

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF LEVEE ROAD)
WATER ASSOCIATION, INC. FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONSTRUCT A SYSTEM)
IMPROVEMENTS PROJECT AND AN ORDER) Case No. 2021-00015
APPROVING A CHANGE IN RATES AND)
AUTHORIZING THE ISSUANCE OF SECURITIES)
PURSUANT TO KRS 278.023)**

Response to Commission Staff's Second Request for Information

Levee Road Water Association, Inc. ("Levee Road Water"), by Counsel, hereby files its Response to the Commission Staff's Second Request for Information, dated April 1, 2021, as follows:

REQUEST 1: Refer to Levee Road Water's response to Commission Staff's First Request for Information (Staff's First Request), Item 1, Excel Spreadsheet: Customer_Analysis.xlsx, Tab "Proposed Rate Blocks." Provide the expected annual revenue from water sales that will be produced at the United States Department of Agriculture, Rural Development (RD) required rates as set out in the Letter of Conditions (LOC).

WITNESS: Artie Gibson, Levee Road Water Association, Inc.

RESPONSE 1: the requested expected annual revenue from water sales is \$411,792 and can be found in the spreadsheet Usage-for-summary-addendum.xlsx under the water budget tab cell Q6. Breakdown of this income can be found under the water forecast tab of the same spreadsheet. This spreadsheet was submitted as part of the initial application however, a revised spreadsheet has been included which has been updated to show RD interest and principal repayment amount based on the RD loan as closed (see Usage for Summary Addendum.xls being filed with this Response).

REQUEST 2: Refer to Levee Road Water's response to Staff's First Request, Item 2, Excel Spreadsheet: Debt_Service_Coverage_Information, Tab "2017-2019."

- a. Levee Road Water states that the RD requires that it maintain a debt service coverage (DSC) of 1.1x. Provide copies of the RD loan agreements that require Levee Road Water to maintain a 1.1x DSC, and provide specific citations to the DSC requirement in each loan agreement.

WITNESS: Artie Gibson, Levee Road Water Association, Inc.

RESPONSE 2(a) : the RD Letters of Conditions for the 2 existing loans and the proposed RD loan are attached as **Exhibit A** to this Response. It should be clarified that the 1.1 debt service coverage is monitored by RD to determine sustainability, however, it is not specifically required by RD as part of the loan documents. Levee Road Water is required to place 10% of the loan payment amount in a reserve account pursuant to Section 6 of the 03-17-2020 LOC and Section 3 of the 07-08-1994 LOC.

- b. In its DSC calculations for calendar years 2017 through 2019, Levee Road Water adds back Actuarial Pension/OPEB Expense (Pension/OPEB). Provide a detailed explanation for Levee Road Water's Pension/OPEB adjustments.

RESPONSE 2(b) : the DSC calculation adjustments previously submitted were incorrect. A revised DSC calculation spreadsheet is being filed with this Response.

- c. Provide workpapers to support the calculation of each of Levee Road Water's Pension/OPEB adjustments.

RESPONSE 2(c) : not applicable as the DSC calculations have been revised to exclude the Actuarial Pension/OPEB Expense.

- d. The table below is a comparison of the depreciation expense Levee Road Water included in its DSC calculations to the amounts that were reported in Levee Road Water's 2018 Annual Report and 2019 Annual Report. Provide explanations for the notes differences.

RESPONSE 2(d) : the numbers included in the DSC calculations as originally filed with the first Response appear to have been transposed. Please refer to the revised DSC calculation spreadsheet being filed with this Response.

- e. Provide a detailed explanation as to why Levee Road Water's DSC calculation for calendar year 2017 and its 2017 Annual Report does not include depreciation expense.

RESPONSE 2(e) : depreciation was not included in the 2017 DSC calculation because it was not included in Levee Road Water's Annual Report. Depreciation for 2017 was unintentionally omitted from such Annual Report. Please refer to the revised DSC calculation spreadsheet being filed with this Response which includes depreciation.

REQUEST 3: Refer to Levee Road Water's response to Staff's First Request, Item 2, Excel Spreadsheet: Debt_Service_Coverage_Information, Tab "2017 - 2019" and Tab "2020 - 2024 wo depreciation." The table below is a comparison of Levee Road Water's reported actual operating revenues and expenses for calendar year 2019 to the projected 2020 operating revenue and expenses. Given the level of the increases between the actual and projected operating revenues and expenses, provide detailed workpapers and documentation to support Levee Road Water's 2020 projections.

WITNESS: Artie Gibson, Levee Road Water Association, Inc.

RESPONSE 3: the increases in revenues and expenses are as follows:

Increase due to rate increase: \$249,338 increased to \$411,792;

(see the breakdown in the Usage for Summary Addendum.xls being filed with this Response)

Increases in Operating Expenses are as follows:

increase in source of supply expense of 2.67% per year: \$150,965 up to \$163,383;

increase in transmission and distribution expense by 2.67% per year: \$52,121 up to \$56,408;

increase in administrative and general expense by 2.67% per year: \$58,749 up to \$63,582;

increase to cover additional 66% of administrative and general expenses (salary and benefits increase) for going from 3 days a week to 5 days a week for employees and expanded service: \$51,700.

Further breakdown of the \$51,700 expense increase:

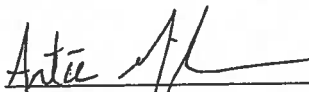
2019 salaried employees from annual report: \$45,010 up to \$75,010 - \$30,000 increase (additional 66% increase in work hours by employees and associated benefits);

2019 salaried officers: \$5,900 up to \$12,000 - \$6,100 increase (\$100 per month per Board member) for additional work;

Customer online billing and payment options associated with new meters within the Project and expanded services to customers associated with the new office: \$1,300 per month for a total yearly amount of \$15,600.

Certification of Responses to Commission Staff's First Request for Information


I hereby certify that I have supervised the preparation of the Responses to the Commission Staff's Second Request for Information. This information provided in the Responses is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.



Artie Gibson
Levee Road Water Association, Inc.

The undersigned has prepared this Response as Counsel to and on behalf of the Levee Road Water Association, Inc., a governmental agency, and hereby certifies that this Response is true and accurate to the best of the undersign's knowledge, information and belief formed after a reasonable inquiry.

