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M. Todd Osterloh
Member
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June 24, 2019

Gwen R. Pinson, Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602-0615

RE: City of Central City
Wholesale Water Rates

Dear Ms. Pinson:

Please find the enclosed proposed tariff and customer notification for the City of Central City's wholesale rate increase to Muhlenberg County Water District and Muhlenberg County Water District No. 3. The increase is proposed to be effective on July 31, 2019.

Central City's proposed rates are based on a requirement by the U.S. Department of Agriculture, acting through Rural Development ("RD") in connection with a loan by RD to the District in the principal amount of \$1,000,000, which includes \$150,000 of grant funding that RD has agreed to provide if the City meets certain conditions of RD, including revising the water rates as set forth above. The proposed rates are required under the terms of an agreement between the City and RD.

In a case involving the City of Harlan, the Public Service Commission explained that if the Commission should find that a City must charge rates less than those specified by Rural Development, the City would fail to meet the conditions imposed by Rural Development. It further declined "to impair or impede" a City's ability to receive funding and that the General Assembly's policy expressed in KRS 278.023 supported its decision to approve the rates set forth in RD's letter of conditions. I am attaching a copy of the Commission's prior decision as well as a copy of the letter of conditions from RD.

Please contact me if you have any questions.

Sincerely,
STURGILL, TURNER, BARKER & MOLONEY, PLLC

M. Todd Osterloh



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June 24, 2019

Muhlenberg County Water District
Bobby Mayhugh, Chairman
P. O. Box 348
Greenville, KY 42345

VIA CERTIFIED MAIL

Muhlenberg County Water District No. 3
Donald Garrett, Chairman
P. O. Box 67
Bremen, KY 42325

RE: City of Central City Wholesale Water Rates

Dear Chairmen Mayhugh and Garrett:

On behalf of the City of Central City, I am enclosing the attached documents related to the City of Central City's proposed rate increase for wholesale water service to Muhlenberg County Water District and Muhlenberg County Water District No. 3. You will find a customer notice and tariff sheet. Pikeville plans on filing these documents with the Public Service Commission on or about June 24, 2019.

Please be advised the proposed rates are based on a requirement by the U.S. Department of Agriculture, acting through Rural Development ("RD") in connection with a loan by RD to the District in the principal amount of \$1,000,000, which includes \$150,000 of grant funding that RD has agreed to provide if the City meets certain conditions of RD, including revising the water rates as set forth. The proposed rates are required under the terms of an agreement between the City and RD.

The Public Service Commission has previously explained that if the Commission should find that a City must charge rates less than those specified by Rural Development, the City would fail to meet the conditions imposed by Rural Development. It further declined "to impair or impede" a City's ability to receive funding and that the General Assembly's policy expressed in KRS 278.023 supported its decision to approve the rates set forth in RD's letter of conditions. I am attaching a copy of the Commission's prior decision as well as a copy of the letter of conditions from RD.

If you have any questions regarding Central City's proposed increase, please contact me.

Sincerely,
STURGILL, TURNER, BARKER & MOLONEY, PLLC



M. Todd Osterloh

MTO/mlm

Enclosures

cc: Mary Ellen Wimberly, District Attorney (via email: MaryEllen.Wimberly@skofirm.com)

NOTICE

Notice is hereby given that the City of Central City proposes to increase its rate for wholesale water service to Muhlenberg County Water District and Muhlenberg County Water District No. 3 effective July 31, 2019. On or about June 24, 2019, documentation will be filed with the Kentucky Public Service Commission to increase rates as follows:

<u>Current Rate</u>	<u>New Rate</u>	<u>Change</u>	<u>\$ Change</u> <u>Ave. Month</u>	<u>% Change</u> <u>Ave. Rate</u>
\$2.63 per 1,000 gals.	\$3.31 per 1,000 gals.	\$0.68		
	Muhlenberg County Water District		\$27,483.33*	25.9%
	Muhlenberg County Water District No. 3		\$13,430.00**	25.9%

* Based on 485,000,000 gallons per year for Muhlenberg County Water District

** Based on 237,000,000 gallons per year for Muhlenberg County Water District No. 3

The proposed effective date is July 31, 2019. Water flowing through the meter(s) before the effective date will be charged at the current rate while water flowing through the meter(s) on and after the effective date will be charged at the proposed new rate.

