONTRACT (i.e. THE PERIOD BEGINNING WITH THE FIRST DAY OF WORK ON THE FEDERAL OR FEDERALLY-ASSISTED CONSTRUCTION CONTRACT AND ENDING WITH THE LAST DAY OF WORK).

C. THE WORKHOURS OF MINORITY WORK MUST BE SUBSTANTIALLY UNIFORM THROUGHOUT THE LENGTH OF THE CONTRACT IN EACH TRADE, AND MINORITIES SHOULD BE EMPLOYED EVENLY ON EACH OF A CONTRACTOR'S PROJECTS. NEVERTHELESS, FAILURE OF A CONTRACTOR TO EMPLOY MINORITIES EVENLY ON EACH OF ITS PROJECTS SHALL NOT CONSTITUTE NONCOMPLIANCE PROVIDED THE PERCENTAGE OF MINORITY WORKHOURS EMPLOYED BY THE CONTRACTOR IN ITS AGGREGATE WORKFORCE IN THE \_\_\_\_\_ AREA MEETS OR EXCEEDS ITS COMMITMENT TO THE GOALS FOR MINORITY MANPOWER UTILIZATION IN THE \_\_\_\_\_ PLAN AND THE CONTRACTOR HAS NOT VIOLATED THE EQUAL OPPORTUNITY CLAUSE OF THE CONTRACT IN THE ASSIGNMENT OF MINORITIES TO ITS PROJECTS. THE TRANSFER OF MINORITY EMPLOYEES FROM EMPLOYER-TO-EMPLOYER OR FROM PROJECT-TO-PROJECT FOR THE PURPOSE OF MEETING THE CONTRACTOR'S GOAL SHALL BE A VIOLATION OF THE \_\_\_\_\_ PLAN. OTHERWISE, THE CONTRACTOR SHALL BE DEEMED TO BE IN COMPLIANCE WITH THE REQUIREMENTS, TERMS, AND CONDITIONS OF THE \_\_\_\_\_ PLAN IF THE MINORITY MANPOWER UTILIZATION RATE OF THE CONTRACTOR MEETS OR EXCEEDS ITS COMMITMENT TO THE GOALS FOR MINORITY MANPOWER UTILIZATION IN ITS AGGREGATE WORKFORCE, BOTH FEDERALLY INVOLVED AND NON-FEDERAL, WITHIN THE \_\_\_\_\_ AREA. HOWEVER, IF THE CONTRACTOR HAS DENIED EQUAL EMPLOYMENT OPPORTUNITY IN VIOLATION OF THE EQUAL OPPORTUNITY CLAUSE OF THIS CONTRACT, IT SHALL NOT BE IN COMPLIANCE WITH THE \_\_\_\_\_ PLAN.

D. IN THE EVENT THAT WORK IS PERFORMED AFTER THE EXPIRATION DATE OF THE \_\_\_\_\_ PLAN ON A CONSTRUCTION CONTRACT AWARDED PURSUANT TO THE REQUIREMENTS, TERMS AND CONDITIONS OF THE PLAN THE GOALS FOR MINORITY MANPOWER UTILIZATION FOR 1980 SHALL BE APPLICABLE TO SUCH WORK.



E. THE CONTRACTORS COMMITMENT TO GOALS OF MINORITY MANPOWER UTILIZATION IS INTENDED TO MEET ITS AFFIRMATIVE ACTION OBLIGATIONS UNDER EXECUTIVE ORDER 11246, AS AMENDED, AND IS NOT INTENDED AND SHALL NOT BE USED TO DISCRIMINATE AGAINST ANY QUALIFIED APPLICANT OR EMPLOYEE. WHENEVER, IT COMES TO THE CONTRACTOR'S ATTENTION THAT THE GOALS ARE BEING USED IN A DISCRIMINATORY MANNER, IT SHALL IMMEDIATELY REPORT THAT FACT TO THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR, AND THE COMPLIANCE AGENCY SO THAT APPROPRIATE PROCEEDINGS MAY BE INSTITUTED.

PART II

SPECIFIC AFFIRMATIVE ACTION STEPS (GOOD FAITH EFFORTS)

THE CONTRACTOR SHALL BE DEEMED TO BE IN COMPLIANCE WITH THE REQUIREMENTS, TERMS, AND CONDITIONS OF THE \_\_\_\_\_ PLAN IF IT MEETS OR EXCEEDS ITS COMMITMENT TO THE GOALS FOR MINORITY MANPOWER UTILIZATION IN ITS AGGREGATE WORKFORCE IN THE \_\_\_\_\_ AREA FOR EACH TRADE FOR WHICH IT IS COMMITTED TO A GOAL UNDER THE \_\_\_\_\_ PLAN. THE CONTRACTOR'S COMMITMENT TO THE GOALS FOR MINORITY MANPOWER UTILIZATION AS REQUIRED BY THE \_\_\_\_\_ PLAN CONSTITUTES A COMMITMENT THAT IT WILL MAKE EVERY GOOD FAITH EFFORT TO MEET SUCH GOALS. NO CONTRACTOR SHALL BE FOUND TO BE IN NON-COMPLIANCE SOLELY ON ACCOUNT OF THE CONTRACTOR'S FAILURE TO MEET ITS GOALS, BUT SHALL BE GIVEN THE OPPORTUNITY TO DEMONSTRATE THAT THE CONTRACTOR HAS INSTITUTED ALL THE SPECIFIC AFFIRMATIVE ACTION STEPS SPECIFIED IN THE \_\_\_\_\_ PLAN AND MADE EVERY GOOD FAITH EFFORT TO MAKE THESE STEPS WORK TOWARD THE ATTAINMENT OF ITS GOALS WITHIN THE TIMETABLES, ALL TO THE PURPOSE OF EXPANDING MINORITY MANPOWER UTILIZATION IN ITS AGGREGATE WORKFORCE IN THE \_\_\_\_\_ AREA. CONTRACTORS WHO FAIL TO ACHIEVE THEIR COMMITMENTS TO THE GOALS FOR MINORITY MANPOWER UTILIZATION MUST HAVE ENGAGED IN

AFFIRMATIVE ACTION DIRECTED AT INCREASING MINORITY MANPOWER UTILIZATION, WHICH IS AT LEAST AS EXTENSIVE AS THE FOLLOWING STEPS:

1. SPECIFIC WRITTEN NOTIFICATION OF MINORITY RECRUITMENT SOURCES AND COMMUNITY ORGANIZATION WHEN THE CONTRACTOR OR ITS UNIONS HAVE EMPLOYMENT OPPORTUNITIES AVAILABLE AND MAINTENANCE OF RECORDS REGARDING THE ORGANIZATIONS' RESPONSE.
2. MAINTENANCE OF A FILE OF THE NAMES AND ADDRESSES OF EACH MINORITY WORKER REFERRED BY THE UNION, MINORITY RECRUITMENT SOURCE(S) AND COMMUNITY ORGANIZATION(S) TO THE CONTRACTOR AND WHAT ACTION HAS BEEN TAKEN WITH RESPECT TO EACH SUCH REFERRED WORKER. IF SUCH WORKER WAS NOT EMPLOYED BY THE CONTRACTOR, THE FILE SHOULD DOCUMENT THIS AND THE REASONS THEREFOR.
3. WRITTEN NOTIFICATION TO BOTH THE CONTRACTING AGENCY AND THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS WHEN THE UNION OR UNIONS WITH WHOM THE CONTRACTOR HAS A COLLECTIVE BARGAINING AGREEMENT HAS NOT REFERRED TO THE CONTRACTOR A MINORITY WORKER SENT BY THE CONTRACTOR, OR THE CONTRACTOR HAS OTHER INFORMATION THAT THE UNION REFERRAL PROCESS HAS IMPEDED ITS EFFORTS TO MEET ITS GOALS.
4. PARTICIPATION IN TRAINING PROGRAMS IN THE AREA, INCLUDING APPRENTICESHIP, TRAINEE, AND JOURNEYMEN UPGRADING PROGRAMS, ESPECIALLY THOSE FUNDED BY THE DEPARTMENT OF LABOR.
5. DISSEMINATION OF THE CONTRACTOR'S OR UNION'S EEO POLICY BY INCLUDING IT IN ANY POLICY MANUAL AND COLLECTIVE BARGAINING AGREEMENT(S); BY PUBLICIZING IT IN THE COMPANY OR UNION

- NEWSPAPER, ANNUAL REPORT, ETC.; BY POSTING OF THE POLICY: AND BY SPECIFIC REVIEW OF THE POLICY WITH MINORITY EMPLOYEES AT LEAST ONCE A YEAR.
6. DISSEMINATION OF THE CONTRACTOR'S EEO POLICY EXTERNALLY BY ADVERTISING IN NEWS MEDIA, SPECIFICALLY INCLUDING MINORITY NEWS MEDIA, IF THE CONTRACTOR HAS A NEED TO ADVERTISE; AND BY NOTIFYING AND DISCUSSING IT WITH OTHER CONTRACTORS, AND SUBCONTRACTORS WITH WHOM THE CONTRACTOR DOES OR ANTICIPATES DOING BUSINESS.
  7. ENCOURAGE PRESENT MINORITY EMPLOYEES TO RECRUIT THEIR FRIENDS AND RELATIVES.
  8. VALIDATION OF ALL TESTS AND OTHER SELECTION REQUIREMENTS AS REQUIRED BY THE TESTING AND SELECTION ORDER (41 CFR PART 60-3).
  9. MAKING EVERY EFFORT TO PROVIDE AFTER SCHOOL, SUMMER AND VACATION EMPLOYMENT TO MINORITY YOUTH - BOTH ON THE JOB SITE AND IN OTHER AREAS OF A CONTRACTOR'S WORKFORCE.
  10. CONDUCT INVENTORY AND EVALUATION OF ALL MINORITY PERSONNEL FOR PROMOTIONAL OPPORTUNITIES ON A QUARTERLY BASIS AND ENCOURAGE MINORITY EMPLOYEES TO SEEK SUCH OPPORTUNITIES.
  11. ENSURING THAT SENIORITY PRACTICES, JOB CLASSIFICATIONS, ETC., DO NOT HAVE A DISCRIMINATORY EFFECT.
  12. ENSURING THAT ALL FACILITIES AND COMPANY ACTIVITIES ARE NONSEGREGATED.
  13. CONTINUAL MONITORING OF ALL PERSONNEL ACTIVITIES TO ENSURE THAT ITS EEO POLICY IS BEING CARRIED OUT.

14. DOCUMENTATION OF SOLICITATION OF BIDS FOR SUBCONTRACTORS FROM AVAILABLE MINORITY SUBCONTRACTORS ENGAGED IN THE TRADES COVERED BY THE \_\_\_\_\_ PLAN, INCLUDING CIRCULATION TO MINORITY CONTRACTOR ASSOCIATIONS.

THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS ASSISTANT REGIONAL ADMINISTRATOR AND THE CONTRACTING AGENCY COMPLIANCE STAFF WILL PROVIDE TECHNICAL ASSISTANCE, UPON REQUEST, PERTAINING TO MINORITY RECRUITMENT SOURCES, COMMUNITY ORGANIZATIONS AND MINORITY NEWS MEDIA.

PART III

ADMINISTRATIVE PROCEDURES FOR ENFORCEMENT

A. THE AGENCY SHALL REVIEW THE CONTRACTOR'S EMPLOYMENT PRACTICES DURING THE PERFORMANCE OF THE CONTRACT. IF THE CONTRACTOR MEETS ITS GOAL(S) OR CAN DEMONSTRATE THAT IT HAS MADE IN GOOD FAITH EVERY EFFORT TO MEET THE GOAL(S) AND IS NOT OTHERWISE VIOLATING THE EQUAL OPPORTUNITY CLAUSE OF THIS CONTRACT OR ANY OTHER FEDERAL EQUAL EMPLOYMENT OPPORTUNITY LAWS OR REGULATIONS, THE CONTRACTOR SHALL BE PRESUMED TO BE IN COMPLIANCE WITH EXECUTIVE ORDER 11246, AS AMENDED, AND THE \_\_\_\_\_ PLAN. IN THAT EVENT, NO FORMAL SANCTIONS OR PROCEEDINGS LEADING TOWARD SANCTIONS SHALL BE INSTITUTED UNLESS THE AGENCY OTHERWISE DETERMINES THAT THE CONTRACTOR IS NOT PROVIDING EQUAL EMPLOYMENT OPPORTUNITIES.

B. WHERE THE AGENCY FINDS THAT THE CONTRACTOR HAS FAILED TO COMPLY WITH REQUIREMENTS OF EXECUTIVE ORDER 11246, THE IMPLEMENTING REGULATIONS AND THE \_\_\_\_\_ PLAN, THE AGENCY SHALL TAKE SUCH ACTION AND IMPOSE

SUCH SANCTIONS, WHICH INCLUDE SUSPENSION, TERMINATION, CANCELLATION, AND DEBARMENT, AS MAY BE APPROPRIATE UNDER THE EXECUTIVE ORDER AND ITS REGULATIONS.

C. WHEN THE AGENCY PROCEEDS WITH SUCH FORMAL ACTION, IT HAS THE BURDEN OF PROVIDING THAT THE CONTRACTOR HAS NOT MET THE REQUIREMENTS OF THE \_\_\_\_\_ PLAN. THE CONTRACTOR'S FAILURE TO MEET ITS GOAL(S) SHALL, HOWEVER, SHIFT TO THE REQUIREMENT TO COME FORWARD WITH EVIDENCE TO SHOW THAT IT HAS MADE EVERY "GOOD FAITH" EFFORT TO MEET SUCH GOALS.

D. THE PENDENCY OF SUCH FORMAL PROCEEDINGS SHALL BE TAKEN INTO CONSIDERATION BY FEDERAL AGENCIES BY DETERMINING WHETHER SUCH CONTRACTOR CAN COMPLY WITH THE REQUIREMENTS OF EXECUTIVE ORDER 11246, AS AMENDED, AND IS THEREFORE, A "RESPONSIBLE PROSPECTIVE CONTRACTOR" WITHIN THE MEANING OF THE FEDERAL PROCUREMENT ACT.

E. IT SHALL BE NO EXCUSE THAT THE UNION WITH WHICH THE CONTRACTOR HAS A COLLECTIVE BARGAINING AGREEMENT PROVIDES FOR THE EXCLUSIVE REFERRAL OF MINORITY EMPLOYEES. DISCRIMINATION IN REFERRAL FOR EMPLOYMENT, EVEN IF PURSUANT TO PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT, IS PROHIBITED BY THE NATIONAL LABOR RELATIONS ACT, AS AMENDED, AND TITLE VII OF THE CIVIL RIGHTS ACT FOR 1964. IT IS THE POLICY OF THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS THAT CONTRACTORS HAVE A RESPONSIBILITY TO PROVIDE EQUAL EMPLOYMENT OPPORTUNITY IF THEY WISH TO PARTICIPATE IN FEDERALLY-INVOLVED CONTRACTS. TO THE EXTENT THEY HAVE DELEGATED THE RESPONSIBILITY FOR SOME OF THEIR EMPLOYMENT PRACTICES TO A LABOR ORGANIZATION AND, AS A RESULT, ARE PREVENTED FROM MEETING THEIR OBLIGATIONS PURSUANT TO EXECUTIVE ORDER 11246, AS AMENDED, SUCH CONTRACTORS

CANNOT BE CONSIDERED TO BE IN COMPLIANCE WITH EXECUTIVE ORDER 11246, AS AMENDED, AND ITS IMPLEMENTING RULES AND REGULATIONS.

CONTRACTOR OBLIGATIONS

A. ALL CONTRACTORS SHALL INCLUDE THE \_\_\_\_\_ PLAN IN ALL BID INVITATIONS OR OTHER PRE-BID COMMUNICATIONS, WRITTEN OR OTHERWISE, WITH THEIR PROSPECTIVE SUBCONTRACTORS. WHENEVER A CONTRACTOR SUBCONTRACTS A PORTION OF THE WORK IN ANY TRADE COVERED BY THE \_\_\_\_\_ PLAN IT SHALL INCLUDE THE PLAN IN SUCH SUBCONTRACTS AND EACH SUBCONTRACTOR SHALL BE BOUND BY THE \_\_\_\_\_ PLAN TO THE FULL EXTENT AS IF IT WERE THE PRIME CONTRACTOR. THE CONTRACTOR SHALL NOT BE ACCOUNTABLE FOR THE FAILURE OF ITS SUBCONTRACTOR TO FULFILL ITS AFFIRMATIVE ACTION COMMITMENTS. HOWEVER, THE PRIME CONTRACTOR SHALL GIVE NOTICE TO THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS OF THE DEPARTMENT OF LABOR AND THE CONTRACTING AGENCY OF ANY REFUSAL OR FAILURE OF ANY SUBCONTRACTOR TO FULFILL ITS OBLIGATIONS UNDER THE \_\_\_\_\_ PLAN. NONCOMPLIANCE WITH THESE REQUIREMENTS BY A SUBCONTRACTOR WILL BE TREATED IN THE SAME MANNER AS SUCH FAILURE BY THE PRIME CONTRACTOR.