Respectfully Submitted:
Rubin & Hays

By 
W. Randall Jones, Esq., Counsel for the
Levee Road Water Association, Inc.
Kentucky Home Trust Building
450 South Third Street
Louisville, Kentucky 40202
Telephone: (502) 569-7525
Fax: (502) 569-7555
Email: wrjones@rubinhays.com

CERTIFICATE OF SERVICE

The undersigned, in accordance with 807 KAR 5:001, Section 8, hereby certifies that Levee Road Water Association, Inc.'s electronic filing of the foregoing Response is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Kentucky Public Service Commission on April 15, 2021; that there are currently no parties that the Kentucky Public Service Commission has excused from participation by electronic means in this proceeding; and that this Response in paper medium will be delivered to the offices of the Kentucky Public Service Commission in Frankfort, Kentucky in accordance with the mandates set forth in the Commission's March 16, 2020 and March 24, 2020 Orders in Case No. 2020-00085.

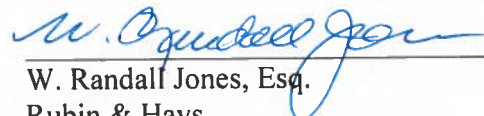

W. Randall Jones, Esq.
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Kentucky Home Trust Building
450 South Third Street
Louisville, Kentucky 40202
Phone: (502) 569-7525
Fax: (502) 569-7555
Counsel for Levee Road Water Association,
Inc.

EXHIBIT A

USDA, Rural Development Letters of Condition

333 Waller Avenue
Lexington, Kentucky 40504

February 13, 1984

Mr. Harold W. Witt
President, LeVee Road Water Association, Inc.
Mt. Sterling, Kentucky 40353

Dear Mr. Witt:

This letter establishes conditions which must be understood and agreed to by you before further 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 to and approved by the Farmers Home Administration (FmHA) by written amendment to this letter. Any changes not approved by FmHA shall be cause for discontinuing processing of the application. It should also be understood that the FmHA is under no obligation to provide additional funds to meet an overrun in construction costs.

This letter is not to be considered as loan or grant approval or as a representation as to the availability of funds. The docket may be completed on the basis of an FmHA loan not to exceed \$103,000 and an FmHA grant not to exceed \$228,000. If FmHA makes the loan, the interest rate will be that established by FmHA at the time of loan approval and notification of approval to the Association.

Please complete and return the attached Form FmHA 442-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given to your application.

The "Letter of Intent to Meet Conditions" must be executed within three weeks from the date of this letter or it becomes invalid unless a time extension is granted by FmHA.

If the conditions set forth in this letter are not met within 120 days from the date hereon, FmHA reserves the right to discontinue the processing of the application.

In signing Form FmHA 442-46, you are agreeing to complete the following as expeditiously as possible:

1. Number of Users and Their Contribution:

There shall be 336 water users, of which 235 are existing users and ¹⁰¹~~100~~ are new users contributing \$35,300 in connection fees toward the cost of the project. The connection fees will be collected prior to advertising for construction bids and will be placed in the construction account at loan pre-closing, unless spent for authorized purposes prior to loan pre-closing. The FmHA District Director will review and authenticate the number of users and amount of cash contribution prior to advertising for construction bids.

2. Grant Agreement:

Attached is a copy of Form FmHA 1942-31, "Association Water or Sewer System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing. A copy of the Resolution authorizing the execution of the Grant Agreement will be attached thereto.

3. Repayment Schedule:

The loan will be scheduled for repayment over a period not to exceed 40 years from the date of the Promissory Note. Principal payment will not be deferred for a period in excess of two years from date of the Promissory Note. The Association will be required to adopt a supplemental payment agreement providing for monthly payments so long as the Promissory Note is held or insured by FmHA.

4. Security Requirements:

The loan will be secured by a real estate mortgage, a financing statement, and a pledge of water revenue, in the Loan Resolution.

5. Land Rights and Real Property:

The Association will be required to furnish satisfactory title, easements, etc., necessary to install, maintain and operate the facility to serve the intended users. The pipelines will be on private rights-of-way where feasible. State and County rights-of-way will be used only in instances where necessary and properly justified. Deeds and easements will be properly recorded. Easements and options are to be secured prior to advertising for construction bids.

6. Organization:

The Association will be legally organized under applicable KRS which will permit them to perform this service, borrow and repay money.

7. Business Operations:

The Association will be required to operate the system under a well-established set of resolutions, rules and regulations. A budget must

be established annually and adopted by the Association after review by FmHA. At no later than loan pre-closing, the Association will be required to furnish a prior approved management plan to include, as a minimum, provisions for management, maintenance, meter reading, miscellaneous services, billing, collecting, bookkeeping, making and delivering required reports and audits.

8. Accounts, Records and Audits:

The Association will be required to maintain adequate records and accounts and submit statistical and financial reports, quarterly and annually, in accordance with subsection 1942.17(q), Appendix "A," to FmHA Instruction 1942-A, a copy of which is enclosed. The enclosed audit booklet will be used as a guide for preparation of audits. Annual audits, budgets, and reports will be submitted to FmHA showing separate accounts. The Association shall be required to submit a copy of its audit agreement for review and approval prior to advertising for construction bids. The Association shall obtain the assistance of its accountant to establish the Association's accounting system. FmHA approval of the accounting system is required.

9. Insurance and Bonding:

The following insurance and bonding will be required:

- A. Liability and Property Damage - In an amount at least equal to \$300,000/50,000.
- B. Workman's Compensation - The Association will carry suitable insurance in accordance with applicable state laws.
- C. Fidelity Bond - Positions of officials entrusted with the receipt and disbursement of its funds and the custody of valuable property will be covered by a fidelity bond in the amount of \$30,000, with USDA-FmHA as Co-Obligee. Other employees and/or officials will be bonded in amounts at least equal to amount of funds and/or valuable property in their custody at any one time. As soon as the amount accumulates in the revenue account, sinking fund and/or reserve accounts to more than \$30,000 at any one time (added together) during the year, the bond will be increased to cover the larger amount.
- D. Real Property Insurance will be carried on all above-ground structures, including Association-owned equipment and machinery housed therein. This includes pumps and electrical equipment, but it does not include water reservoirs, standpipes, elevated tanks, and other noncombustible materials used in treatment plants, clear-wells, clarification units and the like.
- E. Flood Insurance - The Association will carry flood insurance on all structures located in designated flood prone areas.