The rates contained in this notice are the rates proposed by the City of Central City, and are based on a requirement by the U.S. Department of Agriculture, acting through Rural Development ("RD") in connection with a loan by RD to the District in the principal amount of \$1,000,000, which includes \$150,000 of grant funding that RD has agreed to provide if the City meets certain conditions of RD, including revising the water rates as set forth above. The proposed rates are required under the terms of an agreement between the City and RD. The Public Service Commission has previously explained that if the Commission should find that a City must charge rates less than those specified by Rural Development, the City would fail to meet the conditions imposed by Rural Development. It further declined "to impair or impede" a City's ability to receive funding and that the General Assembly's policy expressed in KRS 278.023 supported its decision.

Any person may examine at the offices of the City of Central City located at 214 N. First Street, Central City, Kentucky. Please contact David Rhoades, City Administrator, at 270-754-2336 regarding any questions related to the proposed rates.

This filing may also be examined at the offices of the Public Service Commission located at 211 Sower Boulevard in Frankfort, Kentucky, Monday through Friday from 8:00am to 4:30pm or through the PSC website at <http://psc.ky.gov>.

Comments regarding the filing may be submitted to the PSC through its website or by mail to Public Service Commission, Post Office Box 615, Frankfort, KY 40602.

A timely written request for intervention that establishes grounds for the request may also be submitted to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602. If the PSC does not receive a written request for intervention within thirty (30) days of the date notice was initially provided, the PSC may take final action on the filing.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE)
WHOLESALE WATER SERVICE)
RATES OF THE HARLAN) CASE NO. 2003-00358
MUNICIPAL WATER WORKS)

O R D E R

On September 25, 2003, in response to a letter from Black Mountain Utility District (Black Mountain), the Commission issued an Order suspending the increased rate to be charged Black Mountain by Harlan Municipal Water Works (Harlan). Black Mountain was granted intervention by the same Order.

Subsequently, on September 29, 2003, Otis T. Lewis, Superintendent of Harlan, filed a letter explaining that the rates it had proposed are those specified by U.S.D.A. Rural Development (Rural Development) in its letter of conditions. Harlan is constructing improvements it says are needed to its water treatment plant and is receiving funding from Rural Development and others.

Harlan s ability to receive the Rural Development funding is contingent upon being able to charge the rates that Rural Development previously specified. If the Commission, at the conclusion of this proceeding, should find that Harlan must charge rates less than those specified by Rural Development, Harlan will fail to meet the conditions imposed by Rural Development, and Harlan s ability to receive funding will be

impaired. The Commission declines to impair or impede Harlan's ability to receive funding. We believe that, although KRS 278.023 does not explicitly apply to cities, our decision herein complies with the policy of the General Assembly as expressed in that statute.¹

IT IS THEREFORE ORDERED that:

1. Harlan is authorized to charge the rates set forth in its August 26, 2003 filing with the Commission.

2. This case is dismissed with prejudice and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 24th day of October, 2003.

By the Commission

ATTEST:


Executive Director

¹ KRS 278.023 requires the Commission to accept an agreement between certain water utilities and federal agencies on the basis that imposition by the Commission of different terms could delay or jeopardize construction projects.

FOR Service to PSC Regulated Utilities
Community, Town or City

P.S.C. KY. NO. 1

3rd Revised SHEET NO. 1

CANCELLING P.S.C. KY. NO. 1

2nd Revised SHEET NO. 1

City of Central City
(Name of Utility or City)

CONTENTS

RATES

Monthly Wholesale Water Rate

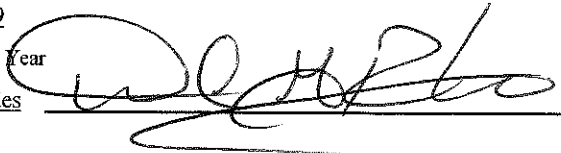
Muhlenberg County Water District: \$3.31 per 1,000 gallons (I)