B. CONTRACTORS HEREBY AGREE TO REFRAIN FROM ENTERING INTO ANY CONTRACT OR CONTRACT MODIFICATION SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED, WITH A CONTRACTOR DEBARRED FROM, OR WHO IS DETERMINED NOT TO BE A "RESPONSIBLE" BIDDER FOR GOVERNMENT CONTRACTS AND FEDERALLY-ASSISTED CONSTRUCTION CONTRACTS PURSUANT TO THE EXECUTIVE ORDER.

C. THE CONTRACTOR SHALL CARRY OUT SUCH SANCTIONS AND PENALTIES FOR VIOLATION OF THESE BID CONDITIONS AND THE EQUAL OPPORTUNITY CLAUSE INCLUDING

SUSPENSION. TERMINATION AND CANCELLATION OF EXISTING SUBCONTRACTS AND DEBARMENT FROM FUTURE CONTRACTS AS MAY BE IMPOSED OR ORDERED PURSUANT TO EXECUTIVE ORDER 11246, AS AMENDED, AND ITS IMPLEMENTING REGULATIONS BY THE CONTRACTING OR ADMINISTERING AGENCY AND THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS. ANY CONTRACTOR WHO FAILS TO CARRY OUT SUCH SANCTIONS AND PENALTIES SHALL ALSO BE DEEMED TO BE IN NONCOMPLIANCE WITH THESE BID CONDITIONS AND EXECUTIVE ORDER 11246, AS AMENDED.

D. NOTHING HEREIN IS INTENDED TO RELIEVE ANY CONTRACTOR DURING THE TERM OF ITS CONTRACT FROM COMPLIANCE WITH EXECUTIVE ORDER 11246, AS AMENDED, AND THE EQUAL OPPORTUNITY CLAUSE OF ITS CONTRACT WITH RESPECT TO MATTERS NOT COVERED IN THE \_\_\_\_\_ PLAN.

E. CONTRACTORS MUST KEEP SUCH RECORDS AND FILE SUCH REPORTS RELATING TO PROVISIONS OF THE \_\_\_\_\_ PLAN AS SHALL BE REQUIRED BY THE CONTRACTING OR ADMINISTERING AGENCY OR THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS. OBLIGATIONS OF THE FEDERAL GOVERNMENT

A. NOTHING IN THE \_\_\_\_\_ PLAN SHALL BE INTERPRETED TO DIMINISH OR RELIEVE THE RESPONSIBILITIES OF THE CONTRACTING AND ADMINISTERING AGENCIES PURSUANT TO EXECUTIVE ORDER 11246, AS AMENDED, WITH RESPECT TO MATTERS NOT COVERED IN THESE BID CONDITIONS.

B. THE PROCEDURES SET FORTH IN THE \_\_\_\_\_ PLAN SHALL NOT APPLY TO ANY CONTRACT WHEN THE HEAD OF THE AGENCY DETERMINES THAT SUCH CONTRACT IS ESSENTIAL TO THE NATIONAL SECURITY AND THAT ITS AWARD WITHOUT FOLLOWING SUCH PROCEDURE IS NECESSARY TO THE NATIONAL SECURITY. UPON MAKING SUCH A DETERMINATION, THE AGENCY HEAD WILL NOTIFY, IN WRITING, THE DIRECTOR OF THE OFFICE

OF FEDERAL CONTRACT COMPLIANCE PROGRAMS WITHIN 30 DAYS.

C. NOTHING IN THE \_\_\_\_\_ PLAN SHALL BE INTERPRETED TO DIMINISH THE PRESENT CONTRACT COMPLIANCE REVIEW AND COMPLIANT PROGRAMS.

D. REQUESTS FOR EXEMPTIONS FROM THE \_\_\_\_\_ PLAN MUST BE MADE IN WRITING, WITH JUSTIFICATION, TO THE DIRECTOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C., 20210, AND SHALL BE FORWARDED THROUGH AND WITH THE ENDORSEMENT OF THE HEAD OF THE CONTRACTING OR ADMINISTERING AGENCY.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_.

\_\_\_\_\_  
DIRECTOR, OFFICE OF FEDERAL  
Contract Compliance Programs

oOo



Rural Development Supplemental General Conditions

The provisions of the Rural Development Supplemental General Conditions as described herein change, amend, or supplement the General Conditions and shall supersede any conflicting provisions of this CONTRACT. All provisions of the General Conditions which are not changed, amended, or supplemented, remain in full force.

- |                                     |  |
|-------------------------------------|--|
| 1. CONTRACT APPROVAL                | 9. SMALL, MINORITY AND WOMEN'S<br>BUSINESSES |
| 2. CONTRACT CHANGE ORDERS           | 10. ANTI-KICKBACK                            |
| 3. PARTIAL PAYMENT ESTIMATES        | 11. VIOLATING FACILITIES                     |
| 4. CONFLICT OF INTEREST             | 12. STATE ENERGY POLICY                      |
| 5. PROTECTION OF LIVES AND PROPERTY | 13. EQUAL OPPORTUNITY REQUIREMENTS           |
| 6. REMEDIES                         | 14. CERTIFICATE OF OWNER'S ATTORNEY          |
| 7. GRATUITIES                       | 15. RURAL DEVELOPMENT CONCURRENCE            |
| 8. AUDIT AND ACCESS TO RECORDS      |  |

1. Contract Approval.

1.1 The OWNER and the CONTRACTOR will furnish the OWNER'S Attorney such evidence as required so that the OWNER'S Attorney can complete and execute "Certificate of Owner's Attorney" (Section 14) before the OWNER submits the executed Contract Documents to Rural Development for approval.

1.2 Concurrence by the Rural Development State Director or designee in the award of the CONTRACT is required before it is effective and the "Rural Development Concurrence" (Section 15), shall be attached and made a part of the Agreement.

1.3 When a Performance BOND and Payment BOND are provided, the United States acting through Rural Development will be named as co-obligee in these BONDS unless prohibited by State law. Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

1.4 This CONTRACT is expected to be funded in part with funds from the Rural Development. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this CONTRACT or any SUBCONTRACT.

2. Contract Change Orders.

2.1 All changes affecting the project's construction cost or modifications of the terms or conditions of the contract must be authorized by means of a written contract change order which is mutually agreed to by the OWNER and CONTRACTOR and is approved by Rural Development. The contract change order will include extra work, work for which quantities have been altered from those shown in the bidding schedule, as well as decreases or increases in the quantities of installed units which are different than those shown in the bidding schedule because of final measurements. All changes must be recorded on a contract change order before they can be included in a partial payment estimate.

2.2 Form RD 1924-7, "Contract Change Order" or similar form approved by Rural Development shall be used to record CONTRACT changes. (Revised 5-12-87, SPECIAL PN.)

2.3 When the CONTRACT sum is, in whole or in part, based on unit prices, the OWNER reserves the right to increase or decrease a unit price quantity as may be deemed reasonable or necessary in order to complete the work contemplated by this CONTRACT.

3. Partial Payment Estimates.

3.1 Form RD 1924-18, "Partial Payment Estimate," or similar form approved by Rural Development shall be used when periodic payments due the CONTRACTOR. (Revised 5-12-87, SPECIAL PN.)

3.2 The OWNER may after consultation with the ARCHITECT/ENGINEER withhold or, on account of subsequently discovered evidence, nullify the whole or part of any approved partial payment estimate to such extent as may be necessary to protect the OWNER from loss on account of:

3.2.1 Defective work not remedied.

3.2.2 Claims filed.

3.2.3 Failure of CONTRACTOR to make payments properly to subcontractors or suppliers.

3.2.4 A reasonable doubt that the WORK can be completed for the balance then unpaid.

3.2.5 Damage to another CONTRACTOR.

3.2.6 Performance of WORK in violation of the terms of the CONTRACT DOCUMENTS.

3.3 Where WORK on unit price items is substantially complete but lacks testing, clean-up and/or corrections, amounts shall be deducted from unit prices in partial payment estimates to amply cover such testing, clean-up and/or corrections.

3.4 When the items in 3.2 and 3.3 are cured, payment shall be made for amounts withheld because of them.

3.5 Payments will not be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the CONTRACTOR.

4. Conflict of Interest.

4.1. Unacceptable bidders. An ENGINEER or ARCHITECT (individual or firm including persons they employ) who has prepared plans and specifications will not be considered an acceptable bidder. Any firm or corporation in which such ENGINEER or ARCHITECT (including persons they employ) is an officer, employee, or holds or controls a substantial interest will not be considered an acceptable bidder. Contracts or purchases by the CONTRACTOR shall not be awarded or made to a supplier or manufacturer if the ENGINEER or ARCHITECT (firm or individual) who prepared the plans and specifications has a corporate or financial affiliation with the supplier or manufacturer. Bids will not be awarded to firms or corporations which are owned or controlled wholly or in part by a member of the governing body of the OWNER or to an individual who is such a member.

4.2. The OWNER'S officers, employees, or agents shall not engage in the award or administration of this CONTRACT if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (a) the employee, officer or agent; (b) any member of their immediate family; (c) their partner or (d) an organization which employs, or is about to employ, any of the above baa financial or interest in the CONTRACTOR. The OWNER'S officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from the CONTRACTOR or subcontractor.

5. Protection of Lives and Property

5.1 In order to protect the lives and health of its employees under the CONTRACT, the CONTRACTOR shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA) and any State Safety and Health agency requirements.

5.2 The CONTRACTOR alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance or operation.

6. Remedies. Unless otherwise provided in this CONTRACT, all claims, counterclaims, disputes, and other matters in question between the OWNER and

the CONTRACTOR arising out of or relating to this CONTRACT or the breach thereof will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the OWNER is located.

6.1 The arbitration provisions of this section may be initiated by either party to this CONTRACT by filing with the other party and the ENGINEER/ARCHITECT a WRITTEN REQUEST for arbitration.

6.2 Each party to this CONTRACT will appoint one arbitrator; the two arbitrators will select a third arbitrator.

6.3 The arbitrators will select a hearing location as close to the OWNER'S locale as possible.

6.4 The procedure for conducting the hearings will follow the Construction Industry Arbitration Rules of the American Arbitration Association.

7. Gratuities.

7.1 If the OWNER finds after a notice and hearing that the CONTRACTOR, or any of the CONTRACTOR'S agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the OWNER, the State, or Rural Development officials in an attempt to secure this CONTRACT or favorable treatment in awarding, amending, or making any determinations related to the performance of this CONTRACT, the OWNER may, by written notice to the CONTRACTOR, terminate this CONTRACT. The OWNER may also pursue other rights and remedies that the law or this CONTRACT provides. However, the existence of the facts on which the OWNER bases such findings shall be an issue and may be reviewed in proceedings under the Remedies clause of this CONTRACT.

7.2 In the event this CONTRACT is terminated as provided in paragraph 7.1 the OWNER may pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the CONTRACT by the CONTRACTOR. As a penalty, in addition to any other damages to which it may be entitled by law, the OWNER may pursue exemplary damages in an amount has determined by the OWNER) which shall be not less than three nor more than ten times the costs the CONTRACTOR incurs in providing any such gratuities to any such officer or employee.

8. Audit and Access to Records. For all negotiated contracts (except those of \$10,000 or less), the Rural Development, the Comptroller General, the OWNER or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the CONTRACTOR, which are pertinent to the CONTRACT, for the purpose of making audits, examinations, excerpts and transcriptions. The CONTRACTOR shall maintain all required records for three years after final payment is made and all other pending matters are closed.
  
9. Small, Minority and Women's Businesses. If the CONTRACTOR intends to let any subcontracts for a portion of the work, the CONTRACTOR shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall consist of (1) including qualified small minority, and women's businesses on solicitation lists; (2) assuring that small, minority and women's businesses are solicited whenever they are potential sources; (3) dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation of small, minority and women's businesses; (4) establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority and women's businesses; (5) using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce; (6) requiring each party to a subcontract to take the affirmative steps of this section; and (7) CONTRACTORS are encouraged to procure goods and services from labor surplus area firms.
  
10. Anti-Kickback. The CONTRACTOR shall comply with the Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This act provides that each CONTRACTOR shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. The OWNER shall report all suspected or reported violations to Rural Development.
  
11. Violating Facilities. Where this CONTRACT exceeds \$100,000 the CONTRACTOR shall comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations 40 CFR Part 15 which prohibit the awarding of non-exempt federal contracts, grants, or loans to facilities included on EPA's list of violating facilities. The CONTRACTOR will report violations to the EPA.

12. State Energy Policy. The CONTRACTOR shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in the State Energy Conservation Plan, shall be utilized.
13. Equal Opportunity Requirements. For all contracts in excess of \$10,000, the CONTRACTOR shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

13.1 If the CONTRACT exceeds \$10,000, the CONTRACTOR will execute Form RD 400-6, "Compliance Statement."

13.2 The CONTRACTOR'S compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the CONTRACT is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the CONTRACT, and in each trade, and the CONTRACTOR shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the CONTRACTOR'S goals shall be a violation of the CONTRACT, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

13.3 The CONTRACTOR shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the CONTRACT resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the CONTRACT is to be performed.

14. Certificate of Owner's Attorney.

I, the undersigned, \_\_\_\_\_, the duly authorized and acting legal representative of \_\_\_\_\_, do hereby certify as follows

I have examined the attached contract(s) and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements are adequate and have has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

\_\_\_\_\_

Date: \_\_\_\_\_

NOTE: Delete phrase "performance and payment bonds" when not applicable.

15. Rural Development Concurrence.

As lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, Rural Development (Rural Development) hereby concurs in the award of this CONTRACT to

\_\_\_\_\_

U.S. Department of Agriculture  
Rural Development

By \_\_\_\_\_ Title \_\_\_\_\_

Date \_\_\_\_\_

This CONTRACT shall not be effective unless and until concurred in by the State Director of Rural Development, U.S. Department of Agriculture or a delegated representative.



AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, by  
and between \_\_\_\_\_, hereinafter called "OWNER"  
(name of Owner), (an Individual)

and \_\_\_\_\_ doing business as (an individual,) or  
(a partnership,) or (a corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements  
herein after mentioned:

1. The CONTRACTOR will commence and complete the construction of

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2. The CONTRACTOR will furnish all of the materials, supplies, tools,  
equipment, labor, and other services necessary for the construction and  
completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT  
DOCUMENTS within \_\_\_\_\_ calendar days after the date of the NOTICE TO  
PROCEED and will complete the same within \_\_\_\_\_ calendar days unless  
the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

4. The CONTRACTOR agrees to perform all of the WORK described in the  
CONTRACT DOCUMENTS and comply with the terms therein for the sum of  
\$ \_\_\_\_\_ or as shown in the BID schedule.

5. The term "CONTRACT DOCUMENTS" MEANS and includes the following:

RD Instruction 1942-A  
(Guide 19) (Page 2)

- (A) Advertisement For BIDS
- (B) Information For BIDDERS
- (C) BID
- (D) BID BOND
- (E) Agreement
- (F) General Conditions
- (G) SUPPLEMENTAL GENERAL CONDITIONS
- (H) Payment BOND
- (I) Performance BOND
- (J) NOTICE OF AWARD
- (K) NOTICE TO PROCEED
- (L) CHANGE ORDER
- (M) DRAWINGS prepared by \_\_\_\_\_  
numbered \_\_\_\_\_ through \_\_\_\_\_, and dated \_\_\_\_\_,
- (N) SPECIFICATIONS prepared or issued by \_\_\_\_\_  
\_\_\_\_\_  
dated \_\_\_\_\_, 19 \_\_\_\_\_
- (O) ADDENDA:  
No. \_\_\_\_\_, dated \_\_\_\_\_, 19 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Guide 19) (Page 3)  
(Revision 1)

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized official, this Agreement in ( ) copies each of which shall be deemed an original on the (Number of Copies) date first above written.

