

FRANCHISE AGREEMENT

1. Franchise. The City of Harrington ("City") hereby grants Chesapeake Utilities Corporation, a Delaware Corporation, its successors or assigns ("Chesapeake" or "Company") the right, privilege and franchise to carry on, within the municipal limits of the City, inclusive of areas annexed hereafter, the business of acquiring, distributing and selling natural, or mixed gas ("gas") for light, heat, power and other purposes. The right, privilege and franchise hereby granted shall be deemed to include the right to construct, operate and maintain in, along and upon the streets, alleys, bridges, public highways and other public places within the City, gas mains, valves, manholes, meters, service connections, and other appurtenances for the purpose of distributing gas for light, heat, power and other purposes to the said City and the inhabitants thereof. The Company's rights hereunder shall not be assigned without the consent of the City, which consent shall not be unreasonably withheld.

The term of this franchise shall be for the initial term of fifteen (15) years from the effective date hereof, unless terminated sooner in accordance with the other terms and conditions set forth herein. The Company will provide written notification with proof of receipt to the City no later than eighteen (18) months prior to, and no sooner than twenty-four (24) months before, the expiration date of the Agreement as a reminder to the City of the upcoming renewal date. This franchise shall renew for an additional term of fifteen (15) years unless either party hereto provides the other party with written notice of termination at least six (6) months prior to the expiration of the initial term.

The City may request reasonable extensions of the system to serve residents and/or non-residents of the City. In evaluating a request for an extension, Chesapeake shall comply with the terms and conditions of Chesapeake's line extension policy, as set forth in Chesapeake's tariff on file with the Delaware Public Service Commission. After Chesapeake, at its sole expense, has conducted a cost analysis of any such request by the City to extend the system, the financial

Commented [BS1]: We need clarification on this sentence. Can it be deleted? We are not sure what we are trying to accomplish with this notification.

Commented [TT2R1]: We believe the sentence needs to stay. It is there to allow us time to prepare for a response to the Franchise renewal request.

responsibility of Chesapeake, the City, the property owner, and any other party shall be reasonably determined, subject to the terms and conditions of Chesapeake's line extension policy.

As Company main extensions pass adjacent to City properties with improved structures (pump stations, buildings, etc.), Company shall provide a service connection line stub out for future connection to the gas utility by City if the economics permit such connections.

Commented [BS3] : If the costs are too great that it makes the project uneconomical we will not be able to provide the connections.

Commented [TT4R3] : We are okay with the correction.

2. Indemnification. Chesapeake, for itself, its successors and assigns, covenants and agrees to indemnify and hold harmless the City, its directors, officers, agents, employees or designees, of and from any and all damage, injury, claim, penalty, judgments, costs, charges, expenses (including reasonable attorney's fees) and/or any other liability of any nature arising directly or indirectly from the exercise of Chesapeake's rights, privileges and franchise under this Agreement, including, but not limited to, any liability by reason of the distribution of gas under this Agreement, and in connection therewith, the operation or use of streets, alleys, bridges, public highways or other public places by Chesapeake. Notwithstanding the foregoing, Chesapeake shall not be obligated to indemnify the City, its directors, officers, agents, employees or designees for any claim or liability arising directly or indirectly out of the negligence of the City, its directors, officers, agents, employees, or designees. It is expressly understood and agreed that Chesapeake is and shall be deemed to be an independent contractor for purposes of this Agreement and shall therefore be solely responsible to all parties for its respective acts and/or omissions. This indemnification shall survive the termination of this Agreement. The City shall be added as an additional insured under Chesapeake's general public liability policy. Chesapeake shall, at its sole cost and expense, provide and keep in force a general liability insurance policy protecting and indemnifying Chesapeake and the City. Chesapeake shall send a copy of the certificate of insurance for their general liability policy to the City of Harrington within 30 days of the policy's renewal and each time the policy is renewed, showing the City as an additional insured on the policy.