Muhlenberg County Water District No. 3 \$3.31 per 1,000 gallons (I)

DATE OF ISSUE June 24, 2019
Month / Date / Year

DATE EFFECTIVE July 31, 2019
Month / Date / Year

ISSUED BY David Rhoades



TITLE City Administrator

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION

IN CASE NO. DATED



Rural Development

March 23, 2018

Kentucky State Office

771 Corporate Drive,
Suite 200
Lexington, KY
40503

SUBJECT: City of Central City
Letter of Conditions

TO: Area Director
Madisonville, Kentucky

Voice 859.224.7300
Fax 859.224.7425
TTY 859.224.7422

The applicant's proposed project has received favorable review action for RUS financial assistance. This is not to be considered as loan or grant approval or as representation as to the availability of funds.

We are enclosing the original and 5 copies of the Letter of Conditions. You should contact the applicant at the earliest opportunity to obtain a date and time for holding a meeting for the purpose of delivering and reading the Letter of Conditions and planning further processing of the application.

If the applicant chooses to proceed with the loan and grant, the following documents should be completed and forwarded to the State Office at the earliest opportunity:

1. Form RD 1942-46, "Letter of Intent to Meet Conditions," ONE signed copy
2. Form RD 1940-1, "Request for Obligation of Funds," TWO signed originals
3. Form RD 442-7, "Initial Operating Budget," adopted by the applicant ONE signed copy.
4. Copy of Notice of Public Meeting and copy of Public Meeting minutes.
5. Copy of "Certification of Conflict of Interest Policy and Disclosure letter"


HILDA GAY LEGG
State Director

Enclosures

USDA is an equal opportunity provider and employer.

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.



March 23, 2018

Honorable Barry Shaver, Mayor
City of Central City
214 North First Street
Central City, KY 42330

SUBJECT: Recipient Name: City of Central City
Project Name: Water System Improvements

Dear Mayor Shaver:

This letter establishes conditions that 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 \$850,000 and a RUS grant not to exceed \$150,000. No applicant cash contribution will be required.

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 210 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 2,117 water users, of which all are existing users. The Area Director will review and authenticate the number of users and amount of connection fees 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 City 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 Bond. Principal payment will not be deferred. Payments will be in accordance with applicable KRS, which requires interest to be paid semi-annually (January 1st and July 1st) and principal will be due on or before the first of January. Rural Development may require the City to adopt a supplemental payment agreement providing for monthly payments of principal and interest so long as the bond 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 City 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 City will be required to deposit \$290 per month into a "Funded Debt Reserve Account" until the account reaches \$34,800. The deposits are to be resumed any time the account falls below the \$34,800.

The required monthly deposits to the Reserve Account and required Reserve Account levels are in addition to the requirements of the City's prior bond ordinances.

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 City also needs to fund an account for short-lived assets by depositing a sum of \$6,598 monthly into the account. The funds in the short-lived asset account may be used by the City as needed to replace or add short-lived assets in the City's utility systems.

7. Security Requirements:

A combined pledge of gross water and sewer revenue(s) will be provided in the Bond Ordinance. Bonds shall rank on a parity with existing bonds, if possible.

If this is not possible, the bond will be subordinate and junior to the existing bonds, in which case the City will be required to abrogate its right to issue additional bonds ranking on a parity with the existing bonds, so long as any unpaid indebtedness remains on this bond issue.

Additional security requirements are contained in [RUS Bulletin 1780-12, "Water and Waste System Grant Agreement," and RUS Bulletin 1780-28, "Loan Resolution Security Agreement," which also serves as an assignment of income.] A draft of all security instruments must be reviewed and concurred in by the Agency prior to advertising for bids. The Loan Resolution must be duly adopted and executed prior to loan closing. The Grant Agreement must be fully executed prior to the first disbursement of grant funds.