OWNER:

\_\_\_\_\_

BY \_\_\_\_\_

Name \_\_\_\_\_  
(Please Type)

Title \_\_\_\_\_

(SEAL)

ATTEST:

\_\_\_\_\_

Name \_\_\_\_\_  
(Please Type)

Title \_\_\_\_\_

CONTRACTOR:

\_\_\_\_\_

BY \_\_\_\_\_

Name \_\_\_\_\_  
(Please Type)

Address \_\_\_\_\_

\_\_\_\_\_

Employer Identification  
Number \_\_\_\_\_

(SEAL)

ATTEST:

\_\_\_\_\_

Name \_\_\_\_\_  
(Please Type)

\_\_\_\_\_

ADVERTISEMENT FOR BIDS

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Address

\_\_\_\_\_  
Separate sealed BIDS for the construction of (briefly describe nature,  
scope, and major elements of the work) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ will be received by \_\_\_\_\_

at the office of \_\_\_\_\_

until \_\_\_\_\_, (Standard Time - Daylight Savings Time) \_\_\_\_\_

19\_\_\_\_\_, and then at said office publicly opened and read aloud.

The CONTRACT DOCUMENTS may be examined at the following locations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copies of the CONTRACT DOCUMENTS may be obtained at the office of  
\_\_\_\_\_ located at \_\_\_\_\_

upon payment of \$ \_\_\_\_\_ for each set.

RD Instruction 1942-A  
(Guide 19) (Attachment 1) (Page 2)

Any BIDDER, upon returning the CONTRACT DOCUMENTS promptly and in good condition, will be refunded the payment, and any non-bidder upon so returning the CONTRACT DOCUMENTS will be refunded \$\_\_\_\_\_.

---

DATE

(Guide 19 - Attachment 2)

INFORMATION FOR BIDDERS

BIDS will be received by \_\_\_\_\_  
(herein called the "OWNER"), at \_\_\_\_\_  
until \_\_\_\_\_, 19\_\_\_\_, and then at said office publicly  
opened and read aloud.

Each BID must be submitted in a sealed envelope, addressed to \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_.  
Each sealed envelope containing a BID must be plainly marked on the outside as  
BID for \_\_\_\_\_ and the envelope should  
bear on the outside the BIDDER'S name, address, and license number if  
applicable, and the name of the project for which the BID is submitted. If  
forwarded by mail, the sealed envelope containing the BID must be enclosed in  
another envelope addressed to the OWNER at \_\_\_\_\_  
\_\_\_\_\_.

All BIDS must be made on the required BID form. All blank spaces for BID  
prices must be filled in, in ink or typewritten, and the BID form must be fully  
completed and executed when submitted. Only one copy of the BID form is  
required.

The OWNER may waive any informalities or minor defects or reject any and  
all BIDS. Any BID may be withdrawn prior to the above scheduled time for the  
opening of BIDS or authorized postponement thereof. Any BID received after the  
time and date specified shall not be considered. No BIDDER may withdraw a BID  
within 60 days after the actual date of the opening thereof. Should there be  
reasons why the contract cannot be awarded within the specified period, the  
time may be extended by mutual agreement between the OWNER and the BIDDER.

BIDDERS must satisfy themselves of the accuracy of the estimated  
quantities in the BID Schedule by examination of the site and a review of the  
drawings and specifications including ADDENDA. After BIDS have been submitted,  
the BIDDER shall not assert that there was a misunderstanding concerning the  
quantities of WORK or of the nature of the WORK to be done.

The OWNER shall provide to BIDDERS prior to BIDDING, all information which  
is pertinent to, and delineates and describes, the land owned and rights-of-way  
acquired or to be acquired.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve the contractor from fulfilling any of the conditions of the contract.

Each BID must be accompanied by a BID bond payable to the OWNER for five percent of the total amount of the BID. As soon as the BID prices have been compared, the OWNER will return the BONDS of all except the three lowest responsible BIDDERS. When the Agreement is executed the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the payment BOND and performance BOND have been executed and approved, after which it will be returned. A certified check may be used in lieu of a BID BOND.

A performance BOND and a payment BOND each in the amount of 100 percent of the CONTRACT PRICE, with a corporate surety approved by the OWNER, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign BID BONDS or payment BONDS and performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

The party to whom the contract is awarded will be required to execute the Agreement and obtain the performance BOND and payment BOND within ten (10) calendar days from the date when NOTICE OF AWARD is delivered to the BIDDER. The NOTICE OF AWARD shall be accompanied by the necessary Agreement and BOND forms. In case of failure of the BIDDER to execute the Agreement, the OWNER may consider the BIDDER in default, in which case the BID BOND accompanying the proposal shall become the Property of the OWNER.

The OWNER within ten (10) days of receipt of acceptable performance BOND, payment BOND and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the OWNER not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw the signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER.

The NOTICE TO PROCEED shall be issued within ten (10) days of the execution of the Agreement by the OWNER. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period, the time may be extended by mutual agreement between the OWNER AND CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.

The OWNER may make such investigations as deemed necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER



may request. The OWNER reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.

A conditional or qualified BID will not be accepted.

Award will be made to the lowest responsible BIDDER.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout.

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to its BID.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the SUPPLEMENTAL GENERAL CONDITIONS.

The low BIDDER shall supply the names and addresses of major material SUPPLIERS and SUBCONTRACTORS when required to do so by the OWNER.

Inspection trips for prospective BIDDERS will leave from the office of the \_\_\_\_\_  
at \_\_\_\_\_.

The ENGINEER IS \_\_\_\_\_. The ENGINEER'S  
address is \_\_\_\_\_.

BID

Proposal of \_\_\_\_\_ (hereinafter called "BIDDER"), organized and existing under the laws of the State of \_\_\_\_\_ doing business as \_\_\_\_\_\*. To the \_\_\_\_\_ (hereinafter called "OWNER").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of \_\_\_\_\_ in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to its own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within \_\_\_\_\_ consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of \$\_\_\_\_\_ for each consecutive calendar day thereafter as provided in Section 15 of the General Conditions.

BIDDER acknowledges receipt of the following ADDENDUM:

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\* Insert "a corporation", "a partnership", or "an individual" as applicable.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or lump sum:

BID SCHEDULE

NOTE: BIDS shall include sales tax and all other applicable taxes and fees.

<u>NO.</u>	<u>ITEM</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>	<u>TOTAL PRICE</u>
------------	-------------	-------------	-------------------	---------------	--------------------

NO.	ITEM	UNIT	UNIT PRICE	AMOUNT	TOTAL PRICE
-----	------	------	------------	--------	-------------

TOTAL OF BID . . . . . \$ \_\_\_\_\_  
LUMP SUM PRICE (if applicable) . . . . . \$ \_\_\_\_\_

Respectfully submitted:

_____ Signature	_____ Address
_____ Title	_____ Date
_____ License number (if applicable)	

SEAL - (if BID is by a corporation)

(Guide 19 - Attachment 4)

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are hereby held and firmly bound unto \_\_\_\_\_ as OWNER in the penal sum of \_\_\_\_\_ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_. The Condition of the above obligation is such that whereas the Principal has submitted to \_\_\_\_\_ a certain BID, attached hereto and hereby made a part hereof to enter into a contract in writing, for the

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attachment hereto (Properly completed in accordance with said BID) and shall furnish a BOND for faithful performance of said contract, and for the payment of all persons performing labor furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

\_\_\_\_\_  
Principal (L.S.)

\_\_\_\_\_  
Surety

By: \_\_\_\_\_

IMPORTANT - Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

(Guide 19 - Attachment 5)

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal,  
and  
(Corporation, Partnership, or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)  
hereinafter called Surety, are held and firmly bound unto \_\_\_\_\_

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER, and the United States of America acting through Rural Development hereinafter referred to as the Government in the total aggregate penal sum of \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, or GOVERNMENT, with or without notice to the SURETY and during the one year guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER and GOVERNMENT from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER and GOVERNMENT all outlay and expense which the OWNER and GOVERNMENT may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the liability of the PRINCIPAL AND SURETY hereunder to the GOVERNMENT shall be subject to the same limitations and defenses as may be available to them against a claim hereunder by the OWNER, provided, however, that the GOVERNMENT may, at its option, perform any obligations of the OWNER required by the contract.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", wherever used in this BOND, and whether referring to this BOND, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER or GOVERNMENT and the PRINCIPAL shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The OWNER and GOVERNMENT are the only beneficiaries hereunder.



(Guide 19 Attachment 5) (Page 3)

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each  
Number  
one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ .

ATTEST:

\_\_\_\_\_  
Principal

\_\_\_\_\_  
(Principal) Secretary

(SEAL)

By \_\_\_\_\_ (s)

\_\_\_\_\_

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Surety

ATTEST:

\_\_\_\_\_  
Witness to Surety

BY \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners should execute BOND.  
IMPORTANT: Surety companies executing BONDS must appear on the Treasury  
Department's most current list (Circular 570 as amended) and be authorized to  
transact business in the state where the Project is located.

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(Guide 19 - Attachment 6)

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_ hereinafter called PRINCIPAL and  
(Corporation, Partnership or Individual)

\_\_\_\_\_  
(Name of Surety)

hereinafter called SURETY, are held and firmly bound unto \_\_\_\_\_

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Address of Owner)

hereinafter called OWNER and the United States of America acting through Rural Development hereinafter referred to as GOVERNMENT, and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extensions or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and for all labor cost incurred in such WORK including that by a SUBCONTRACTOR, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDE, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL (or with the GOVERNMENT in the event the GOVERNMENT is performing the obligations of the OWNER), shall have given written notice to any two of the following: The PRINCIPAL, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date of which PRINCIPAL ceased work on said CONTRACT, is being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER or GOVERNMENT and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

(Guide 19 - Attachment 6) (Page 3)

WITNESS WHEREOF, this instrument is executed in \_\_\_\_ counterparts, each of  
Number  
which shall be deemed an original, this the \_\_\_\_ day of \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Principal

\_\_\_\_\_  
(Principal) Secretary

(SEAL)

By \_\_\_\_\_ (s)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Surety

ATTEST:

By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR Is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

oOo

RD Instruction 1942-A  
(Guide 19 - Attachment 7)

NOTICE OF AWARD

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated \_\_\_\_\_, 19\_\_\_\_, and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$\_\_\_\_\_.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Owner

By \_\_\_\_\_

Title \_\_\_\_\_

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

by \_\_\_\_\_.  
this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
By \_\_\_\_\_  
Title \_\_\_\_\_

NOTICE TO PROCEED

TO: \_\_\_\_\_ DATE: \_\_\_\_\_  
 \_\_\_\_\_ Project: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

You are hereby notified to commence WORK in accordance with the Agreement dated \_\_\_\_\_, 19\_\_, on or before \_\_\_\_\_, 19\_\_, and you are to complete the WORK within \_\_\_\_\_ consecutive calendar days thereafter. The date of completion of all WORK is therefore \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
 Owner

By \_\_\_\_\_

Title \_\_\_\_\_

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by \_\_\_\_\_

\_\_\_\_\_  
 this the \_\_\_\_\_, 19\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Employer Identification  
 Number \_\_\_\_\_

oOo

GENERAL CONDITIONS

- |  |  |
|--|--|
| 1. Definitions                                 | 17. Subsurface Conditions                      |
| 2. Additional Instructions and Detail Drawings | 18. Suspension of Work, Termination, and Delay |
| 3. Schedules, Reports, and Records             | 19. Payments to Contractor                     |
| 4. Drawings and Specifications                 | 20. Acceptance of Final Payment as Release     |
| 5. Shop Drawings                               | 21. Insurance                                  |
| 6. Materials, Services, and Facilities         | 22. Contract Security                          |
| 7. Inspection and Testing                      | 23. Assignments                                |
| 8. Substitutions                               | 24. Indemnification                            |
| 9. Patents                                     | 25. Separate Contracts                         |
| 10. Surveys, Permits, Regulations              | 26. Subcontracting                             |
| 11. Protection of Work, Property, Persons      | 27. Engineer's Authority                       |
| 12. Supervision by Contractor                  | 28. land and Rights-of-Way                     |
| 13. Changes in the Work                        | 29. Guaranty                                   |
| 14. Changes in Contract Price                  | 30. Arbitration                                |
| 15. Time for Completion and Liquidated Damages | 31. Taxes                                      |
| 16. Correction of Work                         |  |

1. DEFINITIONS

1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:

1.2 ADDENDA - Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications, or corrections.

1.3 BID - The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.4 BIDDER - Any person, firm, or corporation submitting a BID for the WORK.

1.5 BONDS - Bid, Performance, and Payment Bonds and other instruments of surety, furnished by the CONTRACTOR and the CONTRACTOR'S surety in accordance with the CONTRACT DOCUMENTS.

1.6 CHANGE ORDER - A written order to the CONTRACTOR authorizing an addition, deletion, or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.7 CONTRACT DOCUMENTS - The contract, including Advertisement For BIDS, Information For BIDDERS, BID, BID BOND, Agreement, Payment BOND, Performance BOND, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.

1.8 CONTRACT PRICE - The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

1.9 CONTRACT TIME - The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.10 CONTRACTOR - The person, firm, or corporation with whom the OWNER has executed the Agreement.

1.11 DRAWINGS - The parts of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.

1.12 ENGINEER - The person, firm, or corporation named as such in the CONTRACT DOCUMENTS.

1.13 FIELD ORDER - A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

1.14 NOTICE OF AWARD - The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

1.15 NOTICE TO PROCEED - Written communication issued by the OWNER to the CONTRACTOR authorizing him/her to proceed with the WORK and establishing the date for commencement of the WORK.

1.16 OWNER - A public or quasi-public body or authority, corporation, association, partnership, or an individual for whom the WORK is to be performed.

1.17 PROJECT - The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

1.18 RESIDENT PROJECT REPRESENTATIVE - The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

1.19 SHOP DRAWINGS - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.20 SPECIFICATIONS - A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.



(Guide 19 - Attachment 9) (Page 3)

1.21 SUBCONTRACTOR - An individual, firm, or corporation having a direct contract with CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.

1.22 SUBSTANTIAL COMPLETION - That date certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

1.23 SUPPLEMENTAL GENERAL CONDITIONS - Modifications to General Conditions required by a Federal agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such requirements that may be imposed by applicable state laws.

1.24 SUPPLIER - Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.25 WORK - All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.26 WRITTEN NOTICE - Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at their last given address, or delivered in person to said party or their authorized representative on the WORK.

## 2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

2.2 The additional drawings and instructions thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

## 3. SCHEDULES, REPORTS AND RECORDS

3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which the CONTRACTOR proposes to carry on the WORK, including dates at which the various parts of the WORK will be started, estimated date of completion of each part and, as applicable:

3.2.1 The dates at which special detail drawings will be required; and

3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The CONTRACTOR shall also submit a schedule of payments that the CONTRACTOR anticipates will be earned during the course of the WORK.

#### 4. DRAWINGS AND SPECIFICATIONS

4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over general DRAWINGS.

4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

#### 5. SHOP DRAWINGS

5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

5.2 When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

(Guide 19 - Attachment 9) (Page 5)

5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

## 6. MATERIALS, SERVICES AND FACILITIES

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

6.3 Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.4 Materials, supplies, and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.

6.5 Materials, supplies, or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

## 7. INSPECTION AND TESTING

7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.

7.3 The CONTRACTOR shall provide at the CONTRACTOR'S expense the testing and inspection services required by the CONTRACT DOCUMENTS.

7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

7.5 Inspections, tests, or approvals by the engineer or others shall not relieve the CONTRACTOR from the obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6 The ENGINEER and the ENGINEER'S representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records or personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection or testing thereof.

7.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for the ENGINEER'S observation and replaced at the CONTRACTOR'S expense.

7.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, if, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

## 8. SUBSTITUTIONS

8.1 Whenever a material, article, or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS

(Guide 19 - Attachment 9) (Page 7)

by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

#### 9. PATENTS

9.1 The CONTRACTOR shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified, however, if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless the CONTRACTOR promptly gives such information to the ENGINEER.

#### 10. SURVEYS, PERMITS, REGULATIONS

10.1 The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The

CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, the CONTRACTOR shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

#### 11. PROTECTION OF WORK, PROPERTY, AND PERSONS

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. The CONTRACTOR will take all necessary precautions for the safety of, will provide the necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The CONTRACTOR will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. The CONTRACTOR will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone directly or indirectly employed by any of them or anyone of whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER, of the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instructions or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. The CONTRACTOR will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

#### 12. SUPERVISION BY CONTRACTOR

12.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of

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construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

### 13. CHANGES IN THE WORK

13.1 The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

13.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles the CONTRACTOR to a change in CONTRACT PRICE or TIME, or both, in which event the CONTRACTOR shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

### 14. CHANGES IN CONTRACT PRICE

14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

- a. Unit prices previously approved.
- b. An agreed lump sum.

### 15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced

on a date specified in the NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1 To any preference, priority or allocation order duly issued by the OWNER.