3. Permits. In order for the Company to cut into, open or excavate in or under the bed of any city owned street, road, highway, lane, alley, avenue, sidewalk, curb or other public way within the corporate limits of the City for the purpose of altering, installing or making additions to any of the gas mains, valves, manholes, meters, service connections, or other appurtenances for any other purpose, the Company must first obtain from the City Manager or his/her designee a permit to cut into, open or excavate such street, road, highway, lane, alley, avenue, curb, sidewalk or other way, except as hereinafter provided. Upon compliance with the above terms, the City Manager or his/her designee shall then issue a permit for such cutting into, opening or excavating, subject to the above terms and conditions of this Agreement, and upon being satisfied that such opening or excavation is in a proper location and for a lawful purpose.

a. Application Required. If the Company needs to cut into, open or excavate in or under the bed of any city owned street, road, highway, lane, alley, avenue, curb, sidewalk or other public way for any purpose as aforesaid shall first make written application to the City Manager or his/her designee for a permit to conduct such work, stating in such application the name of the street, the name and present or past known address of the person, firm or corporation on whose behalf the cutting into, opening or excavating is to be done, the location on such street where such opening or excavation is to be made, the purpose of the opening or excavation, the length, the width and depth of the opening or excavation and the date when such work will be completed.

b. Fee. Each such application for main extensions shall be accompanied by all reasonable the utility fees required and approved by the Chapter 180 of the City of Harrington Code of Ordinances to perform such work a permit fee of two hundred fifty dollars (\$250.00) and a seventy-five dollar (\$75.00) Utility Review Fee, payable to the City. Fees are not applicable for service connections. New subdivisions will require one main extension application and one utility review, unless the master gas plan changes, in which case the plan will be reviewed and fees will be assessed in each occurrence of change.

Commented [B85]: We would prefer the rate not to be a term of the franchise. We will pay the permit fee on record by the City knowing it may change from time to time..

Commented [T26R5]: See the revised section.

c. Issuance. Upon compliance with the above terms, the City Manager or his/her designee shall then issue a permit for such cutting into, opening or excavating, subject to the above terms and conditions of this Agreement.

4. Restorations. The Company shall complete the work pursuant to the terms of such permit as promptly as possible and shall take all precaution to protect all persons and property from damage and shall properly protect the public from injury by reason of any such cutting into, opening or excavation. Any hole, opening, excavation, obstruction or dangerous area created incident to such work shall be ~~roped off~~ properly barricaded or otherwise guarded per the City of Harrington or DelDOT standards and caution lights maintained and kept thereat for a period of one hour before sunset to one hour after sunrise. All work performed and materials used in the making and filling of such cutting into, opening or excavation shall comply with the standard specifications of the City of Harrington, or the Delaware Department of Transportation in effect on the date of applicable permit. Upon completion of the work, the Company shall fully fill any such opening or excavation so made pursuant to the standard specifications of the City and any additional requirements in this Agreement and shall immediately repair and restore the street or way disturbed thereby pursuant to such standard specifications and shall so maintain the same for six months after final inspection and written acceptance by the City Manager or his/her designee on behalf of the City, pursuant to the standard specifications of the City, as aforesaid. In the event the Company fails to comply with these provisions or with the standard specifications of the City, as aforesaid, for 48 hours after written notice to do so shall have been given by the City Manager, said City Manager may proceed to repair, restore and maintain such street, road, highway, lane, alley, avenue, sidewalk, curb or other public way at the cost and expense of the Company. When a City street must be closed to vehicular traffic for a specific period of time, it must be noted on the application with an estimated closing and opening date, not to exceed fifteen (15) working days. Upon good cause shown, the fifteen (15) -day period may be extended by the City Manager or

his/her designee for an additional period not to exceed fifteen (15) working days. If the street is closed for a period longer than fifteen (15) working days, a fine of Twenty-Five Dollars (\$25) per day for each successive workday may be levied by the City Manager or his/her designee.

5. **Emergencies.** (a) In the event of an emergency, i.e. gas leak, severed gas line, etc., and where life and/or property may be in jeopardy, time will be of the essence, and any above operational procedures or language that may inhibit a safe and timely repair are waived.