10. Planning and Performing Development:

- A. The engineer should not be authorized to commence work on final plans and specifications until a determination has been made that the project can be planned and constructed within the estimated cost as shown in paragraph "16" of this letter. When this determination has been made, FmHA should be so advised, by letter. The engineer may then proceed to develop final plans and specifications to be completed no later than 120 days from this date, and prepare bid documents. The District Director is prepared to furnish the necessary guide for him to follow so as to keep the project plans and documents within our guidelines and requirements. The project should not be advertised for construction bids until all easement and enforceable options have been obtained, and total funds are committed or available for the project.
- B. The following documents will be submitted to FmHA for review and must be concurred in by FmHA prior to advertisement for construction bids:
1. Final plans and specifications.
 2. Contract documents and bid documents, with applicant's letter on efforts to encourage small business and minority-owned business participation.
 3. Legal Service Agreements.
 4. Engineering Agreements.

Revision in these documents will be subject to FmHA concurrence.

11. Closing Instructions:

The Office of General Counsel, our Regional Attorney, will be required to write closing instructions in connection with this loan. Conditions listed therein must be met by the Association.

12. Compliance with Special Laws and Regulations:

The Association will be required to conform with any and all state and local laws and regulations affecting this type project.

13. Prior to Pre-Closing the Loan, the Association will be Required to Adopt the Following Forms After Holding a Properly Notified Membership Meeting:

- A. Form FmHA 442-8, "Resolution of Members or Stockholders."
- B. Form FmHA 442-9, "Association Loan Resolution."
- C. Form FmHA 400-1, "Equal Opportunity Agreement."
- D. Form FmHA 400-4, "Assurance Agreement."

The Association must offer the opportunity for all residents in the service area to become users of the facilities regardless of race, creed, color, or level of income.

14. Commercial Interim Financing:

The Association will be required to use commercial interim financing for the project during construction for the FmHA loan portion of the financing, if available at reasonable rates and terms. A construction account, secured by a pledge of collateral with a Federal Reserve Bank, will be required to protect any federal funds accumulated in excess of \$100,000.

Before the loan is closed, the Association will be required to provide FmHA with statements from the contractor, engineer and attorney that they have been paid to date in accordance with their contract or other agreements and, in the case of the contractor, that he has paid his suppliers and sub-contractors. Any exceptions must be authorized under FmHA Instruction 1942-A, subsection 1942.17(n)(2).

15. Disbursement of Project Funds:

A construction account (supervised bank account) for the purpose of disbursement of project funds (FmHA) will be established by the Association prior to start of construction. During construction, the Association shall disburse project funds in a manner consistent with FmHA Instruction 1942.17(p)(5) of Appendix "A" to FmHA Instruction 1942-A. Form FmHA 424-18, "Partial Payment Estimate," or similar form approved by FmHA, shall be used for the purpose of documenting periodic construction estimates, and shall be submitted to FmHA for review and acceptance. Prior to disbursement of funds by the Association, the Board of Directors shall review and approve each payment estimate. All bills and vouchers must be approved by FmHA prior to payment by the Association. Form SF 271, "Outlay Report and Request for Reimbursement for Construction Programs," shall be prepared and submitted to FmHA to account for funds expended in the last 30-day period.

After the FmHA loan is closed, the Association shall prepare and submit Form SF 272, "Report of Federal Cash Transactions," to report the status of federal cash received during each prior monthly period. Form FmHA 440-11, "Estimate of Funds Needed for 30-Day Period Commencing _____," will be prepared by the Association and submitted to FmHA in order that a periodic advance of federal cash may be requested. Forms FmHA 440-11 and SF 272 will be submitted to FmHA simultaneously.

All disbursements on the construction account shall be subject to the countersignature of FmHA.

16. Cost of Facility:

Breakdown of Costs:

Development	\$274,000
Legal and Administrative	7,500
Engineering	50,000
Interest	7,500
Contingencies	27,300
TOTAL	<u>\$366,300</u>

Financing:

FmHA Loan	\$103,000
FmHA Grant	228,000
Applicant Contribution	35,300
TOTAL	<u>\$366,300.</u>

17. Rates and Charges:

Rates and charges for facilities and services rendered by the Association must be at least adequate to meet cost of maintaining, repairing and operating the water system and meeting required principal and interest payments and the required deposits to debt service and/or depreciation reserve.

Water rates will be at least:

First	1,000 gallons @ \$7.50 - Minimum Bill.
Next	2,000 gallons @ 2.50 - per 1,000 gallons.
Next	3,000 gallons @ 2.00 - per 1,000 gallons.
Next	19,000 gallons @ 1.50 - per 1,000 gallons.
Next	25,000 gallons @ 1.25 - per 1,000 gallons.
All Over	50,000 gallons @ 1.00 - per 1,000 gallons.

18. Final Approval Conditions:

Final approval of this loan will depend on your willingness, with the assistance of all your co-workers, to meet the conditions of this letter in an orderly and systematic manner. Then too, final approval will depend on funds being available.

LeVee Road Water Association, Inc.
Page 7

If you desire to proceed with your application, the District Director will allot a reasonable portion of his time to provide guidance in application processing.

Sincerely,

KENDELL L. SEATON
State Director

Enclosures

cc: FmHA District Director - Morehead, Ky.
FmHA County Supervisor - Mt. Sterling, Ky.
Gateway ADD - Owingsville, Ky.
John M. Prewitt - Mt. Sterling, Ky.
Leake Engineering, Inc. - Mt. Sterling, Ky.

C&BP:King:ar

333 Waller Avenue
Lexington, Kentucky 40504

August 19, 1985

Mr. Harold W. Witt
President, LeVee Road Water Association, Inc.
Mt. Sterling, Kentucky 40353

Re: Letter of Conditions Dated February 13, 1984

Dear Mr. Witt:

This letter shall serve as Amendment No. 1 to your Letter of Conditions dated February 13, 1984. The purpose of this Amendment is to revise the funding of this project in accordance with the consulting engineer's Final Cost Estimates.

Paragraph numbered "1" is changed to read as follows:

"1. Number of Users and Their Contribution:

There shall be 336 water users, of which 235 are existing users and 101 are new users contributing \$41,400 in connection fees and from the Reserve Account toward the cost of the project. The connection fees will be collected prior to advertising for construction bids and will be placed in the Construction Account at loan pre-closing, unless spent for authorized purposes prior to loan pre-closing. The FmHA District Director will review and authenticate the number of users and amount of cash contribution prior to advertising for construction bids. Replacement of the funds from the Reserve Account is to begin immediately."