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

## 16. CORRECTION OF WORK

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and reexecute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such



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WORK and store the materials at the expense of the CONTRACTOR.

17. SUBSURFACE CONDITIONS

17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or

17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

17.2 The OWNER shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless the required WRITTEN NOTICE has been given; provided that the OWNER may, if the OWNER determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

18. SUSPENSION OF WORK, TERMINATION, AND DELAY

18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2 If the CONTRACTOR is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of its property, or if CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or disregards the authority of the ENGINEER, or otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the

CONTRACTOR and its surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method the OWNER may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

18.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the CONTRACT. In such case the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.

18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted, or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the OWNER and the ENGINEER stop the WORK until paid all amounts then due, in which event and upon resumption of the WORK CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or

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an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. PAYMENT TO CONTRACTOR

19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER'S title to the material and equipment and protect the OWNER'S interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing approval of payment, and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing the reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate less the retainage. The retainage shall be an amount equal to 10% of said estimate until 50% of the work has been completed. At 50% completion, further partial payments shall be made in full to the CONTRACTOR and no additional amounts may be retained unless the ENGINEER certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the CONTRACTOR. At 50% completion or any time thereafter when the progress of the WORK is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, any amount retained may be paid to the CONTRACTOR. When the WORK has been substantially completed except for WORK which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of the OWNER are valid reasons for noncompletion, the OWNER may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the WORK still to be completed.

19.2 The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site.

19.3 Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

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19.4 The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

19.5 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.

19.6 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demand of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, the CONTRACTOR'S Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

19.7 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

## 20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with

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this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under the CONTRACT DOCUMENTS or the Performance and Payment BONDS.

## 21. INSURANCE

21.1 The CONTRACTOR shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of, or result from, the CONTRACTOR'S execution of the WORK, whether such execution be by the CONTRACTOR, any SUBCONTRACTOR, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1 Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of employees;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.

21.3 The CONTRACTOR shall procure and maintain, at the CONTRACTOR'S own expense, during the CONTRACT TIME, Liability insurance as hereinafter specified:

21.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting the CONTRACTOR from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by the CONTRACTOR or by any SUBCONTRACTOR employed by the CONTRACTOR or anyone directly

or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR employed by the CONTRACTOR. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident.

21.3.2 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.4 The CONTRACTOR shall procure and maintain, at the CONTRACTOR'S own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the WORK is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of the CONTRACTOR'S employees at the site of the PROJECT and in case any WORK is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of its employees not otherwise protected.

21.5 The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, and the OWNER.

## 22. CONTRACT SECURITY

22.1 The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance BOND and a Payment BOND in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance

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by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal Bonds, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

### 23. ASSIGNMENTS

23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of any right, title or interest therein, or any obligations thereunder, without written consent of the other party.

### 24. INDEMNIFICATION

24.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

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24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, its agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

#### 25. SEPARATE CONTRACTS

25.1 The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate the WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional WORK related to the PROJECT or the OWNER may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the OWNER, if the OWNER is performing the additional WORK) reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate the WORK with theirs.

25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves it in additional expense or entitles it to an extension of the CONTRACT TIME, the CONTRACTOR may make a claim thereof as provided in Sections 14 and 15.

#### 26. SUBCONTRACTING

26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2 The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.



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26.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of its SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as the CONTRACTOR is for the acts and omissions of persons directly employed by the CONTRACTOR.

26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.5 Nothing contained in this CONTRACT shall create any contractual relationship between any SUBCONTRACTOR and the OWNER. (Revised 2-16-83, PN 869.)

#### 27. ENGINEER'S AUTHORITY

27.1 The ENGINEER shall act as the OWNER'S representative during the construction period, shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed, and shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship, and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

27.4 The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

#### 28. LAND AND RIGHTS-OF-WAY

28.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

28.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

28.3 The CONTRACTOR shall provide at its own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

29. GUARANTEE

29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL COMPLETION. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

30. ARBITRATION BY MUTUAL AGREEMENT (Revised 2-16-83, PN 869.)

30.1 All claims, disputes, and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims which have been waived by making an acceptance of final payment as provided by Section 20, may be decided by arbitration if the parties mutually agree. Any agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.  
(Revised 2-16-83, PN 869.)

30.2 Notice of the request for arbitration shall be filed in writing with the other party to the CONTRACT DOCUMENTS and a copy shall be filed with the ENGINEER. Request for arbitration shall in no event be made on any claim, dispute, or other matter in question which would be barred by the applicable statute of limitations. (Revised 2-16-83, PN 869.)

30.3 The CONTRACTOR will carry on the WORK and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

31. TAXES

31.1 The CONTRACTOR will pay all sales, consumer, use, and other similar taxes required by the laws of the place where the WORK is performed.

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(Added 09-16-92, PN 191)

32. ENVIRONMENTAL REQUIREMENTS (Added 09-16-92, PN 191.)

The CONTRACTOR, when constructing a project involving trenching and/or other related earth excavation, shall comply with the following environmental constraints.

32.1 WETLANDS - The CONTRACTOR, when disposing of excess, spoil, or other construction materials on public or private property, WILL NOT FILL IN or otherwise CONVERT WETLANDS.

32.2 FLOODPLAINS - The CONTRACTOR, when disposing of excess, spoil, or other construction materials on public or private property, WILL NOT FILL IN or otherwise CONVERT 100 YEAR FLOODPLAIN areas delineated on the latest FEMA Floodplain Maps.

32.3 HISTORIC PRESERVATION - Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the PROJECT ENGINEER and a representative of Rural Development. Construction shall be temporarily halted pending the notification process and further directions issued by Rural Development after consultation with the State Historic Preservation Officer (SHPO).

32.4 ENDANGERED SPECIES - The CONTRACTOR shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of the CONTRACTOR, the CONTRACTOR will immediately report this evidence to the PROJECT ENGINEER and a representative of Rural Development. Construction shall be temporarily halted pending the notification process and further directions issued by Rural Development after consultation with the U.S. Fish and Wildlife Service.

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Guide 20 and 21 not automated see manual

DELINQUENT ACCOUNTS  
POSITIVE ACTION PLAN

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Name of Borrower	Case	State County
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Type of Loan	Insured	/ <u>  </u> /
	Guaranteed	/ <u>  </u> /
	Direct	/ <u>  </u> /

Initial Rural Development Debt	Unpaid Balance	Amt. Delinquent	Amt. Annual
pmt    Amt. Paid			

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OTHER DEBTS OWED

<u>To Whom Owed</u>	<u>Amount</u>	<u>Amount Del.</u>	<u>Purpose of Debt</u>	<u>How Secure</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Reason for Delinquency (Explain):

Option(s) Selection to Remove Delinquency - (Specify Completion Dates for Goals)

- 1.
- 2.
- 3.

Acknowledgement of the adoption of the positive action plan by:

<u>Borrower</u>	<u>Date</u>	<u>Rural Development</u>

Progress Made Toward Accomplishing Goals: (Give Details & Revised Completion Date)

- 1.
- 2.
- 3.
- 4.

Minimum Suggested  
Contents of Management Agreements

1. Manage and operate the project subject to the operating and employment procedures adopted by the owner.
2. Operate facility based on the annual budget and fee schedule adopted by the owner.
3. Set out the handling of funds. All reserve, depreciation, debt payment, and surplus funds should be transferred to the owner on at least a monthly basis.
4. Provide for monthly and annual reports to the owner covering appropriate financial and operational statistics and inspection of books and records by owner and government.
5. Set out the responsibilities for maintenance and amounts of insurance and bonds.
6. Provide for reasonable limits on expenditures for emergency repairs to the facility.
7. Set out the term of the agreement and compensation of the manager including specific positions included in that fee.
8. Set out the remedies for default of the agreement.
9. Require operation in accordance with all Federal, State and local government requirements.
10. For health facilities, require compliance with appropriate third-party requirements such as Medicare-Medicaid.
11. Require the manager to comply with all requirements related to the Federal financial assistance as if it were the recipient of the assistance.
12. Set out responsibilities for obtaining and maintaining all necessary licenses, certifications, and accreditations as may be necessary to operate, maintain, or manage the project.

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Joint Policy Statement  
Between  
The Environmental Protection Agency and Rural Development

The Safe Drinking Water Act (SDWA) was passed on December 16, 1974, to provide for the safety of drinking water supplies throughout the United States by establishing and enforcing national drinking water standards. Congress authorized the Environmental Protection Agency (EPA) to support State and local community drinking water programs by providing financial and technical assistance to undertake research and study efforts. The SDWA, however, did not provide any funds for construction of new water treatment systems or upgrading existing treatment systems to meet the National Interim Primary Drinking Water Regulations.

The National Interim Primary Drinking Water Regulations were published in the Federal Register on December 24, 1975, and became effective on June 24, 1977. The regulations set limits for bacteriology, turbidity and chemical contaminants in finished water. These regulations or equivalent State regulations are applicable to all public water systems defined as one that provides piped water for human consumption and has at least 15 service connections or serves at least 25 people a day for at least 60 days out of the year. There are approximately 50,000 such community water systems in the United States. EPA estimates that some 12,000 community water systems will need additional treatment of some type to meet the current water standards. The majority of these systems are located in small and/or rural communities and thus could qualify for financial assistance through Rural Development of the U.S. Department of Agriculture.

The Rural Development program of loans and grants is designed to assist in the development of water and waste disposal facilities serving rural areas consisting of open country or cities and towns having a population not in excess of 10,000 inhabitants. The Rural Development can provide assistance to a wide range of community based organizations operated on a not-for-profit basis, such as districts, authorities, associations, and Indian tribes that are unable to obtain credit elsewhere at reasonable rates and terms to construct, enlarge, extend, or otherwise improve community water facilities. This may include the extension of existing facilities to provide additional customers with an adequate supply of safe drinking water.

Rural Development and EPA have agreed to adopt the following policy statements as part of the priority system used to determine where, when, and how loans and/or grants are made to eligible communities under 7 CFR Parts 1823 and 1933:



Subpart A - Community Facility Loans or Subpart P - Development Grants for  
Community Domestic Water and Waste Disposal Systems.

1. Improvements or additions to water treatment systems needed to meet the requirements of the Safe Drinking Water Act will be accorded priority in determining the commitment of available funds.
2. The quality of drinking water for projects financed in whole or in part by Rural Development must meet the applicable primary drinking water regulations after completion of any proposed improvements. In those States where primary enforcement responsibility has been assumed by the State, a certification by the State will be required at the time the final design plans and specifications are reviewed. In all other States, such certification will be made by the consulting engineer and will accompany the final assign plans and specifications when submitted to the appropriate State regulatory agency for review.

Signed:

Environmental Protection Agency

Rural Development

/s/ Thomas C. Jorling  
Thomas C. Jorling  
Assistant Administrator for  
Water and Hazardous Materials

/s/ Gordon Cavanaugh  
Gordon Cavanaugh  
Administrator

7/23/78  
Date

7/13/78  
Date

Community Programs  
Project Selection Criteria

Project Score \_\_\_\_\_

Name of Applicant \_\_\_\_\_

Case Number: \_\_\_\_\_

Project Type  Water and Waste Disposal (WWD)  Community Facilities (CF)

State \_\_\_\_\_ County \_\_\_\_\_ Congressional District No. \_\_\_\_\_

Loan \$ \_\_\_\_\_ Grant \$ \_\_\_\_\_ Initial or Subsequent \_\_\_\_\_

Amount of previous Rural Development funding for this project: loan \$ \_\_\_\_\_, grant \$ \_\_\_\_\_.

Anticipated interest level: Poverty \_\_\_\_\_, Intermediate \_\_\_\_\_, Market \_\_\_\_\_.

Brief description of the proposed facility \_\_\_\_\_

Priorities

Points

A. Population priorities. The priorities in this section apply to both Water and Waste Disposal and Community Facilities preapplications

- 1. Proposed project is located in a rural community having a population not in excess of 2,500. 25
- 2. Proposed project is located in a rural community having a population not in excess of 5,500. 20  
(Do not award points under this priority if points were awarded under Priority A-1).

B. Health priorities.

1. Water and Waste Disposal preapplication only -

- a. Proposed project is needed to alleviate the sudden unexpected diminution or deterioration of a water supply, or to meet health or sanitary standards which pertain to a community's water supply. 25

<u>Priorities</u>	<u>Points</u>
b. Proposed project is required to correct an inadequate waste disposal system due to unexpected occurrences, or to meet health or sanitary standards which pertain to a community's waste disposal systems.	25
2. Community Facilities preapplication only- Proposed project is required either to correct a health or sanitary problem, or to meet a health or sanitary standard.	25
C. <u>Income priorities.</u> The priorities in this section apply to both Water and Waste Disposal and Community Facilities preapplications. The median income of the population to be served by the proposed facility is:	
1. Less than the poverty line for a family of four as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or less than 80% of the statewide nonmetropolitan median household income.	25
2. Equal to or more than the poverty line and between 80% and 100%, inclusive, of the State's nonmetropolitan median household income.	20
D. <u>Other factors.</u>	
1. Water and Waste Disposal preapplications only - The proposed project will: merge ownership, management, and operation of smaller facilities providing for more sufficient management and economical service; and/or enlarge, extend, or otherwise modify existing facilities to provide service to additional rural residents.	10
2. Community Facilities preapplication only - The purpose of the proposed project is to construct, enlarge, extend or otherwise improve the following types of facilities. (Select only the factor most applicable to the proposed project.)	
a. Public safety.	10

<u>Priorities</u>	<u>Points</u>
b. Health care. (Do not award points under this priority if points were awarded under priority B-2.)	5
3. Water and Waste Disposal and Community Facilities preapplications -	
a. Applicant is a public body or Indian tribe.	5
b. Project is located in a "truly rural area" as described in Section 1942.17(c) (1).	10
c. Amount of joint financing committed to the project is:	
i. 20% or more private, local or State funds.	10
ii. 5% - 19% private, local or State funds.	5
E. State Director's discretionary points. (Up to 15). Give written justification.	____

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Chief, Community (and Business) Programs	Date
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Directions: Complete the information requested on Page 1. In paragraphs A-D circle the points for those priorities which apply to and are met by the preapplication under consideration. Determine and justify the number of discretionary points, if any, to be awarded in paragraph E and add up the total number of points scored.

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TO: Administrator, Rural Development  
Washington, DC 20250

Attention: \_\_\_\_\_ Water and Waste Disposal Division  
                  \_\_\_\_\_ Community Facilities Division

State: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_

- A. Amount of additional funds requested: Loan \$ \_\_\_\_\_ Grant \$ \_\_\_\_\_
- B. Are funds being requested for an approved project that has encountered cost overruns due to high bids or unexpected construction problems that cannot be reduced by negotiation, redesign or other means?  
\_\_\_\_\_ yes \_\_\_\_\_ no
- C. State the priority of this project in relation to all others for which requests are pending in the National Office. (Attach a revised priority listing for previously submitted projects if necessary.) \_\_\_\_\_
- D. Is this project ready for obligation? \_\_\_\_\_ yes \_\_\_\_\_ no.  
If no, give estimated date project will be ready for obligation of funds. \_\_\_\_\_
- E. Has the appropriate environmental review documentation as required in accordance with 7 CFR part 1970, including the public notice requirements (if applicable), been completed for the project? \_\_\_\_\_  
yes \_\_\_\_\_ no. (Revised 04-01-16, SPECIAL PN.)
- F. If other funds are involved in this project, have they been committed? \_\_\_\_\_ yes \_\_\_\_\_ no.
- G. Has all of the State's fund allocation been obligated? \_\_\_\_\_ yes  
\_\_\_\_\_ no. If no, attach specific explanation of plans to use funds.  
Include a list of projects and planned dates of obligation.

\_\_\_\_\_  
State Director

\_\_\_\_\_  
Date

Directions: To request an additional allocation of funds from the National Office Reserve, State Offices should complete this Part of Guide 26, attach it to the front of a completed copy of Part I and submit both to the National Office.

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(INSTRUCTION SHEET ONLY - NOT TO BE INCLUDED AS PART OF THE CONTRACT DOCUMENTS)

This Guide modifies selected documents published by the American Institute of Architects (AIA) to conform with USDA/Rural Development / Rural Housing Service (RHS) regulations and policy. The AIA documents, as modified by this Guide, may be used on RHS financed building construction projects such as those administered under this subpart. The AIA documents must be used in accordance with current copyright rules.

The need to witness the agreements will depend upon State and local requirements for validation of the document. Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached to the agreement.

Questions regarding the use of these documents should be referred to the RHS National Office Program Support Staff.