(b) Chesapeake will provide copies of its Emergency Plan to the City Manager, Fire Chief, and Chief of Police, as well as any other City officials who may request it. Chesapeake will make the City aware if substantive revisions are made to its Emergency Plan. ~~Chesapeake will review its Emergency Plan annually, not to exceed 15 months, and revisions will be distributed to the City Manager, Fire Chief, and Chief of Police, as soon as the revised plan can be reasonably printed and distributed.~~

(c) Chesapeake will provide public information to its customers, the appropriate governmental organizations, and persons engaged in excavation-related activities to recognize a gas emergency. The Company will provide information to the public in reporting gas odors, leaks, and other emergencies to the proper Division's emergency number. Periodic training sessions will be ~~conducted~~ offered with all Fire Companies in a ~~Division's~~ Chesapeake's Utilities' service territory. These training sessions will coordinate response, resources, and responsibilities between all parties involved.

6. **Rates.** The determination of the Company's rates shall be subject solely to the rules and regulations of such state or federal authority that shall have jurisdiction over this type of industry or enterprise.

7. **Franchise Fee.** As long as the Company remains the only natural gas provider in the City, the Company shall pay the City of Harrington a franchise fee in the amount of \$0.0181 per 100 cubic feet (ccf) of gas delivered to customers through the Company's distribution system within the

limits of the City during the term hereof. The Company is authorized, subject to any necessary approvals from any State or Federal regulatory body having jurisdiction over the Company, to collect said franchise fee from the Company's customers within the City, including any future annexations of the City, by way of a surcharge on the customer's bill. The franchise fee otherwise payable hereunder shall not apply to any gas delivered to any customer of the Company from whom the company is prohibited by law from collecting said surcharge. The payment of the franchise fee, once it is approved by the Delaware Public Service Commission and its supporting documentation will be as follows:

1. Within fifteen (15) days after the end of each calendar quarter (i.e., by January 15, April 15, July 15 and October 15) Chesapeake will calculate the total consumption of natural gas for the previous three months for all Chesapeake natural gas customers who use natural gas within the corporate limits of Harrington, and who pay a monthly franchise fee according to the terms of this Agreement.

2. The amount payable to the City of Harrington will be equal to the total ccfs consumed by Chesapeake Delaware Division natural gas customers, except those who may be exempt from paying a franchise fee, multiplied by the franchise fee per ccf.

3. Chesapeake will mail the quarterly franchise fee payment to the City of Harrington no later than thirty (30) days after the end of each calendar quarter (i.e., by January 30, April 30, July 30 and October 30).

4. Chesapeake will enclose the following supporting documentation with each payment:

- Number of Customers
- Total Consumption (ccf)
- Average cConsumption per Customer
- Franchise Fee

Commented [BS7]: We would prefer to do this annually, not quarterly.

Commented [TTBR7]: We prefer to keep this quarterly. Other municipalities are paid the fee quarterly.

8. Receivership. Subject to the provisions of the federal bankruptcy laws, the City shall have the right to cancel this Agreement one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, ~~unless, unless~~ such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days or unless:

(a) within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Agreement and remedied all defaults hereunder; and

(b) such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Agreement.

9. Interpretation. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

10. Financial Risk. During the term of this Agreement, the Company intends to construct certain gas distribution facilities within the City. For any such investments in gas distribution facilities made by the Company, the City will not bear the financial risk associated with the Company's investment in such distribution facilities unless the City enters into a separate agreement with the Company, thereby overriding this section.

Commented [B89]: We have a proposed program which could benefit the City which we can discuss.

11. Forces and Effect. This Agreement shall become effective and shall constitute a binding contract between the City and the Company on the latter of (a) the date when the same shall have been duly adopted by a majority vote of the Council of the City in any regular or special meeting wherein action is taken in compliance with the City Charter; or (b) the date when the provisions

hereof shall have been accepted by the Company as signified by the Company's execution. This Agreement is also enacted pursuant to and in the manner provided for in the Underground Utility Damage Prevention and Safety Act of Title 26 of the Delaware Code (as amended) and Chapter 13 ("Gas, Water and Oil Corporations") of Title 26 of the Delaware Code (as amended). Performance of the terms of this Agreement shall commence on the effective date of this Agreement.