Paragraph numbered "16" is changed to read as follows:

"16. Cost of Facility:

Breakdown of Costs:

Development	\$291,100
Land & Rights	7,000
Legal and Administrative	5,000
Engineering	48,700
Interest	6,000
Contingencies	14,600
TOTAL	<u>\$372,400</u>

Financing:

FmHA Loan	\$103,000
FmHA Grant	228,000
Applicant Contribution	41,400
	<u>\$372,400"</u>

All other provisions of the referenced Letter of Conditions remain in full force and unchanged.

Sincerely,

KENDELL L. SEATON
State Director

cc: FmHA District Director - Morehead, KY
FmHA County Supervisor - Mt. Sterling, KY
Gateway ADD - Owingsville, KY
John M. Prewitt - Mt. Sterling, KY
Leake Engineering, Inc. - Mt. Sterling, KY

C&BP:lletcher:mt



United States
Department of
Agriculture

Farmers
Home
Administration

771 Corporate Drive, Suite 200
Lexington, Kentucky 40503-5477
(606) 224-7336

July 8, 1994

Mr. Jim Linkous
President, LeVee Road Water Association, Inc.
Mt. Sterling, Kentucky 40353

Dear Mr. Linkous:

This letter establishes conditions which must be understood and agreed to by you before further 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 to and approved by the Rural Development Administration (RDA) by written amendment to this letter. Any changes not approved by RDA shall be cause for discontinuing processing of the application. It should also be understood that the RDA is under no obligation to provide additional funds to meet an overrun in construction costs.

This letter is not to be considered as loan approval or as a representation as to the availability of funds. The docket may be completed on the basis of an RDA loan not to exceed \$44,000, an Appalachian Regional Commission (ARC) grant of \$360,000, and a Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) of \$192,900.

If RDA 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 FmHA 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 RDA as soon as practical. In order to avoid possible delays in loan closing, such a request should ordinarily be submitted at least 30 days before loan closing.

Please complete and return the attached Form FmHA 1942-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given to your application.

The "Letter of Intent to Meet Conditions" must be executed within three weeks from the date of this letter or it becomes invalid unless a time extension is granted by RDA.



Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

OFFICIAL AGENCY FILE COPY

If the conditions set forth in this letter are not met within 180 days from the date hereof, RDA reserves the right to discontinue the processing of the application.

In signing Form FmHA 1942-46, you are agreeing to complete the following as expeditiously as possible:

1. Number of Users and Their Contribution:

There shall be 524 water users, of which 488 are existing users and 36 are new users contributing \$3,600 in connection fees toward the cost of the project. The connection fees will be collected prior to advertising for construction bids and will be placed in the construction account at loan pre-closing, unless spent for authorized purposes prior to loan pre-closing. The FmHA District Director will review and authenticate the number of users and amount of connection fees prior to advertising for construction bids.

1a. Grant Agreement (ARC Grant):

Attached is a copy of Form FmHA 1942-31, "Association Water or Sewer System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing.

2. Repayment Period:

The loan will be scheduled for repayment over a period not to exceed 40 years from the date of the Promissory Note. Principal payment will not be deferred for a period in excess of two (2) years from the date of the Promissory Note. The Association will be required to adopt a supplemental payment agreement providing for monthly payments of principal and interest so long as the Promissory Note is held or insured by RDA.

3. Funded Depreciation Reserve Account:

The Association will be required to deposit \$25.00 per month into a "Funded Depreciation Reserve Account" until the account reaches \$3,000. The deposits are to be resumed any time the account falls below the \$3,000.

The required monthly deposits to the Reserve Account and required Reserve Account levels are in addition to the requirements of the Association's prior note resolutions.

The monthly deposits to the Reserve Account are required to commence with the first month of the first full fiscal year after the facility becomes operational.

4. Security Requirements:

The loan will be secured by a real estate mortgage, a financing statement, and a pledge of water revenue, in the Loan Resolution and Financing Statement.

5. Land Rights and Real Property:

The Association will be required to furnish satisfactory title, easements, etc., necessary to install, maintain and operate the facility to serve the intended users. The pipelines will be on private rights-of-way where feasible. State and County rights-of-way will be used only in instances where necessary and properly justified. Easements and options are to be secured prior to advertising for construction bids.

6. Organization:

The Association will be legally organized under applicable KRS which will permit them to perform this service, borrow and repay money.

7. Business Operations:

The Association will be required to operate the system under a well-established set of resolutions, rules and regulations. A budget must be established annually and adopted by the Association after review by RDA. At no later than loan pre-closing, the Association will be required to furnish a prior approved management plan to include, as a minimum, provisions for management, maintenance, meter reading, miscellaneous services, billing, collecting, bookkeeping, making and delivering required reports and audits.

8. Accounts, Records and Audits:

The Association will be required to maintain adequate records and accounts and submit statistical and financial reports, annually, in accordance with subsection 1942.17(q) of FmHA Instruction 1942-A, a copy of which is enclosed. The enclosed audit booklet will be used as a guide for preparation of audits. The Association shall be required to submit a copy of its audit agreement for review and approval prior to advertising for construction bids. The Association shall obtain the assistance of its accountant to establish the Association's accounting system. RDA approval of the accounting system is required.

9. Accomplishing Audits for Years in Which Receive Federal Financial Assistance:

The Association will accomplish audits in accordance with OMB Circular A-133, "Audits of Institution of Higher Education and Other Non-Profit Institutions," during the years in which federal funds are received. The Association will provide copies of the audits to the FmHA District Office and the appropriate Federal cognizant agency as designated by OMB Circular A-133.

10. Insurance and Bonding:

The following insurance and bonding will be required:

- A. Adequate Liability and Property Damage Insurance including vehicular coverage, if applicable, must be obtained and maintained by the Association. The Association should obtain amounts of coverage as recommended by its attorney, consulting engineer and/or insurance provider.
- B. Worker's Compensation - The Association will carry worker's compensation insurance for employees in accordance with applicable state laws.
- C. Fidelity Bond - The Association 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. The amount of coverage required for all FmHA/RDA loans is \$19,486.
- D. Real Property Insurance - The Association will obtain and maintain adequate fire and extended coverage on all structures including major items of equipment or machinery located in the structures. The amounts of coverage should be based on recommendations obtained by the Association from its attorney, consulting engineer and/or insurance provider. Subsurface lift stations do not have to be covered except for the value of electrical and pumping equipment therein.
- E. Flood Insurance - The Association will obtain and maintain adequate coverage on any facilities located in a special flood and mudslide prone areas.