Attachments:

1. Attachment to AIA DOCUMENT B101-2007, *Standard Form of Agreement Between Owner and Architect*
2. Attachment to AIA DOCUMENT A701-1997, *Instructions to Bidders.*
3. Attachment to AIA DOCUMENT A101-2007, *Standard Form of Agreement Between Owner and Contractor.*
4. Attachment to AIA Document A201-2007, *General Conditions of the Contract for Construction.*
5. Attachment to AIA Document A121/CMc-2003, *Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor.*
6. Attachment to AIA Document A141-2004, *Standard Form of Agreement Between the Owner and Design/Builder.*
7. Community Facilities Design/Build or Construction Management Concurrence Checklist.

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ATTACHMENT TO AIA DOCUMENT B101-2007, *Standard Form of Agreement Between Owner and Architect*

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "*Standard Form of Agreement Between Owner and Architect*," AIA Document B101-2007. The provisions contained in this Attachment will supersede any conflicting provisions of the AIA Document. The term "Agency," as used in this Attachment, shall mean the United States of America, acting through the United States Department of Agriculture.

ARTICLE 3, SCOPE OF ARCHITECT'S BASIC SERVICES

Add the words "and concurrence by the Agency" after "Owner's approval" in subparagraph 3.2.5, subparagraph 3.3.1 and subparagraph 3.4.1.

Delete subparagraphs 3.2.6 and 3.2.7

Add the following subparagraphs:

3.2.6. The Architect shall provide the Owner with the appropriate documentation showing the Schematic Design and the estimated Project cost to the Owner to seek the concurrence of the Agency. When the Owner has accepted and the Agency has concurred on the Schematic Design studies and estimated Project cost, the project Architect may be authorized to proceed with the Design Development Documents.

3.2.7. The Architect shall attend conferences with the Owner, representatives of the Agency and other interested parties as may be reasonably necessary.

3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

3.4.6 The Architect shall certify in writing, to the best of the Architect's knowledge, information and belief, that the Drawings and Specifications are in conformance with the applicable development standard, as defined in Agency regulations furnished by the Owner under subparagraph 5.1.

3.4.7 Prior to advertisement for bids, the Architect shall provide \_\_\_\_\_ sets of Construction Documents for use by the Owner, the Agency and the appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The reproduction cost of such Construction Documents shall be included in the compensation paid to the Architect, notwithstanding subparagraph 11.8. The Owner shall obtain Agency concurrence with the Construction Documents, estimated Project costs, and authorization to proceed in writing prior to advertisement for bids.

### 3.5 BIDDING OR NEGOTIATING PHASE SERVICES

Add the following subparagraph to 3.5.2.2:

- .6 furnishing additional copies of the Construction Documents as requested by the prospective bidders, and other interested parties, and may charge them a reasonable cost for such copies.

### 3.6 CONSTRUCTION PHASE SERVICES

Add the following to subparagraph 3.6.1.1 after the words "Contract for Construction": "and the conditions of RD Instruction 1942-A, Guide 27, Attachment 4".

Delete the first sentence of subparagraph 3.6.1.2 and substitute the following:

3.6.1.2 The Architect shall be a representative of and shall advise and consult with the Owner during construction until final payment to the Contractor is paid, and at the Owner's direction during the period of correction of the Work described in the Contract for Construction. The Architect shall furnish architectural services and consultations necessary to correct minor construction defects encountered during such correction period. The Architect shall assist the Owner in performing a review of the Project during the 11th month after the date of substantial completion. Such services shall be furnished without additional charge except for travel and subsistence costs.

Delete the following words from subparagraph 3.6.1.3 after the word, "terminates": "on the date the Architect issues the final Certificate for Payment" and substitute the words "at the expiration of the period of correction of the Work described in the Contract for Construction."

Add the following subparagraph to paragraph 3.6.1:

3.6.1.4 Upon award of the construction contract, the Architect shall furnish to the Owner \_\_\_\_\_ sets of Construction Contract Documents for execution. The costs of these sets shall be included in the compensation to the Architect notwithstanding subparagraph 11.8.

3.6.1.5 The Architect shall participate in the Preconstruction Conference and shall advise and consult with the Owner and the Agency.



Add to subparagraph 3.6.2.1 following the first sentence, "Such visits to the site shall be documented in writing on inspection report forms acceptable to the Owner and the Agency. Copies shall be furnished to the Owner, Contractor and the Agency."

Add the following subparagraph to paragraph 3.6.2:

3.6.2.6 The Architect shall advise the Owner and the Agency of required tests, inspections and test results; shall furnish coordination of such tests and inspections; and shall advise the Owner and the Agency of the results of same. Copies of tests results shall be furnished upon request to the Owner, and the Agency.

Add the following subparagraph to paragraph 3.6.3:

3.6.3.4 The Architect shall obtain Agency concurrence on all Certificates of Payment before payment is made.

Modify subparagraph 3.6.5.1 as follows: Add the following to the end of the subparagraph: "Preparation of Change Orders which do not substantially affect the Project shall be included in the compensation computed in paragraph 11.1. The Owner, with the assistance of the Architect, shall obtain Agency concurrence in writing for all change orders prior to the performance of the Work."

Delete subparagraphs 3.6.6.1, and substitute the following:

3.6.6.1 The Architect shall conduct an inspection prior to the issuance of the Certificate of Substantial Completion and shall submit a written report of work to be completed to the Owner, the Agency and the Contractor prior to final acceptance. The Architect shall notify the Agency about inspection allowing reasonable time for the Agency's representative to attend. Such services shall be coordinated with the Agency. Prior to submitting the final Certificate for Payment, the Architect shall; 1) conduct an inspection to determine compliance with the requirements of the Contract Documents, and 2) receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor.

ARTICLE 4, ADDITIONAL SERVICES

Delete items .3 and .6 from paragraph 4.3.2.

Insert the word "Architect" under the heading "Responsibility" for line items 4.1.11, 4.1.12, and 4.1.15 in the chart.

Add the following subparagraphs to paragraph 4.2 below the chart:

4.2.1 The Architect shall provide a cost estimate based on Construction Contract Documents. The estimate shall show a breakdown of the project cost in accordance with Rural Development requirements and procedures.

4.2.2 The selection and compensation of the Project Representative, if required, shall be concurred in by the Agency.

4.2.3 \_\_\_\_\_ sets of Record Drawings shall be provided to the Owner. The costs of these sets shall be included in the compensation to the Architect not withstanding Subparagraph 11.8.

ARTICLE 5, OWNER'S RESPONSIBILITIES

Add the following subparagraph to Article 5:

5.13 Owner shall provide Agency design and construction document regulations and guides to the Architect, upon request. The Owner shall provide information on requirements and procedures of the Agency.

ARTICLE 6, COST OF THE WORK

Add the following paragraph to Article 6:

6.8 The Architect shall consult with the Agency Architect or Engineer about the Agency's requirements and procedures.

ARTICLE 8, CLAIMS AND DISPUTES

Delete the words "unless the parties mutually agree otherwise" and substitute the words "if the parties mutually agree" in the first sentence of subparagraph 8.3.1.

ARTICLE 9, TERMINATION OR SUSPENSION

Delete the second sentence in subparagraph 9.2 and substitute the following:

When the Project is resumed, the Architect's compensation may be equitably adjusted, as mutually agreed, to provide for expenses incurred in the interruption and resumption of the Architect's services.

Insert the words "as mutually agreed" after "Termination Expenses" in subparagraph 9.7.

ARTICLE 10, MISCELLANEOUS PROVISIONS

Add the following subparagraphs:

10.9 This Agreement and any amendments to this Agreement shall not be in full force and effect until concurred with in writing by the Agency State Director or the State Director's delegate. Such concurrence shall be evidenced by the signature of such a representative of the Agency in the space provided at the end of this Agreement.

10.10 If applicable, the Architect shall comply with section 319 of Public Law 101-121, as supplemented by the Department of Agriculture regulations (7 CFR part 3018). This statute pertains to restrictions on lobbying and applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, the Architect must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. The certification and disclosure forms shall be provided by the Owner.

10.11: The Architect agrees to abide by the requirements under Executive Order 12549, which pertains to the debarment or suspension of a person from participating in a Federal program or activity. If the total compensation described in Article 1.5 exceeds \$25,000, the Architect shall complete the relevant certification form provided by the Owner.

#### ARTICLE 11, COMPENSATION

Add the words "or representatives of the United States of America" after the words "Owner" in subparagraph 11.10.4.

Add the following subparagraph to paragraph 11.10:

11.10.5 The Architect shall provide a detailed cost estimate for Reimbursable Expenses as defined in subparagraph 11.8., which shall be attached and made a part of this Agreement. The cost estimate must be approved in writing by the Owner and shall be concurred with in writing by the Agency before the services are rendered. The billings for reimbursable services shall not exceed the budgeted amount without prior approval of the Owner with the concurrence of the Agency. The Agency may not concur in requests for payments which exceed the budgeted amount unless it is established that funds are available for such expenditures.

#### ARTICLE 12, SPECIAL TERMS AND CONDITIONS

Add the following subparagraph 12.1:

12.1 This Agreement is modified and supplemented by RD Instruction 1942-A, Guide 27, Attachment 1.

#### ARTICLE 13, SCOPE OF THE AGREEMENT

Delete the word "both" from the end of the second sentence in subparagraph 13.1 and conclude the sentence with "Owner, Architect and Agency".

#### SIGNATURE BLOCK:

Delete the signature block on page 18 of this Agreement and substitute the following:

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

OWNER:

ATTEST: \_\_\_\_\_ By \_\_\_\_\_  
Type Name \_\_\_\_\_ Type Name \_\_\_\_\_  
Title \_\_\_\_\_ Title \_\_\_\_\_  
Date \_\_\_\_\_ Date \_\_\_\_\_

ARCHITECT:

ATTEST: \_\_\_\_\_ By \_\_\_\_\_  
Type Name \_\_\_\_\_ Type Name \_\_\_\_\_  
Title \_\_\_\_\_ Title \_\_\_\_\_  
Date \_\_\_\_\_ Date \_\_\_\_\_

The United States of America, as potential lender or insurer of funds to defray the costs of this agreement and without liability for any payments thereunder, hereby concurs in the form, content and the execution of this agreement.

U.S. Department of Agriculture  
Rural Development  
Rural Housing Service

By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

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ATTACHMENT TO AIA DOCUMENT A701-1997, *Instructions to Bidders*

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "*Instructions to Bidders*," AIA Document A701-1997 Edition. The provisions contained in this Attachment will supersede any conflicting provisions of the AIA Document. The term "Agency," as used in this Attachment, shall mean the United States of America, acting through the United States Department of Agriculture.

ARTICLE 2, BIDDER'S REPRESENTATIONS

2.1 Add the following subparagraph to paragraph 2.1:

2.1.5 This Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid, with any other Bidder or with any competitor.

ARTICLE 4, BIDDING PROCEDURES

4.1.1 Add the following sentence to subparagraph 4.1.1:

Only one copy of the Bid is to be submitted.

4.2.1 Delete subparagraph 4.2.1 and substitute the following:

4.2.1 Each Bid must be accompanied by a Bid Bond payable to the Owner for five percent of the total amount of the Bid.

4.2.2 Delete Subparagraph 4.2.2 and substitute the following:

4.2.2 The Bid Bond shall be written on a form identical to that included in the Bidding Documents, and the attorney-in-fact who executes the Bid Bond on behalf of the surety shall affix to the Bid Bond a certified and current copy of the power of attorney.

4.2.3 Add the words "payment and performance" before the word "bonds"; and add the following to subparagraph 4.2.3:

As soon as the Bid prices have been compared, the Owner will return the Bid Bonds of all except the three lowest responsible Bidders. When the Agreement is executed, the Bid Bonds of the two remaining unsuccessful Bidders will be returned.

4.2 Add the following subparagraph to paragraph 4.2:

4.2.4 If a Bidder refuses to execute the Agreement or obtain the Performance and Payment Bonds within the agreed time, the Owner may consider the Bidder in default, in which case the Bid Bond accompanying the Bid shall become the property of the Owner.

4.3 Add the following subparagraphs to paragraph 4.3:

4.3.5 All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project, shall apply to the Contract throughout.

4.3.6 The Bidder agrees to abide by the requirements of Executive Order 11246, specifically including the provisions of the Equal Opportunity Clause and the Standard Federal Equal Employment Construction Contract Specifications set forth in the Supplementary Conditions.

4.3.7 The Bidder agrees to abide by the requirements of section 319 of Public Law 101-121, which pertains to lobbying activities and applies to recipients of contracts or subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. Each Bid shall be accompanied by a completed lobbying certification form identical to that included in the Bidding Documents.

4.3.8 The Bidder agrees to abide by the requirements under 7 C.F.R. part 3017, which pertains to the debarment or suspension of a person from participating in a Federal program or activity. Each Bid exceeding \$25,000 shall be accompanied by a relevant completed certification form identical to that included in the Bidding Documents.

4.4.1 Delete subparagraph 4.4.1 and substitute the following:

4.4.1 No Bidder may withdraw, modify or cancel a Bid within 60 calendar days after the actual date of the opening thereof. Should there be reasons why the Contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Owner and the Bidder, and the concurrence of the Agency.

4.4.4 Delete the words ", if required," from Subparagraph 4.4.4.

ARTICLE 5, CONSIDERATION OF BIDS

5.3.2 Delete subparagraph 5.3.2 and substitute the following:

5.3.2 The Owner shall have the right to accept Alternates in the sequence or combinations listed and to determine the low Bidder on the basis of the sum of the Base Bid and the Alternates accepted.

ARTICLE 7, PERFORMANCE BOND AND PAYMENT BOND

7.1.1 Delete subparagraph 7.1.1 and substitute the following:

7.1.1 Prior to execution of the Contract, the Bidder shall furnish Bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder. Both Bonds shall be separately written, each in the amount of the Contract Sum. The cost shall be included in the Bid.

7.1.2 Delete subparagraph 7.1.2 and substitute the following:

7.1.2 Surety companies executing Bonds must hold a certificate of authority as a acceptable surety on Federal Bonds as listed in Treasury Circular 570, as amended, and be authorized to transact business in the State where the Project is located.

7.1.3 Delete subparagraph 7.1.3.

7.2.1 Delete subparagraph 7.2.1 and substitute the following:

7.2.1 The Bidder to whom the Contract is awarded will be required to execute the Agreement and obtain Performance and Payment Bonds within ten (10) calendar days from the date when the Notice of Award is delivered to the Bidder. The Notices shall be accompanied by the necessary Agreement and Bond forms.

7.2.2 Delete subparagraph 7.2.2 and substitute the following:

7.2.2 The Bonds shall be written on forms identical to those included in the Bidding Documents.

(Note: Any additional provisions that are necessary to remain effective after execution of the Contract for Construction will be inserted here and continue in the same format.)

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ATTACHMENT TO AIA DOCUMENT A101-2007, *Standard Form of Agreement Between Owner and Contractor*

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "*Standard Form of Agreement Between Owner and Contractor*," AIA Document A101-2007 Edition. The provisions contained in this attachment shall supersede any conflicting provisions of the AIA Document.

ARTICLE 3, DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Delete paragraph 3.1 and substitute the following:

3.1 The date of commencement shall be contained in the Notice to Proceed.

Add the following to paragraph 3.3:

If the work is not substantially complete on or before this date, or within this period of time, or extension thereof granted by the Owner, damage will be sustained by the Owner and that it is and will be impracticable and extremely difficult to fix the actual damage which the Owner will sustain in the event of and by reason of such delays. The Contractor shall pay to the Owner liquidated damages in the sum of \$ \_\_\_\_\_ for each calendar day of delay. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's surety.

ARTICLE 5, PAYMENTS

Insert "ten" and "10" in the appropriate spaces in clauses 5.1.6.1 and subparagraph 5.1.6.2.

Delete the last sentence of clause 5.1.6.1.

Delete the following from clause 5.1.6.2:

(or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing)

Insert the following sentences in subparagraph 5.1.8:

The amount retained shall be 10% of the value of Work until 50% of the Work has been completed. At 50% completion, further partial payments shall be made in full to the Contractor and no additional amounts may be retained unless the Architect certifies that the Work is not proceeding satisfactorily, but amounts previously retained shall not be paid to the Contractor. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of Work completed.

#### ARTICLE 8, MISCELLANEOUS PROVISIONS

Add the following subparagraph to paragraph 8.6:

8.6.1 This Agreement shall not become effective until concurred in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency in the space provided at the end of this Attachment to the Agreement. The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment thereunder, but in the event such assistance is provided, the concurrence shall signify the provisions of this Agreement are consistent with Agency requirements.