8. Land Rights and Real Property:

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

The City 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 City 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 City after review by Rural Development. At no later than loan pre-closing, the City 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. 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 City 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 City 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 City. The City should obtain amounts of coverage as recommended by its attorney, consulting engineer and/or insurance provider.
- B. Worker's Compensation - The City will carry worker's compensation insurance for employees in accordance with applicable state laws.
- C. Fidelity Bond - The City 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 \$800,000.
- D. Real Property Insurance - The City 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 City 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 City 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 240 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.

Prior to receipt of an authorization to advertise for construction bids, the City will obtain advance clearance from Bond Counsel and/or Local Counsel regarding compliance with KRS 424 pertaining to publishing of the advertisement for construction bids in local newspapers and the period of time the notice is required to be published.

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 de-obligate 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 de-obligated, with grant funds being de-obligated 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 City.

21. Compliance with Special Laws and Regulations:

The City 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 City is reminded that the water treatment plant and water system operator must have an Operator's Certificate issued by the State.

23. Prior to Pre-Closing the Loan, the City Will Be Required to Adopt:

- A. Form RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)."
- B. Form RD 400-1, "Equal Opportunity Agreement."
- C. Form RD 400-4, "Assurance Agreement."
- D. Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transaction."

- E. Form RD 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts."
- F. RD Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans."
- G. RUS Bulletin 1780-22, "Eligibility Certification."

24. Refinancing and Graduation Requirements:

The City is reminded that if at any time it shall appear to the Government that the City 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 City will apply for and accept such loan in sufficient amount to repay the Government.

25. Commercial Interim Financing:

The City 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 City 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 City 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 City'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 City 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 City, the City Council shall review and approve each payment estimate. All bills and vouchers must be approved by Rural Development prior to payment by the City.

Form RD 440-11, "Estimate of Funds Needed for 30-Day Period Commencing _____," will be prepared by the City 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 City.

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	\$ 765,000
Legal and Administrative	15,500
Engineering Fees	118,000
Interest	19,890
PER & EA	25,000
Contingencies	<u>56,610</u>
TOTAL PROJECT COST	\$1,000,000

Project Funding:

RUS Loan	\$ 850,000
RUS Grant	<u>150,000</u>
TOTAL FUNDING	\$1,000,000

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

Obligated loan or grant funds not needed to complete the proposed project will be de-obligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget.

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. 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 City must be at least adequate to meet cost of maintaining, repairing and operating the * 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:

Inside City:

First	0	gallons @ \$11.00 - Minimum Bill.
All Over	0	gallons @ \$ 3.86 – per 1,000 gallons.

Outside City:

First	2,000	gallons @ \$18.76 - Minimum Bill.
All Over	2,000	gallons @ \$ 6.08 – per 1,000 gallons.

County Water Districts:

All usage - \$3.31 per 1,000 gallons.

33. Water Purchase Contract:

The City 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.

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 City will be required to pass and adopt a Resolution or amend its By-Laws whereby the City 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 City 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. Water Withdrawal Permit:

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

37. Mitigation Measures:

- A. The project shall be in compliance with all requirements noted in the Governor's Office for Local Development letter dated November 3, 2017, from Ms. Lee Nalley.
- B. 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.
- C. 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.
- D. The design and construction shall be in compliance with all local, state and federal environmental statutes, regulations and executive orders applicable to the project.
- E. Best Management Practices shall be incorporated into the project design, construction, and maintenance.

38. 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>).

39. 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.

40. Security/Operational Inspections:

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

41. 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:

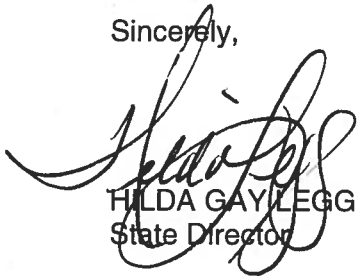
- (1) No Federal funds made available for this fiscal year for the rural water, waste water, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, 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. .

42. 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 LEGG
State Director

Enclosures

cc: Area Director – Madisonville, Kentucky
Pennyrile ADD – Hopkinsville, Kentucky
McGhee Engineering – Guthrie, Kentucky
Dennis Winters – Central City, Kentucky
Rubin & Hays – Louisville, Kentucky