12. Approval. Chesapeake warrants and represents that this Agreement represents the binding obligation of Chesapeake and that Chesapeake has acquired, or prior to the effective date will acquire, any and all necessary approvals, other than approval to collect the franchise fee from the Company's customers within the City, from any third party whose approval is necessary, including but not limited to any approvals required by the Delaware Public Service Commission.

Commented [B610] : We cannot assess the fee until the PSC gives full authority...May take at most 90 days from when franchise is approved...

13. Compliance with Laws. Chesapeake shall comply with all applicable federal, state and local laws, ordinances and regulations related to the provision of gas services under this Agreement and any activity related thereto, including but not limited to, any rules and regulations adopted by the Delaware Public Service Commission, the Underground Utility Damage Prevention and Safety Act of Title 26 of the Delaware Code (as amended) and Chapter 13 ("Gas, Water and Oil Corporations") of Title 26 of the Delaware Code (as amended).

14. Notice. Any notice required herein shall be given by registered or certified mail, postage prepaid, addressed as follows:

If to the City:

City of Harrington
Attn: City Manager
106 Dorman Street
Harrington, DE 19952

With a copy to: City Solicitor

William W. Pepper Sr., Esquire
414 South State Street
Dover DE 19901

If to Chesapeake:

Chesapeake Utilities Corporation, Inc.

Attn: Director, Energy Services of Natural Gas Operations

350 S. Queen St.

Dover, DE 19904

With a copy to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze
PO Box 598
Dover, DE 19903

15. Entire Agreement. This Agreement comprises the entire Agreement between the parties hereto relative to the subject matter hereof, and upon the effective date hereof no earlier agreements, promises or other understandings entered into by either party or its predecessors or assignors in connection therewith, shall be of any force or effect.

16. Governing Law. This Agreement shall be governed by the laws of the State of Delaware and the parties hereto agree that any litigation relating to this Agreement shall be conducted in the state courts of Delaware.

17. Severability. In the event that any part of this Agreement is ruled invalid or unenforceable, the parties agree that this Agreement is deemed severable and that the balance of the terms will remain in full force.

18. Amendments. This Agreement shall not be amended except in writing executed by all parties hereto.

19. Contra Proferentum. The fact that one party has drafted this Agreement shall in no way be used against that party in construing the terms, conditions, and obligations hereunder.

ADOPTED with the concurrence of a majority of all members of the Council of the City of
Harrington at the regular meeting this ____ day of _____, 2016.

ATTEST: THE CITY OF HARRINGTON

CLERK OF COUNCIL

MAYOR

The foregoing franchise is hereby accepted this ____ day of _____, 2016, by Chesapeake
Utilities Corporation.

ATTEST: CHESAPEAKE UTILITIES CORPORATION

SECRETARY

SR. VICE PRESIDENT

FRANCHISE AGREEMENT

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responsibility of Chesapeake, the City, the property owner, and any other party shall be reasonably determined, subject to the terms and conditions of Chesapeake's line extension policy.

As Company main extensions pass adjacent to City properties with improved structures (pump stations, buildings, etc.), Company shall provide a service connection line stub out for future connection to the gas utility by City if the economics permit such connections.