#### ARTICLE 9, ENUMERATION OF CONTRACT DOCUMENTS

The following Documents should be referenced, if applicable:

Subparagraph 9.1.3:

Attachment to the *Standard Form of Agreement Between Owner and Contractor* (this Attachment)  
*General Conditions of the Contract for Construction*, AIA A201-2007  
Attachment to the *General Conditions of the Contract for Construction* (RD Instruction 1942-A, Guide 27, Attachment 4)  
Special Conditions

Subparagraph 9.1.7:

Invitation for Bids (Form RD 1924-5)  
*Instructions to Bidders*, AIA A701-1997  
Attachment to the *Instructions to Bidders* (RD Instruction  
1924-A, Guide 27, Attachment 2)  
Bid Form  
Bid Bond  
Compliance Statement (Form RD 400-6)  
Payment Bond  
Performance Bond  
Certification Regarding Debarment, Suspension,  
Ineligibility and Voluntary Exclusion - Lower Tier  
Covered Transactions (Form AD 1048)  
Disclosure of Lobbying Activities (SF-LLL)  
Certification for Contracts, Grants and Loans (RD  
Instruction 1940-Q, Exhibit A-1)

Delete the signature block on page 7 of this Agreement, and substitute the  
block on the following page:

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below:

ATTEST: _____	OWNER:
Type Name _____	By _____
Title _____	Type Name _____
Date _____	Title _____
	Date _____

ATTEST: _____	CONTRACTOR:
Type Name _____	By _____
Title _____	Type Name _____
Date _____	Title _____
	Date _____

AGENCY CONCURRENCE:

By \_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment hereunder, but in the event such assistance is provided, the concurrence shall signify the provisions of this Agreement are consistent with Agency requirements.

ATTACHMENT TO AIA DOCUMENT A201-2007, *General Conditions of the Contract for Construction*

The provisions of this attachment shall delete, modify and supplement the provisions contained in the "*General Conditions of the Contract for Construction*," AIA Document A201-2007 Edition. The provisions contained in this attachment will supersede any conflicting provisions of the AIA Document. The term "Agency," as used in this Attachment, shall mean the United States of America, acting through the United States Department of Agriculture.

ARTICLE 1, GENERAL PROVISIONS

Add the following subparagraph:

1.2.4 Concurrence of the Contract by the Agency is required before it is effective.

ARTICLE 2, OWNER

Delete subparagraph 2.2.5 and substitute the following:

2.2.5 The Contractor will be furnished, free of charge, \_\_\_\_\_ copies of the Drawings and Projects Manuals necessary for execution of the Work. Additional copies will be available from the Architect at the cost of reproduction and handling.

ARTICLE 4, ARCHITECT

Add the following to subparagraph 4.1.1:

The term "Architect" means the Architect, or the Engineer when the nature of the work is within the authority granted engineers by the State licensure law, or an authorized representative of the Architect or Engineer.

ARTICLE 5, SUBCONTRACTORS

Add the following to subparagraph 5.2.2:

The Contractor shall not contract with any party who is suspended or debarred by any Federal government agency from participating in Federally assisted construction projects

or to whom the Owner or the Architect has made reasonable and timely objection.

ARTICLE 7, CHANGES IN THE WORK

Delete the words ", Construction Change Directive" from subparagraph 7.1.1.

Insert the words ", Agency " after the word "Owner," and delete the words "; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor" in subparagraph 7.1.2.

Delete the words "Construction Change Directive" from subparagraph 7.1.3.

Delete subparagraph 7.2.1 and substitute the following:

7.2.1 A Change Order is a written order to the Contractor utilizing Form RD 1924-7, "Contract Change Order," or AIA G-701 signed by the Owner, Architect, Contractor, and the Agency representative. It is issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. The Contractor's signing of a Change Order indicates complete agreement therein.

Add subparagraph 7.2.2:

7.2.2 Methods used in determining adjustments to the Contract Sum may include any of the following:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluating.

- .2 Unit prices stated in the Contract Documents  
or subsequently agreed upon.

Add the following sentence to paragraph 7.3: "A Construction Change Directive may be used only for a change in response to an emergency as described in paragraph 10.4.

#### ARTICLE 8, TIME

Add the following subparagraphs:

8.2.4 The Notice to Proceed shall be issued within twenty (20) calendar days of the execution of the Agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period, the time may be extended by mutual agreement of the Owner and Contractor, with the concurrence of the Agency. If the Notice to Proceed has not been issued within the twenty (20) calendar day period or within the period mutually agreed, the Contractor may terminate the Agreement without further liability on the part of either party.

8.3.4 As outlined in Article 3 of the Agreement, the Contractor agrees to pay liquidated damages to the Owner for each calendar day the Contractor shall be in default.

#### ARTICLE 9, PAYMENTS AND COMPLETION

Delete clause 9.3.1.1 and substitute the following:

9.3.1.1 Work performed and materials supplied under a Change Order may be included for payment only after the Change Order has been approved by all appropriate parties, including the Agency.

Add the words ", using AIA Document 702, 'Application and Certificate for Payment' or Form RD 1924-18, 'Partial Payment Estimate'," after "Certificate for Payment" in subparagraph 9.4.1.

Add the following subparagraph:

9.6.8 No progress payments will be made that deplete the retainage, nor place in escrow any funds that are required for retainage, nor invest the retainage for the benefit of the Contractor. Retainage will not be adjusted until after construction is substantially complete.

Replace the word "seven" with the words "fifteen (15)" in the first sentence , third line of subparagraph 9.7.

Delete subparagraph 9.8.5, after the first sentence, and substitute the following:

9.8.5 When the Work has been substantially completed, except for Work which cannot be completed because of weather conditions, lack of materials or other reasons, which, in the judgment of the Owner, are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the Work still to be completed. Provide a copy of the Certificate to the Agency.

Delete subparagraphs 9.9.1 through 9.9.3 and substitute the following:

9.9.1 The Contractor agrees to the use and occupancy of a portion or unit of the Project before formal acceptance by the Owner under the following conditions:

- .1 A "Certificate of Substantial Completion" shall be prepared and executed as provided in subparagraph 9.8.4, except that when, in the opinion of the Architect, the Contractor is chargeable with unwarranted delay in completing the Work or other Contract requirements, the signature of the Contractor will not be required. The Certificate of Substantial Completion shall be accompanied by a written endorsement of the Contractor's insurance carrier and surety permitting occupancy by the Owner during the remaining period of the Project Work. Occupancy and use by the Owner shall not commence until authorized by public authorities having jurisdiction over the Work.



- .2 Occupancy by the Owner shall not be construed by the Contractor as being an acceptance of that part of the Project to be occupied.
- .3 The Contractor shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.
- .4 Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims in behalf of the Owner or Contractor against each other.
- .5 If the Project consists of more than one building, and one of the buildings is to be occupied, the Owner, prior to occupancy of that building, shall secure permanent property insurance on the building to be occupied and necessary permits which may be required for use and occupancy.

9.9.2 With the exception of clause 9.9.1.5, use and occupancy by the Owner prior to Project acceptance does not relieve the Contractor of responsibility to maintain all insurance and bonds required of the Contractor under the Contract Documents until the Project is completed and accepted by the Owner.

Delete the second and third sentences of subparagraph 9.10.2.

#### ARTICLE 11, INSURANCE AND BONDS

Replace the words "the Contract Documents" with the words "subparagraph 11.1.5" in the first sentence of subparagraph 11.1.2.

Add the following subparagraph:

11.1.5. Insurance shall be:

- .1 Written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate

for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident, or

- .2 Written with a combined bodily injury and damage liability of not less than \$700,000 per occurrence; and with an aggregate of not less than \$700,000 per occurrence.

Modify the first sentence of subparagraph 11.3.1 as follows:

11.3.1 Delete "Unless otherwise provided, the Owner" and substitute "The Contractor".

Add the following sentences to the end of subparagraph 11.3.1

The policy shall name as the insured the Contractor and the Owner. If the Owner is damaged by the failure of the Contractor to purchase and maintain such insurance without so notifying the Owner in writing, then the Contractor shall bear all reasonable costs attributable thereto.

Insert the word "Owner" after the words "protect the interests of the" in the second sentence of subparagraph 11.3.1.2.

Add the following sentence to the end of subparagraph 11.3.6:

The provisions of this subparagraph shall apply to the Contractor if the Contractor purchases and maintains said insurance coverage.

Delete subparagraph 11.3.7 in its entirety.

Delete subparagraph 11.4.1 and substitute the following:

11.4.1 The Contractor shall furnish the Owner bonds covering faithful performance of the Contract and payment of obligations arising thereunder within ten (10) calendar days after receipt of the Notice of Award. The surety company executing the bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570, and be authorized to transact business in the State where the Project is located. The bonds (using the forms included in the Bidding Documents) shall each be equal to the amount of the Contract Sum. The cost of these bonds shall be included in the Contract Sum

Add the following subparagraphs:

11.4.1.1 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current power of attorney.

11.4.1.2 If at any time a surety on any such bond is declared bankrupt or loses its right to do business in the State in which the work is to be performed or is removed from the list of surety companies accepted on Federal Bonds, the Contractor shall within ten (10) calendar days after notice from the Owner to do so, substitute an acceptable bond in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums of such bond shall be paid by any Contractor. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the Owner.

ARTICLE 13, MISCELLANEOUS PROVISIONS

Add the following paragraphs:

13.8 LANDS AND RIGHTS-OF WAY

13.8.1 Prior to the start of construction, the Owner shall obtain all lands and rights-of-way necessary for the execution and completion of work to be performed under this contract.

### 13.9 EQUAL OPPORTUNITY REQUIREMENTS

Non-discrimination in Employment by Federally Assisted Construction Contractors, by Executive Order 11246.

13.9.1 This section summarizes Executive Order 11246, which prohibits employment discrimination and requires employers holding non-exempt Federal contracts and subcontracts and federally-assisted construction contracts and subcontracts in excess of \$10,000 to take affirmative action to ensure equal employment opportunity without regard to race, color, religion, sex, or national origin. The Executive Order requires, as a condition for the approval of any federally assisted construction contract, that the applicant incorporate nondiscrimination and affirmative action clauses into its non-exempt federally assisted construction contracts.

13.9.2 Executive Order 11246, is administered and enforced by the Office of Federal Contract Compliance Programs (OFCCP), an agency in the U.S. Department of Labor's Employment Standards Administration. OFCCP has issued regulations at 41 CFR chapter 60 implementing the Executive Order. The regulations at 41 CFR part 60-4 establish the procedures which the Agency, as an administering agency, must follow when making grants, contracts, loans, insurance or guarantees involving federally assisted construction which is not exempt from the requirements of Executive Order 11246. The regulations which apply to Federal or federally assisted construction contractors also are published at 41 CFR part 60-4.

13.9.3 OFCCP has established numerical goals for minority and female utilization in construction work. The goals are expressed in percentage terms for the contractor's aggregate workforce in each trade. OFCCP has set goals for minority utilization based on the percentage of minorities in the civilian labor force in the relevant area. There is

a single nationwide goal of 6.9 percent for utilization of women. The goals apply to all construction work in the covered geographic area, whether or not it is federal, federally assisted or non-federal. A notice advises bidders of the applicable goals for the area where the project is to be located.

13.9.4 Application. This section applies to all of a construction contractor's or subcontractor's employees who are engaged in on-site construction including those construction employees who work on a non-Federal or non-Federally assisted construction site.

13.9.4.1 Agency officials will notify the appropriate Regional Director of OFCCP that an Agency financed construction contract has been awarded, and that the equal opportunity clauses are included in the contract documents.

13.9.4.2 The Regional Director, OFCCP-DOL, will enforce the non-discrimination requirements of Executive Order 11246.

13.9.5 The prospective contractor or subcontractor must comply with the Immigration Reform and Control Act of 1986, by completing and retaining Form I-9, "Employment Eligibility Verification," for employees hired. This form is available from the Immigration and Naturalization Service, and Department of Justice.

13.9.6 The prospective contractor or subcontractor must submit Form RD 400-6, "Compliance Statement," to the applicant and an Agency official as part of the bid package, prior to any contract bid negotiations and comply with the Executive Order 11246 as stated in the contract documents.

#### 13.10 STATUTES

13.10.1 The Contractor and each Subcontractor shall comply with the following statutes (and with regulations issued pursuant thereto, which are incorporated herein by reference):

13.10.1.1 Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each Contractor shall be prohibited from inducing, by any means, any person in connection with construction to give up any part of the compensation to which the person is otherwise entitled.

13.10.1.2 Clean Air Act (42 U.S.C. 7414), section 114, and Water Pollution Control Act (33 U.S.C. 1813), section 308. Under Executive Order 11738 and Environmental Protection Agency (EPA) regulations 40 C.F.R. part 15, all Contracts in excess of \$100,000 are required to comply with these Acts. The Acts require the Contractor to:

- .1 Notify the Owner of the receipt of any communication from EPA indicating that a facility to be utilized in the performance of the Contract is under consideration to be listed on the EPA list of Violating Facilities.
- .2 Certify that any facility to be utilized in the performance of any nonexempt Contractor or Subcontractor is not listed on the EPA list of Violating Facilities as of the date of the Contract Award.
- .3 Include or cause to be included the above criteria and requirements of paragraphs .1 and .2 in every nonexempt subcontract, and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

13.10.1.3 Restrictions on Lobbying (Public Law 101-121, section 319) as supplemented in Department of Agriculture regulations (7 CFR part 3018). This statute applies to the recipients of contracts or subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, the Contractor must complete a certification form on lobbying activities related to the specific Federal loan or grant that is a funding source for this contract. The certification and disclosure forms shall be provided by the Owner.

#### 13.11 RECORDS

13.11.1 If the Contract is based on a negotiated Bid, the Owner, the Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions. The Contractor shall maintain records for at least three years after the Owner makes final payment and all other pending matters are closed.

13.12 ENVIRONMENTAL REQUIREMENTS

13.12.1 Mitigation Measures - The contractor shall comply with applicable mitigation measures established in the environmental assessment for the project. These may be obtained from the Agency representative.

13.12.2 The Contractor, when constructing a Project involving trenching, excavating, or other earth moving activity, shall comply with the following environmental constraints:

13.12.2.1 Endangered Species, Historic Preservation, Human Remains and Cultural Items, Hazardous Materials, and Paleontology - Any excavation or other earth moving activity by the Contractor that provides evidence of the presence of endangered or threatened species or their critical habitat, uncovers a historical or archaeological artifact, human remains or cultural items, hazardous materials, a fossil or other paleontological materials will require the Contractor to:

- .1 Temporarily stop work;
- .2 Provide immediate notice to the Architect and the Agency, and in the case of potentially hazardous materials, provide immediate notice to local first responders and take such measures as necessary to protect the public and workers;
- .3 Take reasonable measures as necessary to protect the discovered materials or protected resource;
- .4 Abide by such direction as provided by the Agency, or Agencies responsible for resource protection or hazardous materials management; and
- .5 Resume work only upon notice from the Architect and the Agency.

13.12.3 Lead-Based Paint - The Contractor and Owner shall comply with applicable Agency requirements of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851) for rehabilitation work on residential property built prior to 1978.

13.13 DEBARMENT AND SUSPENSION

13.13.1 The Contractor shall comply with the requirements of 7 CFR part 3017, which pertains to the debarment or suspension of a person from participating in a Federal program or activity.

ARTICLE 15 CLAIMS AND DISPUTES

Add the words "may be" after "on the parties but" in the last sentence of subparagraph 15.2.5.

Replace the word "shall" with the word "may" in the first sentence, first occurrence of subparagraph 15.3.2

15.4.1.2 The arbitrators will select a hearing location as close to the Owner's locale as possible.

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**ATTACHMENT TO AIA DOCUMENT A133-2009, *Standard Form of Agreement Between Owner and Construction Manager as Constructor* where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.**

The provisions of this Attachment shall delete, modify, and supplement the provisions contained in the "***Standard Form of Agreement Between Owner and Construction Manager as Constructor***", AIA Document A133-2009 Edition. The provisions contained in these Modifications shall supersede any conflicting provisions of the AIA Document. The term "Agency," as used in these Modifications, shall mean the United States of America, acting through the United States Department of Agriculture.

**ARTICLE 2, CONSTRUCTION MANAGER'S RESPONSIBILITIES**

**2.3.2.5** Add a sentence to the end of subparagraph 2.3.2.5 reading "The Construction Manager shall attend on-site progress meetings no less than once a month during the periods of active construction."

**ARTICLE 7, PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

**7.1.7.3 and 7.1.7.4-Delete both of these paragraphs. Reference insert 7.1.11 for retainage on each pay application.**

**7.1.8** Delete existing paragraph and replace with the following:

The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than ten percent (10%). The Construction Manager shall execute subcontracts in accordance with those agreements.