11. Planning and Performing Development:

- A. The engineer should not be authorized to commence work on final plans and specifications until a determination has been made that the project can be planned and constructed within the estimated cost shown in paragraph "20" of this letter. When this determination has been made, RDA should be so advised by letter. The engineer may then proceed to develop final plans and specifications to be completed no later than 120 days from this date, and prepare bid documents. The District Director is prepared to furnish the necessary guide for him to follow so as to keep the project plans and documents within our guidelines and requirements. The project should not be advertised for construction bids until all easements and enforceable options have been obtained, and total funds are committed or available for the project.
- B. The following documents will be submitted to RDA for review and must be concurred in by RDA prior to advertisement for construction bids:
1. Final plans and specifications.
 2. Contract documents and bid documents, with applicant's letter on efforts to encourage small business and minority-owned business participation.
 3. Legal Service Agreements.
 4. Engineering Agreements.

Revision in these documents will be subject to RDA concurrence. Any agreements, contracts, etc. not reviewed and approved by RDA will not be eligible for payment from project funds or revenues from facilities financed by RDA.

12. Compliance with Section 504 of the Rehabilitation Act of 1973:

The Association will be required to comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), in order to make sure no handicapped individual, solely by reason of their handicap, is excluded from participation in the use of the water system, be denied the benefits of the water system, or be subjected to discrimination.

13. Closing Instructions:

The Office of General Counsel, our Regional Attorney, will be required to write closing instructions in connection with this loan. Conditions listed therein must be met by the Association.

14. Compliance with Special Laws and Regulations:

The Association will be required to conform with any and all state and local laws and regulations affecting this type project.

15. System Operator:

The Association is reminded that the system operator must have an Operator's Certificate issued by the State.

16. Prior to Pre-Closing the Loan, the Association will be Required to Adopt the Following Forms After Holding a Properly Notified Membership Meeting:

- A. Form FmHA 1942-8, "Resolution of Members or Stockholders."
- B. Form FmHA 1942-9, "Association Loan Resolution."
- C. Form FmHA 400-1, "Equal Opportunity Agreement."
- D. Form FmHA 400-4, "Assurance Agreement."
- E. Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transaction."
- F. Form FmHA 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts."
- G. FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans."

The Association must offer the opportunity for all residents in the service area to become users of the facilities regardless of race, creed, color, religion, sex, national origin, marital status, physical or mental handicap or level of income.

17. Refinancing and Graduation Requirements:

The Association is reminded that if at any time it shall appear to the Government that the Association is able to refinance the amount of the RDA indebtedness then outstanding, in whole or in part, by obtaining a loan from commercial sources at reasonable rates and terms, upon the request of the Government, the Association will apply for and accept such loan in sufficient amount to repay the Government.

18. Commercial Interim Financing:

The Association will be required to use commercial interim financing for the project during construction for the RDA loan portion of the financing, if available at reasonable rates and terms.

Before the loan is closed, the Association will be required to provide RDA with statements from the contractor, engineer and attorneys that they have been paid to date in accordance with their contract or other agreements and, in the case of the contractor, that he has paid his suppliers and sub-contractors. Any exceptions must be authorized under FmHA Instruction 1942-A, subsection 1942.17(n) (3).

19. Disbursement of Project Funds:

A construction account for the purpose of disbursement of project funds (RDA) will be established by the Association prior to start of construction. The position of officials entrusted with the receipt and disbursement of RDA project funds will be covered by a "Fidelity Bond," with USDA-RDA as Co-Obligee, in the amount of construction funds on hand at any one time during the construction phase.

During construction, the Association shall disburse project funds in a manner consistent with subsection 1942.17(p) (5) of FmHA Instruction 1942-A. Form FmHA 1924-18, "Partial Payment Estimate," or similar form approved by RDA, shall be used for the purpose of documenting periodic construction estimates, and shall be submitted to RDA for review and acceptance. Prior to disbursement of funds by the Association, the Board of Directors shall review and approve each payment estimate. All bills and vouchers must be approved by RDA prior to payment by the Association.

Form FmHA 440-11, "Estimate of Funds Needed for 30-Day Period Commencing _____," will be prepared by the Association and submitted to RDA in order that a periodic advance of federal cash may be requested.

Monthly audits of the Association's construction account records shall be made by RDA.

20. Cost of Facility:

Breakdown of Costs:

Development	\$	441,800
Legal and Administrative		27,500*
Engineering		86,900
Interest		2,500
Contingencies		<u>41,800</u>
	TOTAL	\$ 600,500

* Includes CDBG Administrative expense of \$15,000 and LMI Connection of \$6,300.

Financing:

RDA Loan	\$	44,000
ARC Grant		360,000
CDBG Grant		192,900
Applicant Contribution		<u>3,600</u>
	TOTAL	\$ 600,500

21. Use of Remaining Project Funds:

The applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining RDA project funds will be considered to be RDA loan funds and refunded to RDA.

22. Rates and Charges:

Rates and charges for facilities and services rendered by the Association must be at least adequate to meet cost of maintaining, repairing and operating the water system and meeting required principal and interest payments and the required deposits to debt service and/or depreciation reserve.

Water rates will be at least:

First	1,000 gallons @ \$10.25	- Minimum Bill.
Next	2,000 gallons @ \$ 3.85	- per 1,000 gallons.
Next	3,000 gallons @ \$ 3.15	- per 1,000 gallons.
Next	19,000 gallons @ \$ 2.40	- per 1,000 gallons.
Next	25,000 gallons @ \$ 2.05	- per 1,000 gallons.
All Over	50,000 gallons @ \$ 1.75	- per 1,000 gallons.

23. Water Purchase Contract:

The Association will submit a Water Purchase Contract for approval by RDA before advertising for construction bids. If the contract is not on Form FmHA 442-30, "Water Purchase Contract," the contract will require approval by our Regional Attorney. The contract must meet the requirements of FmHA Instruction 1942.18(f).

24. Commitment of CDBG and ARC Grants:

This Letter of Conditions is issued contingent upon a firm commitment being in effect prior to advertising for construction bids for the CDBG Grant in the amount of \$192,900, and for the ARC Grant in the amount of \$360,000.

25. Floodplain Construction:

The Association will be required to pass and adopt a Resolution or amend its By-Laws whereby the Association will deny any water service to any future customer wishing to build within a designated floodplain.

26. Water Withdrawal Permit:

The Association will be required to obtain satisfactory evidence that City of Mt. Sterling has secured a revised water withdrawal permit from the Division of Water. The permit must be obtained prior to the commencement of construction on the water project.