2. Indemnification. Chesapeake, for itself, its successors and assigns, covenants and agrees to indemnify and hold harmless the City, its directors, officers, agents, employees or designees, of and from any and all damage, injury, claim, penalty, judgments, costs, charges, expenses (including reasonable attorney's fees) and/or any other liability of any nature arising directly or indirectly from the exercise of Chesapeake's rights, privileges and franchise under this Agreement, including, but not limited to, any liability by reason of the distribution of gas under this Agreement, and in connection therewith, the operation or use of streets, alleys, bridges, public highways or other public places by Chesapeake. Notwithstanding the foregoing, Chesapeake shall not be obligated to indemnify the City, its directors, officers, agents, employees or designees for any claim or liability arising directly or indirectly out of the negligence of the City, its directors, officers, agents, employees, or designees. It is expressly understood and agreed that Chesapeake is and shall be deemed to be an independent contractor for purposes of this Agreement and shall therefore be solely responsible to all parties for its respective acts and/or omissions. This indemnification shall survive the termination of this Agreement. The City shall be added as an additional insured under Chesapeake's general public liability policy. Chesapeake shall, at its sole cost and expense, provide and keep in force a general liability insurance policy protecting and indemnifying Chesapeake and the City. Chesapeake shall send a copy of the certificate of insurance for their general liability policy to the City of Harrington within 30 days of the policy's renewal and each time the policy is renewed, showing the City as an additional insured on the policy.

3. Permits. In order for the Company to cut into, open or excavate in or under the bed of any city owned street, road, highway, lane, alley, avenue, sidewalk, curb or other public way within the corporate limits of the City for the purpose of altering, installing or making additions to any of the gas mains, valves, manholes, meters, service connections, or other appurtenances for any other purpose, the Company must first obtain from the City Manager or his/her designee a permit to cut into, open or excavate such street, road, highway, lane, alley, avenue, curb, sidewalk or other way, except as hereinafter provided. Upon compliance with the above terms, the City Manager or his/her designee shall then issue a permit for such cutting into, opening or excavating, subject to the above terms and conditions of this Agreement, and upon being satisfied that such opening or excavation is in a proper location and for a lawful purpose.

a. Application Required. If the Company needs to cut into, open or excavate in or under the bed of any city owned street, road, highway, lane, alley, avenue, curb, sidewalk or other public way for any purpose as aforesaid shall first make written application to the City Manager or his/her designee for a permit to conduct such work, stating in such application the name of the street, the name and present or past known address of the person, firm or corporation on whose behalf the cutting into, opening or excavating is to be done, the location on such street where such opening or excavation is to be made, the purpose of the opening or excavation, the length, the width and depth of the opening or excavation and the date when such work will be completed.

b. Fee. Each such application for main extensions shall be accompanied by the utility fees required and approved Chapter 180 of the City of Harrington Code of Ordinances to perform such work. Fees are not applicable for service connections. New subdivisions will require one main extension application and one utility review, unless the master gas plan changes, in which case the plan will be reviewed and fees will be assessed in each occurrence of change.

c. Issuance. Upon compliance with the above terms, the City Manager or his/her designee shall then issue a permit for such cutting into, opening or excavating, subject to the above terms and conditions of this Agreement.

4. Restorations. The Company shall complete the work pursuant to the terms of such permit as promptly as possible and shall take all precaution to protect all persons and property from damage and shall properly protect the public from injury by reason of any such cutting into, opening or excavation. Any hole, opening, excavation, obstruction or dangerous area created incident to such work shall properly barricaded or otherwise guarded per the City of Harrington or DelDOT standards. All work performed and materials used in the making and filling of such cutting into, opening or excavation shall comply with the standard specifications of the City of Harrington, or the Delaware Department of Transportation in effect on the date of applicable permit. Upon completion of the work, the Company shall fully fill any such opening or excavation so made pursuant to the standard specifications of the City and any additional requirements in this Agreement and shall immediately repair and restore the street or way disturbed thereby pursuant to such standard specifications and shall so maintain the same for six months after final inspection and written acceptance by the City Manager or his/her designee on behalf of the City, pursuant to the standard specifications of the City, as aforesaid. In the event the Company fails to comply with these provisions or with the standard specifications of the City, as aforesaid, for 48 hours after written notice to do so shall have been given by the City Manager, said City Manager may proceed to repair, restore and maintain such street, road, highway, lane, alley, avenue, sidewalk, curb or other public way at the cost and expense of the Company. When a City street must be closed to vehicular traffic for a specific period of time, it must be noted on the application with an estimated closing and opening date, not to exceed fifteen (15) working days. Upon good cause shown, the fifteen (15) day period may be extended by the City Manager or his/her designee for an additional period not to exceed fifteen (15) working days. If the street is closed for a period longer than fifteen

(15) working days, a fine of Twenty-Five Dollars (\$25) per day for each successive workday may be levied by the City Manager or his/her designee.