**7.1.11** Insert the following subparagraph:

7.1.11 The amount retained, on each pay application, shall be 10% of the value of Work until 50% of the Work has been completed. At 50% completion, further partial payments shall be made in full to the Construction Manager and no additional amounts may be retained unless the Architect certifies that the Work is not proceeding satisfactorily, but amounts previously retained shall not be paid to the Construction Manager. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of Work completed.

**7.2.2** Replace the word "seven" with the word "ten (10)" in the second sentence; and add the words, "using AIA Document G702, 'Application and Certificate for Payment,' or Form RD 1924-18, 'Partial Payment Estimate,'" after "Certificate for Payment" in that sentence.

**7.2.3** Delete the first two sentences of section 7.2.3 and replace them with the following sentences:

If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall not be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007 unless the Owner specifically authorizes such action in writing. If such action has been authorized by the Owner, the Construction Manager may make a request for mediation within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment.

**7.2.5** Insert the following subparagraph:

7.2.5 Amounts withheld from the final payment to cover any incomplete Work are not considered retainage and shall not be paid to the Construction Manager until the work is actually completed and accepted by the Owner. Such withholdings shall not be less than 150% of the estimated cost to complete the Work.

## **ARTICLE 11, MISCELLANEOUS PROVISIONS**

**11.5** Delete "Other Provisions:" and insert the following paragraph:

11.5 The date of Substantial Completion established by this contract is:

**11.6** Insert the following paragraph:

11.6 If the Work is not substantially complete on or before the date of Substantial Completion established in paragraph 11.5, or extension thereof granted by the Owner, the Construction Manager shall pay to the Owner liquidated damages in the sum of \$\_\_\_\_\_ for each calendar day of delay. Any sums that may be due by the Construction Manager to the Owner as liquidated damages may be deducted from any monies due or to become due to the Construction Manager under the Contract or may be collected from the Construction Manager's surety.

**11.7** Insert the following paragraph:

11.7 This Agreement shall not become effective until concurred with in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency in the space provided at the end of the Agency Attachment to this Agreement.

**ARTICLE 12, SCOPE OF THE AGREEMENT**

**12.1** Delete the last sentence of section 12.1 and replace it with the following sentence:

"This Agreement may be amended only by written instrument signed by Agency, the Owner, and the Construction Manager."

**12.2.5** The following Documents should be referenced, if applicable:

Attachment to the ***Standard Form of Agreement Between Owner and Construction Manager as Constructor*** (this Attachment)  
*General Conditions of the Contract for Construction*, AIA A201-2007  
Attachment to the *General Conditions of the Contract for Construction* (RD Instruction 1942-A, Guide 27, Attachment 4)  
Invitation for Bids  
*Instructions to Bidders* (AIA Document A701-1997)  
Attachment to *Instructions to Bidders* (RD Instruction 1942-A, Guide 27, Attachment 2)  
Bid Form  
Bid Bond  
Compliance Statement (Form RD 400-6) Payment Bond  
Performance Bond  
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (Form AD 1048)  
Disclosure of Lobbying Activities (Form SF-LLL)  
Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)

**SIGNATURE BLOCK:**

The following signature block shall replace the signature block following paragraph 12.2:

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below:

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**OWNER:**

By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**CONSTRUCTION MANAGER:**

By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**AGENCY CONCURRENCE:**

By \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment hereunder, but in the event such assistance is provided, the concurrence shall signify that the provisions of this Agreement are consistent with Agency requirements.

*ATTACHMENT TO AIA DOCUMENT A141-2004, Standard Form of Agreement Between Owner and Design/Builder*

The provisions of this Attachment shall delete, modify and supplement the provisions contained in the "*Standard Form of Agreement between Owner and Design/Builder*", AIA Document A141 - 2004 Edition. The provisions contained in this Attachment will supercede any conflicting provisions of the AIA Document. The term "Agency", as used in this Attachment, shall mean the United States of America, acting through the United States Department of Agriculture.

ARTICLE 1: THE DESIGN/BUILD DOCUMENTS

Modify paragraph 1.1 by inserting the words "and concurred with by the Agency" after "by the Owner" in the first sentence.

Modify paragraph 1.3 by inserting the words "and the Agency" after "by both parties" in the second sentence.

ARTICLE 3: DATE OF COMENCEMENT AND SUBSTANTIAL COMPLETION

Modify paragraph 3.2 by inserting the following sentences in the appropriate space:

If the Work is not substantially complete on or before this date, or within this period of time, or extension thereof granted by the Owner, the Design/Builder shall pay to the Owner liquidated damages in the sum of \$\_\_\_\_\_ for each calendar day of delay. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due the Design/Builder under the Contract or may be collected from the Design/Builder's surety.

ARTICLE 4: CONTRACT SUM

Delete the choice "Cost of the Work Plus Design/Builder's Fee in accordance with Section 4.3 below" from paragraph 4.1.

Delete paragraph 4.3 in its' entirety.

**ARTICLE 5: PAYMENTS**

Add the following sentence to the end of paragraph 5.1.1: "Agency concurrence is required on all Certificates of Payment before payment is made."

Modify subparagraph 5.1.3 by inserting "ten (10)" in the last space.

Modify clause 5.2.2.1 by inserting "ten" and "10" in the appropriate space.

Modify clause 5.2.2.2 by inserting "ten" and "10" in the appropriate space.

Modify subparagraph 5.2.4 by inserting the following sentences in the appropriate space.

The amount retained shall be 10% of the value of Work until 50% of the Work has been completed. At 50% completion, further partial payments shall be made in full to the Design/Builder and no additional amounts may be retained unless the Owner certifies that the Work is not proceeding satisfactorily, but amounts previously retained shall not be paid to the Design/Builder. At 50% completion or any time thereafter when the progress of the Work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of Work completed.

Delete paragraph 5.3 in its entirety.

Modify clause 5.4.2.3 by inserting "ten percent" and "10" in the appropriate space.

Modify clause 5.4.3 by inserting "ten percent" and "10" in the appropriate space.

**ARTICLE 7: MISCELLANEOUS PROVISIONS**

Modify paragraph 7.7 by inserting the following in the appropriate space:

This Agreement will not become effective until concurred with in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency in the space provided at the end of this attachment to the Agreement. The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for payment hereunder.

But in the event such assistance is provided, the concurrence shall signify the provisions of this Agreement are consistent with the requirements of the Agency.

Modify subparagraph 7.7.2 by inserting the following in the appropriate space:

Interest at 1% per month or 12% per year for pay estimates outstanding for 60 days will be paid to the Design/Builder.

ARTICLE 8: ENUMERATION OF THE DESIGN/BUILD DOCUMENTS

Modify subparagraph 8.1.2 by inserting the following in the appropriate space:

Attachment to the *Standard Form of Agreement between Owner and Design/Builder* (USDA Rural Development)

Modify subparagraph 8.1.7 by inserting the following in the appropriate space:

Payment Bond  
Performance Bond

Modify subparagraph 8.1.10 by inserting the following in the appropriate space:

Compliance Statement (Form RD 400-6)  
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (Form AD 1048)  
Disclosure of Lobbying Activities (SF-LLL)  
Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)

Delete Exhibit B in its entirety. (Exhibit B describes conditions where the contract sum is the cost of the work plus the Design/Builder's Fee without a Guaranteed Maximum Price. That option is deleted from paragraph 4.1 of the contract.)

Delete Exhibit C in its entirety. (Exhibit C describes the Insurance and Bonding requirements, which we have enumerated in the Attachment to Exhibit A in Article A.11.)

**SIGNATURE BLOCK:**

Delete the signature block on page 10 of this Agreement and substitute the following signature block:

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design/Builder, one to the Owner and one to the Agency. Concurrence in the Contract by the Agency is required before the contract is effective.

OWNER:

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DESIGN/BUILDER:

ATTEST: \_\_\_\_\_

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



OWNER'S ATTORNEY REVIEW:

I have examined this design/build contract and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements are adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

AGENCY CONCURRENCE:

Approved as lender or insurer of fund to defray the costs of this contract and without liability for any payments thereunder, the USDA Rural Development hereby concurs in the award of this contract.

By: \_\_\_\_\_ Title: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

RD Instruction 1942-A  
Guide 27  
Attachment 6  
Page 6  
(Added 09-24-12, PN 458)

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**ARTICLE A.1: GENERAL PROVISIONS**

Add the following subparagraphs and clauses to paragraph A.1.1:

**A1.1.9 Agency**

The term "Agency", as used in this Attachment, shall mean the United States of America, acting through United States Department of Agriculture.

**A1.1.10 Independent Inspector**

The term "Independent Inspector," as used in this Attachment, shall mean the Inspector hired independent from the Design/Builder by the Owner to represent the Owner's interests. The Agency requires a construction inspector independent of the Design/Builder.

A.1.1.10.1 The Independent Inspector shall be a representative of and shall advise and consult with the Owner during construction until final payment is due to the Design/Builder, and at the Owner's direction during the period of correction of the Work described in the design/build documents. The Independent Inspector shall furnish consultations necessary to identify construction defects, and correct unforeseen conditions normally encountered during this period. The Independent Inspector shall assist the Owner in performing a review of the Project during the 11th month after the date of Substantial Completion.

A.1.1.10.2 The Independent Inspector shall conduct an inspection prior to the issuance of the Acknowledgement of Substantial Completion and shall submit a written report to the Owner, Agency and the Design/Builder about Work to be completed prior to final acceptance. Such services shall be coordinated with the Agency. Prior to submitting the final Application for Payment, the Independent Inspector shall conduct an inspection, submit a Statement of Completion, receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Design/Builder.

A.1.1.10.3 Visits to the site shall be documented in writing on standard inspection report forms with copies furnished to the Owner, Design/Builder and Agency. Visits to the site shall be in accordance with Agency requirements and procedures.

Add the words "and concurred with by the Agency" after "Design/Builder" in subparagraph A.1.5.1.

ARTICLE A.2: OWNER

Add the following subparagraph to Paragraph A.2.2:

A.2.2.12 The Owner shall provide the Design/Builder with Agency standard Contract Document Guides.

ARTICLE A.3: DESIGN/BUILDER

Add the following sentence to subparagraph A.3.2.3: "Any extra cost that may result from errors and omissions in the services provided under the contract will be the responsibility of the Design/Builder."

Add the following subparagraph to subparagraph A.3.2.4:

A.3.2.4.1 The Design/Builder shall consult with the Agency Architect or Engineer about the Agency's requirements and procedures.

In subparagraph A.3.2.5, add the words "and written concurrence by the Agency" after "Owner's written approval" and add the following sentence after the first sentence: Two (2) sets for the Agency are required.

Add the words "and written concurrence by the Agency" at the end of the first sentence in subparagraph A.3.2.6.

Add the words "and written concurrence by the Agency" after "Owner's written approval" in subparagraph A.3.2.8.

Add the words "and written concurrence by the Agency" after "Owner's review and approval" in subparagraph A.3.3.1.

Add the following clauses to subparagraph A.3.3.6:

A.3.3.6.1 The Design/Builder shall conduct a Preconstruction Conference prior to the beginning of construction to familiarize all parties involved with the necessary work. This meeting shall be held with the Design/Build representative, Owner, Owner's Independent Inspector, Agency representative(s) and other interested parties as appropriate. The Agency 'Record of Preconstruction Conference' may be used to document the meeting.

A.3.3.6.2 The Design/Builder shall conduct on-site pay/progress meetings no less than once a month during the periods of active construction. These meetings shall be held with the Design/Build representative, Owner, Owner's Independent Inspector, Agency representative(s) and other interested parties as appropriate, to review and discuss the application for payment, work progress schedule, construction problems or disputes and other appropriate matters.

A.3.3.8 Add the following subparagraph to subparagraph A.3.3.8:

A.3.3.8.1 The Design/Builder shall advise the Owner of required tests, inspections and reports, shall furnish coordination of such tests and inspections, and shall advise the Owner and Agency of the results of same. Copies of test results shall be furnished to the Owner, Owner's Independent Inspector and Agency, as appropriate.

In subparagraph A.3.4.1, add the following subparagraph:

A.3.4.1.1 The Design/Builder shall not contract with any person or entity declared ineligible under Federal laws or regulations from participating in federally assisted construction projects for to whom the Owner has made reasonable objection. The Design/Builder shall not be required to contract with anyone to whom the Design/Builder has reasonable objection.

#### ARTICLE A.4: DISPUTE RESOLUTION

In subparagraph A.4.4.1, delete the first sentence and replace it with: "Claims, except those waived as provided for in subparagraphs A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to paragraphs 6.2 and 6.3 of the Agreement or elsewhere in the Design/Build documents, may be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration."

Delete subparagraph A.4.4.2 and substitute the following subparagraphs:

A.4.4.2 The arbitration provisions in this subsection may be initiated by either party to this Contract by filing with the other party a written request for arbitration. The other party may accept or reject the request by filing a written answering statement with the requesting party within fourteen (14) calendar days of the receipt of such request. If the request is accepted the provisions of this section shall apply. If the request is rejected or an answering statement is not filed within the fourteen (14) day period, the provisions in this subsection will not apply.

A.4.4.2.1 Within fourteen (14) calendar days or any mutually agreeable time period thereafter, each party to this Contract will appoint one arbitrator. Within fourteen (14) calendar days or any mutually agreeable time period thereafter, the two arbitrators will select a third arbitrator. Failure to appoint an arbitrator within the mutually agreeable time periods will terminate further actions under this subsection.

A.4.4.2.2 The arbitrators will select a hearing location as close to the Owner's locale as possible.

In subparagraph A.4.4.4, replace the word "demand" with the word "request" in each occurrence in the first sentence.

#### ARTICLE A.7: CHANGES IN THE WORK

Insert the word ", Agency" after the word "Owner" in its first occurrence in subparagraph A.7.1.2.

A.7.2.1 Delete subparagraph A.7.2.1 and substitute the following:

A.7.2.1 A change order is a written order to the Design/Builder utilizing Form RD 1924-7, "Contract Change Order," signed by the Owner, Independent Inspector, Design/Builder, and the Agency representative. It is issued after the execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. The Design/Builder's signing of the change order indicates complete agreement therein.

Add the following sentence to subparagraph A.7.3.1: "A Construction Change Directive may be used only for a change in response to an emergency, as described in Paragraph A.10.6."

Delete subparagraph A.7.3.3.

Delete subparagraph A.7.3.4.

Delete subparagraph A.7.3.6.

#### ARTICLE A.9: PAYMENTS AND COMPLETION

Add the words, "using AIA Document G-702, 'Application and Certificate for Payment' or Form RD 1924-18, 'Partial Payment Estimate'," after "Application for Payment" in the first sentence of subparagraph A.9.3.1.

Under subparagraph A.9.3.1, add the following subparagraph:

A.9.3.1.3 The Design/Builder shall obtain Agency concurrence on all Applications of Payment before payment is made.

Add the following subparagraph to paragraph A.9.6:

A.9.6.8 No progress payments will be made that deplete the retainage, nor place in escrow any funds that are required for retainage, nor invest the retainage for the benefit of the Design/Builder.

Replace the word "seven" with the word "ten (10)" in the first sentence, second and third lines of subparagraph A.9.7.1.

Add the words ", in collaboration with the Agency Architect or Engineer," after "prepare" in the first sentence of subparagraph A.9.8.5.

Delete subparagraph A.9.8.6 and substitute the following:

A.9.8.6 When the Work has been substantially completed, except for the Work which cannot be completed because of weather conditions, lack of materials or other reasons, which, in the judgment of the Owner, are valid reasons for non-completion, the Owner may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the Work still to be completed.

Delete subparagraph A.9.9.1 and substitute the following subparagraphs:

A.9.9.1 The Design/Builder agrees to the use and occupancy of a portion or unit of the Project before formal acceptance by the Owner under the following conditions:

A.9.9.1.1 A Certificate of Substantial Completion shall be prepared and executed as provided in subparagraph 9.8.4, except that when, in the opinion of the Inspecting Architect, the Design/Builder is chargeable with unwarranted delay in completing the Work or the Contract requirements, the signature of the Design/Builder will not be required. The Certificate of Substantial Completion shall be accompanied by copies of Design/Builder's insurance policies, written endorsements of the Design/Builder's insurance carrier, and the surety permitting occupancy by the Owner during the remaining period of the Project Work. Occupancy and use by the Owner shall not commence until authorized by public authorities having jurisdiction over the Work.

A.9.9.1.2 Occupancy by the Owner shall not be construed by the Design/Builder as being an acceptance of that part of the Project to be occupied.

A.9.9.1.3 The Design/Builder shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.

A.9.9.1.4 Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims in behalf of the Owner or Design/Builder against each other.