27. Final Approval Conditions:

Final approval of this loan will depend on your willingness, with the assistance of all your co-workers, to meet the conditions of this letter in an orderly and systematic manner. Then too, final approval will depend on funds being available.

If you desire to proceed with your application, the District Director will allot a reasonable portion of his time to provide guidance in application processing.

Sincerely,



THOMAS G. FERN
State Director

Enclosures

cc: FmHA District Director - Lexington, KY
FmHA County Supervisor - Mt. Sterling, KY
Gateway ADD - Owingsville, KY
(Local Counsel)
H. A. Spaulding, Inc. - Hazard, KY
PSC - (Attn: Claude Rhorer) - Frankfort, KY



C & BP: LETCHER: C3



March 17, 2020

Arthur Gibson, Chairman
Levee Road Water Association, Inc.
P.O. Box 770
Mt. Sterling, Kentucky 40353

SUBJECT: Recipient Name: Levee Road Water Association, Inc.
Project Name: Water System Improvements

Dear Chairman Gibson:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area office staff of USDA Rural Development. Any changes in project cost, source of funds, scope of services or any other significant changes in the project or applicant must be reported to and approved by USDA Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application. It should also be understood that Rural Development is under no obligation to provide additional funds to meet an overrun in construction costs.

This letter is not to be considered as loan or grant approval or as a representation as to the availability of funds. The docket may be completed on the basis of a RUS loan not to exceed \$1,050,000 and a RUS grant not to exceed \$250,000. There will be no applicant contribution.

If Rural Development makes the loan, the interest rate will 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, unless the applicant otherwise chooses. 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.

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given to your application.

The "Letter of Intent to Meet Conditions" must be executed within three weeks from the date of this letter or it becomes invalid unless a time extension is granted by Rural Development.

If the conditions set forth in this letter are not met within 240 days from the date hereof, Rural Development reserves the right to discontinue the processing of the application. In signing Form RD 1942-46, "Letter of Intent to Meet Conditions," you are agreeing to complete the following as expeditiously as possible:

Rural Development • Kentucky State Office
771 Corporate Drive, Suite 200, Lexington, Kentucky 40502
Voice (859) 224-7300 • Fax (855) 661-8335 • TTY (859) 224-7422

USDA is an equal opportunity provider, employer and lender.

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

1. Number of Users and Their Contribution:

There shall be 857 water users, of which all are existing users. The Area Director will review and authenticate the number of users prior to advertising for construction bids.

2. Grant Agreement:

Attached is a copy of RUS Bulletin 1780-12, "Water and Waste System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing.

3. Drug-Free Work Place:

Prior to grant closing, the Association will be required to execute Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I - For Grantees Other Than Individuals."

4. Repayment Period:

The loan will be scheduled for repayment over a period not to exceed 40 years from the date of the Promissory Note. Principal payment will not be deferred. The Association may be required to adopt a supplemental payment agreement providing for monthly payments of principal and interest so long as the Promissory Note is held or insured by RUS. Monthly payments will be approximate amortized installments.

5. Recommended Repayment Method:

Payments on this loan shall be made using the Preauthorized Debit (PAD) payment method. This procedure eliminates the need for paper checks and ensures timely receipt of RD loan payments. To initiate PAD payments, Form RD 3550-28, "Authorization Agreement for Preauthorized Payments," should be signed by the Association to authorize the electronic withdrawal of funds from your designated bank account on the exact installment payment due date. The Area Director will furnish the necessary forms and further guidance on the PAD procedure.

6. Reserve Accounts:

Reserves must be properly budgeted to maintain the financial viability of any operation. Reserves are important to fund unanticipated emergency maintenance, pay for repairs, and assist with debt service should the need arise.

The Association will be required to deposit \$335 per month into a "Funded Debt Reserve Account" until the account reaches \$40,200. The deposits are to be resumed any time the account falls below the \$40,200.

The required monthly deposits to the Reserve Account and required Reserve Account levels are in addition to the requirements of the Association's prior loan resolutions.

The monthly deposits to the Reserve Account are required to commence with the first month of the first full fiscal year after the facility becomes operational.

The Association also needs to fund an account for short-lived assets by depositing a sum of \$1,959 monthly to the account. The funds in the short-lived asset account may be used by the Association as needed to replace or add short-lived assets in the Association's water system.

7. Security Requirements:

The loan will be secured by a real estate mortgage, a financing statement, and a pledge of gross water revenue, in the Loan Resolution and Financing Statement.

8. Land Rights and Real Property:

The Association will be required to furnish satisfactory title, easements, etc., necessary to install, maintain and operate the facility to serve the intended users.

The pipelines will be on private rights-of-way where feasible. Easements and options are to be secured prior to advertising for construction bids.

9. Organization:

The Association will be legally organized under applicable KRS, which will permit them to perform this service, borrow, or repay money.

The Association must maintain a current registration of their Dun and Bradstreet Data Universal Numbering System (DUNS) number in SAM.gov (System for Award Management) in order to receive federal loan and/or grant financial assistance. This registration must be updated/renewed at least annually.

10. Business Operations:

The Association will be required to operate the system under a well-established set of resolutions, rules and regulations. A budget must be established annually and adopted by the Association after review by Rural Development. At no later than loan pre-closing, the Association will be required to furnish a prior approved management plan to include, as a minimum, provisions for management, maintenance, meter reading, miscellaneous services, billing, collecting, delayed payment penalties, disconnect/reconnect fees, bookkeeping, making and delivering required reports and audits.

11. Conflict of Interest Policy:

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

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

Sample conflict of interest policies may be found at the National Council of Nonprofits website, <https://www.councilofnonprofits.org/tools-resources/conflict-of-interest>, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at <http://www.irs.gov/pub/irs-pdf/i1023.pdf>. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure of the same format is required if no conflicts are anticipated. Assistance in developing a conflict of interest policy is available through Agency-contracted technical assistance providers if desired.

12. Accounts, Records and Audits:

The Association will be required to maintain adequate records and accounts and submit annual budgets and year-end reports (annual audits)/statistical and financial reports, quarterly and annually, in accordance with subsection 1780.47 of RUS Instruction 1780.

The Association shall be required to submit a copy of its audit agreement for review and concurrence by Rural Development prior to pre-closing the loan.

13. Accomplish Audits for Years in Which Federal Financial Assistance is Received:

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

Audits – An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of your fiscal year end.