A.9.9.1.5 If the Project consists of more than one building, and one of the buildings is to be occupied, the Owner, prior to occupancy of that building, shall secure permanent property insurance on the building to be occupied and necessary permits which may be required for use and occupancy.

Delete subparagraph A.9.9.2 and substitute the following:

A.9.9.2 With the exception of clause 9.9.1.5, use and occupancy by the Owner prior to Project acceptance does not relieve the Design/Builder of the responsibility to maintain all insurance and bonds required of the Design/Builder under the Contract Documents until the Project is completed and accepted by the Owner.

Delete subparagraph A.9.10.1 and substitute the following:

A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, Owner's Independent Inspector and Agency representative shall promptly make such inspection and, and when the Owner finds the Work acceptable under the Design/Build documents and fully performed, the Owner with Agency concurrence shall, subject to Section A.9.10.2, promptly make final payment to the Design/Builder.

Delete the second and third sentences of subparagraph A.9.10.2.

ARTICLE A.11: INSURANCE AND BONDS

A.11.2.1 Add subparagraph A.11.2.1.9:

A.11.2.1.9 The Owner shall be named as co-insured on the liability insurance.

A.11.2 Add the following clauses to A.11.2.

A.11.2.4 The insurance required in subparagraph A.11.2 shall be written for not less than the following limits, or greater if required by law:

.1 Workers' Compensation:

- (a) State: Statutory
- (b) Applicable Federal Statutory  
(E.g. Longshoremen's)
- (c) Employer's Liability: \$ \_\_\_\_\_ per Accident  
\$ \_\_\_\_\_ Disease, Policy Limit  
\$ \_\_\_\_\_ Disease, Each Employee

.2 Comprehensive or Commercial General Liability (Including Premises-Operations; Independent Design/Builders' Protective; Products and Completed Operations; Broad Form Property Damage):

- (a) Bodily Injury: \$ \_\_\_\_\_ Each Occurrence  
\$ \_\_\_\_\_ Aggregate
- (b) Property Damage \$ \_\_\_\_\_ Each Occurrence  
\$ \_\_\_\_\_ Aggregate
- (c) Products and Completed Operations to be maintained for years after final payment:  
\$ \_\_\_\_\_ Aggregate
- (d) Property Damaged Liability Insurance shall provide X, C and U coverage.
- (e) Broad Form Property Damage Coverage shall include Completed Operations.

.3 Contractual Liability:

- (a) Bodily Injury \$ \_\_\_\_\_ Each Occurrence  
\$ \_\_\_\_\_ Aggregate
- (b) Property Damage \$ \_\_\_\_\_ Each Occurrence  
\$ \_\_\_\_\_ Aggregate

.4 Personal Injury, with Employment Exclusion deleted:  
\$ \_\_\_\_\_ Aggregate

.5 Business Auto Liability (including owned, non-owned and hired vehicles):

- (a) Bodily Injury \$ \_\_\_\_\_ Each Person  
\$ \_\_\_\_\_ Each Occurrence
- (b) Property Damage \$ \_\_\_\_\_ Each Occurrence

.6 If the General Liability Coverages are provided by a Commercial Liability policy, the:

- (a) General Aggregate shall be not less than \$\_\_\_\_\_ and it shall apply, in total, to this Project only.
- (b) Fire Damage Limit shall be not less than \$\_\_\_\_\_ on any one fire.
- (c) Medical Expense Limit shall be not less than \$\_\_\_\_\_ on any one person

.7 Umbrella Excess Liability:

- \$\_\_\_\_\_ over primary insurance
- \$\_\_\_\_\_ retention for self-insured hazards each occurrence.

.8 If an exposure exists, Aircraft Liability (owned and non-owned) and Watercraft Liability (owned and non-owned) with limits approved by the Owner shall be provided.

Delete the last sentence in subparagraph A.11.4.3.

Delete subparagraph A.11.4.5.

Delete subparagraph A.11.4.7.

Add the following subparagraphs to subparagraph A.11.5.1:

A.11.5.1.1 The Design/Builder shall furnish the Owner Bonds covering faithful performance of the Contract and payment of obligations arising thereunder with such bonds dated on or before the date of this agreement. The surety company executing the Bonds must hold a certificate of authority as an acceptable surety on Federal Bonds as listed in Treasury Circular 570, as amended, and be authorized to transact business in the State where the Project is located. The Bonds (using the latest AIA forms) shall each be equal to the amount of the Contract Sum. The cost of these Bonds shall be included in the Contract Sum.

A.11.5.1.2 The Design/Builder shall require the attorney-in-fact who executes the required Bonds on behalf of the surety to affix thereto a certified and current power of attorney.

A.11.5.1.3 If at any time a surety on any such Bond is declared bankrupt or loses its right to do business in the State in which the Work is to be performed or is removed from the list of surety companies accepted on Federal Bonds, the Design/Builder shall within ten (10) calendar days after notice from the Owner to do so, substitute an acceptable Bond in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums of such Bond shall be paid by the Design/Builder. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable Bond to the Owner.

#### ARTICLE A.13: MISCELLANEOUS PROVISIONS

Add the following paragraphs A.13.7 through A.13.11.1 to Article A.13.

A.13.7 EQUAL OPPORTUNITY REQUIREMENTS - Non-discrimination in Employment by Federally Assisted Construction Contractors, by Executive Order 11246.

A.13.7.1 This section summarized Executive Order 11246, as amended, which prohibits employment discrimination and requires employers holding non-exempt Federal contracts and subcontracts and federally-assisted construction contracts and subcontracts in excess of \$10,000 to take affirmative action to ensure equal employment opportunity without regard to race, color, religion, sex, or national origin. The Executive Order requires, as a condition for the approval of any federally assisted construction contract, that the applicant incorporate nondiscrimination and affirmative action clauses into its non-exempt federally assisted construction contracts.

A.13.7.2 Executive Order 11246, as amended, is administered and enforced by the Office of Federal Contract Compliance Programs (OFCCP), an agency in the U.S. Department of Labor's Employment Standards Administration. OFCCP has issued regulations at 41 CFR chapter 60 implementing the Executive Order. The regulations at 41 CFR part 60-4 establish the procedures which the Agency, as an administering agency, must follow when making grants, contracts, loans, insurance or guarantees involving federally assisted construction which is not exempt from the requirements of Executive Order 11246. The regulations which apply to Federal or federally assisted construction contractors also are published at 41 CFR part 60-4.

A.13.7.3 OFCCP has established numerical goals for minority and female utilization in construction work. The goals are expressed in percentage terms for the contractor's aggregate workforce in each trade. OFCCP has set goals for minority utilization based on the percentage of minorities in the civilian labor force in the relevant area. There is a single nationwide goal of 6.9 percent for utilization for women. The goals to all construction work in the covered geographic area, whether or not it is federal, federally assisted or non-federal. A notice advises bidders of the applicable goals for the area where the project is to be located.

A.13.7.4 Application. This section applies to all of a construction contractor's or subcontractor's employees who are engaged in on-site construction including those construction employees who work on a non-Federal or non-Federally assisted construction site.

A.13.7.4.1 Agency officials will notify the appropriate Regional Director of OFCCP that an Agency financed construction contract has been awarded, and that the equal opportunity clauses are included in the contract documents.

A.13.7.4.2 The Regional Director, OFCCP-DOL, will enforce the non-discrimination requirements of Executive Order 11246.

A.13.7.4.3 The prospective contractor or subcontractor must comply with the Immigration Reform and Control Act of 1986 by completing and retaining Form I-9, "Employment Eligibility Verification," for employees hired. This form is available from the Immigration and Naturalization Service, and Department of Justice.

A.13.7.4.4 The prospective contractor or subcontractor must submit Form RD 400-6, "Compliance Statement," to the applicant and an Agency official as part of the bid package, prior to any contract bid negotiations and comply with the Executive Order 11246 as stated in the contract documents.

#### A.13.8 STATUTES

A.13.8.1 The Design/Builder and each subcontractor shall comply with the following statutes (and the regulations issued pursuant thereto, which are incorporated herein by reference):

A.13.8.2 The Design/Builder agrees to abide by the requirements of 7 CFR part 3017 and under Executive Order 12549, which pertains to the debarment or suspension of a person from participating in a Federal program or activity. If the total compensation exceeds \$25,000, the Design/Builder shall complete the relevant certification form provided by the Owner.

A.13.8.3 If applicable, the Design/Builder shall comply with Section 319 of Public Law 101-121, as supplemented by the Department of Agriculture regulations (7 CFR 3018 and DR 2400-5). This Law pertains to restrictions on lobbying and applies to the recipients of Contracts and Subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, the Design/Builder must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding for this Contract. The certification and disclosure forms shall be provided by the Owner.

A.13.8.4 Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each Contractor shall be prohibited from inducing, by any means, any person in connection with the construction to give up any part of the compensation to which the person is otherwise entitled.

A.13.8.5 Clean Air Act (42 U.S.S. 7414), section 114, and the Water Pollution Control Act (33 U.S.C. 1813), section 308. Under Executive Order, 11738 and Environmental Protection Agency (EPA) regulations 40 CFR part 15, all Contracts in excess of \$100,000 are required to comply with these Acts. The Acts require the Contractor to:

A.13.8.5.1 Notify the Owner of the receipt of any communication from EPA indicating that a facility to be utilized in the performance of the Contract is under consideration to be listed on the EPA list of Violating Facilities,

A.13.8.5.2 Certify that any facility to be utilized in the work by any nonexempt contractor or subcontractor is not listed on the EPA list of Violating Facilities as of the date of the Contract Award.

A.13.8.5.3 Include or cause to be included the above criteria and requirements of clauses A.13.3.5.1 and A.13.3.5.2 in every nonexempt Subcontract, and that the Contractor will take such actions as the Agency may direct as a means of enforcing such provisions.

A.13.8.6 The Contractor shall be required to comply with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) entitle "Safety and Health Regulations for Construction" (29 CFR Part 1926) to the extent that any resulting Contract involves construction.

#### A.13.9 ENVIRONMENTAL REQUIREMENTS

A.13.9.1 Mitigation Measures - The Design/Builder shall comply with applicable mitigation measures established in the environmental assessment for the project. These may be obtained from the Agency representative.

A.13.9.2 The Design/Builder, when constructing a Project involving trenching, excavating, or other earth moving activity, shall comply with the following environmental constraints:

A.13.9.2.1 Endangered Species, Historic Preservation, Human Remains and Cultural Items, Hazardous Materials, and Paleontology - Any excavation or other earth moving activity by the Design/Builder that provides evidence of the presence of endangered or threatened species or their critical habitat, uncovers a historical or archaeological artifact, human remains or cultural items, hazardous materials, a fossil or other paleontological materials will require the Design/Builder to:

- .1 Temporarily stop work;
- .2 Provide immediate notice to the Architect and the Agency, and in the case of potentially hazardous materials, provide immediate notice to local first responders and take such measures as necessary to protect the public and workers;
- .3 Take reasonable measures as necessary to protect the discovered materials or protected resource;

.4 Abide by such direction as provided by the Agency, or Agencies responsible for resource protection or hazardous materials management; and

.5 Resume work only upon notice from the Architect and the Agency.

A.13.10 Compliance with all Federal, State, and local requirements effective on the contract execution date will be the responsibility of the Design/Builder.

A.13.11 RECORDS

A.13.11.1 If the Contract is based on a negotiated Bid, the Owner, the United States Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Design/Builder which are directly pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions. The Design/Builder shall maintain records for at least three years after the Owner makes final payment and all other pending matters are closed.

**A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT**

Insert the words "as mutually agreed" after "Contract Sum" in the first sentence of subparagraph A.14.3.2.



**COMMUNITY FACILITIES  
DESIGN/BUILD OR CONSTRUCTION MANAGEMENT  
CONCURRENCE CHECKLIST**

*(Comments may be attached or entered on this form. Items in italics are explanatory in nature.)*

1. State Director's and Agency Architect/Engineer's comments and recommendations. *(When noncompetitive negotiation is proposed, submit an evaluation of previous work of the proposed construction firm.)*
2. Regional attorney's opinion and comments regarding the legal adequacy of the proposed procurement method and proposed contract documents. *(If this review is being requested concurrently to expedite the process, please so indicate.)*
3. A copy of the owner's written request and description of the procurement method proposed. *(This may be the same "written request" listed as #1 below.)*
4. A copy of the proposed contract. *(If standard industry contract forms, such as AIA, DBIA or AGC are used, submittal of entire contract is not required. Indicate type of contract, publisher, and what, if any, additions, deletions, changes, or addenda have been made.)*

Section 1942.18(1) requires the owner to provide the following information to the Agency. State Architect/Engineer will initial each item reviewed: *(The following items are not required to be sent to the National Office for review.)*

- \_\_\_\_\_ 1. The owner's written request to use an unconventional contracting method with a description of the proposed method.

- \_\_\_\_\_ 2. A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include such items as:
  - \_\_\_\_\_ a) A non-technical statement summarizing the work to be performed by the contractor and the results expected.
  - \_\_\_\_\_ b) The sequence in which the work is to be performed and a proposed construction schedule.
  
- \_\_\_\_\_ 3. A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for:
  - \_\_\_\_\_ a) Any extra cost that may result from errors or omissions in the services provided under the contract.
  - \_\_\_\_\_ b) Compliance with all Federal, State, and local requirements effective on the contract execution date.
  
- \_\_\_\_\_ 4. An evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.
  
- \_\_\_\_\_ 5. A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.
  
- \_\_\_\_\_ 6. Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.
  
- \_\_\_\_\_ 7. Preliminary plans and outline specifications.
  
- \_\_\_\_\_ 8. The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The State Office has reviewed the above materials and makes a recommendation for concurrence of the use of the **design/build** or **construction management** method (*circle one or the other*) of development for this proposal.

Project: \_\_\_\_\_

Submitted by: \_\_\_\_\_

Date: \_\_\_\_\_

Fax Number: \_\_\_\_\_

**NATIONAL OFFICE REVIEW**

CP / PSS Comments on Submittal: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Program Support Staff  
Date: \_\_\_\_\_

The proposal to use the design / build or construction management method is concurred in by:

\_\_\_\_\_  
Community Programs  
Date: \_\_\_\_\_

oOo

Guide 13, Attachment 1: Page 5 and Guides 20 and 21 in PDF ONLY.  
Exhibits A and B in PDF ONLY.

ENGINEERING FEE ANALYSIS

Part 1: Overview of System

This program was designed by the Program Support Staff to aid State Offices in tracking current trends in market rates for engineering fees on water and waste disposal projects. This program may be used by the State Office to produce graphs to be used in determining reasonable engineering fee on proposed projects.

All necessary instructions and information will appear on the computer screen as needed by the user. The system is menu driven to be user friendly, and "help" is available throughout the system:

- 1) an information option appears on menu, and
- 2) each data entry field has "help" available on the type of data to be entered in that field.

The system performs checks on the data entered and displays error messages as necessary.

Although helpful, typing is not required to use this system. The system is predominantly menu driven.

Part 2: Data Guide

The information which may be stored in the Engineering Fee Analysis System is organized into two separate data entry screens. The first screen contains information on individual projects. The second screen contains specifications for graph options.

Screen 1 -

The following information is required:

Project name  
Bid opening date  
Construction cost  
Engineering fee

The system performs tests on required fields, and will not accept an incomplete entry. All fields must be entered. The project's name must be unique. In cases where the same name is used for multiple projects, some convention (such as incorporating the town name, adding a number, etc.) must be used to make each name unique. The name may not include asterisks (\*), apostrophes ('), or question marks (?).

Screen 2 -

Screen 2, "Graph Options", contains data fields which may be changed to control the range of the graph axes. The upper and lower limits can be changed for both axes. The increments along both axes can also be adjusted within specified limits.

#### Part 3: Limitations of the System

The Engineering Fee Analysis System was designed for single user. Only one user may access the data at a time: adding new projects, editing existing projects, or producing graphs.

There is no limit on the number of projects which may be added to the data base within the system. The only limit would be the storage capacity of the minicomputer used (AT&T 3B2).

#### Part 4: System Administration Information

This software was developed in accordance with the Software Development Guide, and as such is located in the /usr/workaid directory. The shell script which operates the software is /usr/workaid/bin/engfee file. All other files are located in /usr/workaid/lib/engfee directory.

Root has write permissions in all these directories. The individual user has write permissions only in the lib directory, where data is stored. The data entered on projects is located in the file /usr/workaid/lib/engfee/EFw.tbl and EFs.tbl. The version number and date of the software is stored in the file /usr/workaid/bin/engfee.

The Primary Office in developing this software was the Program Support Staff. Technical Support was provided by the Program Support Staff, Decision Support Branch. Enhancements will be incorporated in future versions.