14. Insurance and Bonding:

The following insurance and bonding will be required:

- A. Adequate Liability and Property Damage Insurance including vehicular coverage, if applicable, must be obtained and maintained by the Association. The Association should obtain amounts of coverage as recommended by its attorney, consulting engineer and/or insurance provider.

- B. Worker's Compensation - The Association will carry worker's compensation insurance for employees in accordance with applicable state laws.
- C. Fidelity Bond - The Association 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. The amount of coverage required for all RUS loans is \$51,000.
- D. Real Property Insurance - The Association will obtain and maintain adequate fire and extended coverage on all structures including major items of equipment or machinery located in the structures. The amounts of coverage should be based on recommendations obtained by the Association from its attorney, consulting engineer and/or insurance provider. Subsurface lift stations do not have to be covered except for the value of electrical and pumping equipment therein.
- E. Flood Insurance - The Association will obtain and maintain adequate coverage on any facilities located in special flood and mudslide prone areas.

15. Planning and Performing Development:

- A. The engineer should not be authorized to commence work on final plans and specifications until a determination has been made that the project can be planned and constructed within the estimated cost shown in paragraph "28" of this letter. The engineer may then proceed to develop final plans and specifications to be completed no later than 210 days from this date, and prepare bid documents. The Area Director is prepared to furnish the necessary guide to follow so as to keep the project plans and documents within our guidelines and requirements. The project must be constructed by the design/bid/build method of construction. The project should not be advertised for construction bids until all easements and enforceable options have been obtained, and total funds are committed or available for the project.
- B. The following documents will be submitted to Rural Development for review and must be concurred in by Rural Development prior to advertisement for construction bids:
 - 1. Final plans, specifications and bid documents.
 - 2. Applicant's letter on efforts to encourage small business and minority - owned business participation.
 - 3. Legal Service Agreements.
 - 4. Engineering Agreements.

Revision in these documents will be subject to Rural Development concurrence. Any agreements, contracts, etc. not reviewed and approved by Rural Development will not be eligible for payment from project funds or revenues from facilities financed by this Agency.

16. Bid Tabulation:

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

A. Cost Overruns – If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds.

Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.

B. Excess Funds – If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and letter of conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

17. Contract Documents, Final Plans and Specifications:

A. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.

B. The contract documents, final plans and specifications must comply with RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, and must be submitted to the Agency for concurrence prior to advertising for bids along with an updated cost estimate. The Agency may require another updated cost estimate if a significant amount of time elapses between the original submission and advertising for bids.

C. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.

18. Contract Review:

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

19. Civil Rights & Equal Opportunity:

You should be aware of and will be required to comply with other federal statute requirements including but not limited to:

A. Section 504 of the Rehabilitation Act of 1973:

Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Rural Development financial assistance.

B. Civil Rights Act of 1964:

All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and Subpart E of Part 1901 of this Title, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by paragraph 1901.202(e) of this Title.

C. The Americans with Disabilities Act (ADA) of 1990:

This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, state and local government services, public transportation, public accommodations, facilities, and telecommunications. Title II of the Act applies to facilities operated by state and local public entities that provide services, programs, and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities that accommodate the public.

D. Age Discrimination Act of 1975:

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

E. Limited English Proficiency (LEP) under Executive Order 13166:

LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons.

LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge.

You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, "Improving Access to Services by Persons with Limited English Proficiency" and further affirmed in the USDA Departmental Regulation 4330-005, "Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA."

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

20. Closing Instructions:

The Office of General Counsel, our Regional Attorney, will be required to write closing instructions in connection with this loan. Conditions listed therein must be met by the Association.

21. Compliance with Special Laws and Regulations:

The Association will be required to conform to any and all state and local laws and regulations affecting this type project.

22. Treatment Plant and System Operator:

The Association is reminded that the water system operator must have an Operator's Certificate issued by the State.

23. Prior to Pre-Closing the Loan and Grant, the Association Will Be Required to Adopt:

- A. Form RD 1942-8, "Resolution of Members or Stockholders."
- B. Form RUS Bulletin 1780-28, "Loan Resolution Security Agreement."
- C. Form RD 400-1, "Equal Opportunity Agreement."
- D. Form RD 400-4, "Assurance Agreement."
- E. Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transaction."
- F. Form RD 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts."
- G. RD Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans."
- H. RUS Bulletin 1780-22, "Eligibility Certification."

24. Refinancing and Graduation Requirements:

The Association is reminded that if at any time it shall appear to the Government that the Association is able to refinance the amount of the RUS indebtedness then outstanding, in whole or in part, by obtaining a loan from commercial sources at reasonable rates and terms, upon the request of the Government, the Association will apply for and accept such loan in sufficient amount to repay the Government.

25. Commercial Interim Financing:

The Association will be required to use commercial interim financing for the project during construction for the RUS loan portion of the financing, if available at reasonable rates and terms.

Before the loan is closed, the Association will be required to provide Rural Development with statements from the contractor, engineer and attorneys that they have been paid to date in accordance with their contract or other agreements and, in the case of the contractor, that he has paid his suppliers and sub-contractors.

26. Disbursement of Project Funds:

A construction account for the purpose of disbursement of project funds (RUS) will be established by the Association prior to start of construction. The position of officials entrusted with the receipt and disbursement of RUS project funds will be covered by a "Fidelity Bond," with USDA Rural Development as Co-Obligee, in the amount of construction funds on hand at any one time during the construction phase.

For each "construction account" as established, if the amount of RUS loan and grant funds plus any applicant contributions or funds from other sources to be deposited into the account are expected to exceed \$250,000 at any time, the financial institution will secure the amount in excess of \$250,000 by pledging collateral with the Federal Reserve Bank in an amount not less than the excess in accordance with 7 CFR, 1902.7(a).

Agency funds will be disbursed into the construction account through an electronic transfer system. The borrower should complete Form SF-3881, "Electronic Funds Transfer Payment Enrollment Form," for each account where funds will be electronically received. The completed form(s) must be received by Rural Development at least thirty (30) days prior to the first advance of funds.

Monthly audits of the Association's construction account records shall be made by Rural Development.

Borrowers receiving federal loan and/or grant funds by EFT will have funds directly deposited to a specified account at a financial institution with funds being available to the recipient on the date of payment

Any applicant contribution will be the first funds expended, followed by other funding sources. Interim financing or Agency loan funds will be expended after all other funding sources unless an agreement is reached with all other funding sources on how funds are to be disbursed prior to start of construction or loan closing, whichever occurs first.

Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. The Grant funds must not be disbursed prior to loan funds except as specified in RUS Instruction 1780.45 (d). In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

During construction, the Association shall disburse project funds in a manner consistent with subsection 1780.76 (e) of RUS Instruction 1780. Form RD 1924-18, "Partial Payment Estimate," or similar form approved by Rural Development, shall be used for the purpose of documenting periodic construction estimates, and shall be submitted to Rural Development for review and acceptance. Prior to disbursement of funds by the Association, the Board of Directors shall review and approve each payment estimate. All bills and vouchers must be approved by Rural Development prior to payment by the Association.

Form RD 440-11, "Estimate of Funds Needed for 30-Day Period Commencing _____," will be prepared by the Association and submitted to Rural Development in order that a periodic advance of federal cash may be requested.

27. Disbursement of Grant Funds:

The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of obligations due and payable by the Association.

Grant funds are to be deposited in an interest bearing account in accordance with 2 CFR part 200 and interest in excess of \$500 per year remitted to the Agency.

The funds should be disbursed by the recipient immediately upon receipt and there should be little interest accrual on the Federal funds. Recipients shall maintain advances of Federal funds in interest-bearing account, unless:

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

28. Project Budget:

Estimated expenditures are as follows:

Project Costs:

Development	\$1,004,875
Legal and Administrative	10,000
Engineering Fees	169,300
Interest	10,325
Environmental	5,000
Contingencies	<u>\$ 100,500</u>
TOTAL PROJECT COST	\$1,300,000

Project Funding:

RUS Loan	\$1,050,000
RUS Grant	\$ 250,000
TOTAL FUNDING	\$1,300,000

29. Construction Completion Timeframe:

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

30. Use of Remaining Project Funds:

The applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining project funds will be considered to be RUS grant funds and refunded in proportion to participation in the project. If the amount of unused project funds exceeds the grants, that part would be RUS loan funds.

31. Proposed Operating Budget:

You will be required to submit to Rural Development a copy of your proposed annual operating budget that supports the proposed loan repayment prior to this agency giving you written authorization to proceed with the bidding phase. The operating budget should be based on a typical year cash flow, subject to completion of this project in the first full year of operation. Form RD 442-7, Operating Budget, or similar form may be utilized for this purpose.

32. Rates and Charges:

Rates and charges for facilities and services rendered by the Association must be at least adequate to meet cost of maintaining, repairing and operating the water system and meeting required principal and interest payments and the required deposits to debt service and/or depreciation reserve.

Water rates will be at least:

All meter sizes:

First	2,000	gallons @ \$23.25 - Minimum Bill.
Next	5,000	gallons @ \$ 8.00 – per 1,000 gallons.
Next	13,000	gallons @ \$ 6.00 – per 1,000 gallons.
All Over	20,000	gallons @ \$ 5.50 – per 1,000 gallons.

33. Water Purchase Contract:

The Association will submit a Water Purchase Contract for approval by Rural Development before advertising for construction bids. If the contract is not on Form RD 442-30, "Water Purchase Contract," the contract will require approval by our Regional Attorney. The contract must meet the requirements of subsection 1780.62 of RUS Instruction 1780, which includes there must be 40 years left on the term of the water purchase contract. The contract term must match the term of the loan.

34. Vulnerability Assessment/Emergency Response Plan (VA/ERP):

The Agency requires all financed water and wastewater systems to have a VA/ERP in place. Borrowers with existing systems must provide a certification that a VA/ERP has been completed prior to advertising for bids. The documents are not submitted to the Agency for VA/ERP requirements throughout the life of the loan.

35. Floodplain Construction:

The Association will be required to pass and adopt a Resolution or amend its By-Laws whereby the Association will deny any water service to any future customer wishing to build on or develop property located within a designated floodplain.

If a customer or developer requests service for construction in a designated floodplain, the customer or developer must provide evidence and a justification for approval by the Association and Rural Development officials that there are no other alternatives to construction or development within the designated floodplain. The community must be a participant in the National Flood Insurance Program (NFIP) and the customer or developer must obtain the required permits prior to the tap on restrictions being waived.

36. Mitigation Measures:

- A. The project shall be in compliance with all requirements noted in the Governor's Office for Local Development letter dated February 27, 2019, from Ms. Lee Nalley.
- B. The design and construction shall be in compliance with the requirements of the U.S. Fish and Wildlife Service as requested by letter dated August 10, 2019, and signed by Virgil Lee Andrews, Jr., Field Supervisor.
- C. The line design and construction shall be accomplished in a way that will leave flood plains and farmland without effect after construction is complete. The Army Corps of Engineers Nationwide Permit No. 12 applies to all floodplain and wetland utility line construction.
- D. Any excavation by Contractor that uncovers a historical or archaeological artifact shall be immediately reported to Owner and a representative of Agency. Construction shall be temporarily halted until RD can consult with the State Historical Preservation Officer and issue further directions.
- E. The design and construction shall be in compliance with all local, state and federal environmental statutes, regulations and executive orders applicable to the project.
- F. Best Management Practices shall be incorporated into the project design, construction, and maintenance.

37. System for Award Management:

You will be required to maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be done on-line at: <http://sam.gov>.

This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended.

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

38. Prepayment and Extra Payments:

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

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

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

39. Security/Operational Inspections:

The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

40. American Iron & Steel:

Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) applies a new American Iron and Steel requirement:

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

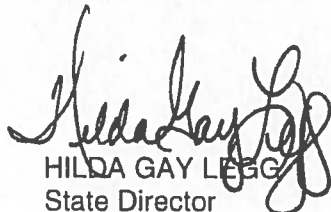
- (2) The term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (3) The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the "Secretary") or the designee of the Secretary finds that— a. applying the requirement would be inconsistent with the public interest; b. iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or c. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

41. Final Approval Conditions:

Final approval of this assistance will depend on your willingness, with the assistance of all your co-workers, to meet the conditions of this letter in an orderly and systematic manner. Then too, final approval will depend on funds being available.

If you desire to proceed with your application, the Area Director will allot a reasonable portion of time to provide guidance in application processing.

Sincerely,



HILDA GAY LEUNG
State Director

Enclosures

cc: Field Director – Morehead, Kentucky
Field Specialist – Morehead, Kentucky
Gateway ADD – Morehead, Kentucky
Leah Hawkins – Mt. Sterling, Kentucky
Kentucky Engineering – Versailles, Kentucky
PSC - ATTN: Talina Mathews - Frankfort, Kentucky