5. Emergencies. (a) In the event of an emergency, i.e. gas leak, severed gas line, etc., and where life and/or property may be in jeopardy, time will be of the essence, and any above operational procedures or language that may inhibit a safe and timely repair are waived.

(b) Chesapeake will provide copies of its Emergency Plan to the City Manager, Fire Chief, and Chief of Police, as well as any other City officials who may request it. Chesapeake will make the City aware if substantive revisions are made to its Emergency Plan. (c) Chesapeake will provide public information to its customers, the appropriate governmental organizations, and persons engaged in excavation-related activities to recognize a gas emergency. The Company will provide information to the public in reporting gas odors, leaks, and other emergencies to the proper Division's emergency number. Periodic training sessions will be offered with all Fire Companies in Chesapeake's service territory. These training sessions will coordinate response, resources, and responsibilities between all parties involved.

6. Rates. The determination of the Company's rates shall be subject solely to the rules and regulations of such state or federal authority that shall have jurisdiction over this type of industry or enterprise.

7. Franchise Fee. As long as the Company remains the only natural gas provider in the City, the Company shall pay the City of Harrington a franchise fee in the amount of \$0.0181 per 100 cubic feet (ccf) of gas delivered to customers through the Company's distribution system within the limits of the City during the term hereof. The Company is authorized, subject to any necessary approvals from any State or Federal regulatory body having jurisdiction over the Company, to collect said franchise fee from the Company's customers within the City, including any future annexations of the City, by way of a surcharge on the customer's bill. The franchise fee otherwise payable hereunder shall not apply to any gas delivered to any customer of the Company from

whom the company is prohibited by law from collecting said surcharge. The payment of the franchise fee, once it is approved by the Delaware Public Service Commission and its supporting documentation will be as follows:

1. Within fifteen (15) days after the end of each calendar quarter (i.e., by January 15, April 15, July 15 and October 15) Chesapeake will calculate the total consumption of natural gas for the previous three months for all Chesapeake natural gas customers who use natural gas within the corporate limits of Harrington, and who pay a monthly franchise fee according to the terms of this Agreement.

2. The amount payable to the City of Harrington will be equal to the total ccf's consumed by Chesapeake Delaware Division natural gas customers, except those who may be exempt from paying a franchise fee, multiplied by the franchise fee per ccf.

3. Chesapeake will mail the quarterly franchise fee payment to the City of Harrington no later than thirty (30) days after the end of each calendar quarter (i.e., by January 30, April 30, July 30 and October 30).

4. Chesapeake will enclose the following supporting documentation with each payment:

- Number of Customers
- Total Consumption (ccf)
- Average consumption per Customer
- Franchise Fee

8. Receivership. Subject to the provisions of the federal bankruptcy laws, the City shall have the right to cancel this Agreement one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days or unless:

(a) within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Agreement and remedied all defaults hereunder; and

(b) such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Agreement.

9. Interpretation. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

10. Financial Risk. During the term of this Agreement, the Company intends to construct certain gas distribution facilities within the City. For any such investments in gas distribution facilities made by the Company, the City will not bear the financial risk associated with the Company's investment in such distribution facilities unless the City enters into a separate agreement with the Company, thereby overriding this section.

11. Forces and Effect. This Agreement shall become effective and shall constitute a binding contract between the City and the Company on the latter of (a) the date when the same shall have been duly adopted by a majority vote of the Council of the City in any regular or special meeting wherein action is taken in compliance with the City Charter; or (b) the date when the provisions hereof shall have been accepted by the Company as signified by the Company's execution. This Agreement is also enacted pursuant to and in the manner provided for in the Underground Utility Damage Prevention and Safety Act of Title 26 of the Delaware Code (as amended) and Chapter 13 ("Gas, Water and Oil Corporations") of Title 26 of the Delaware Code (as amended). Performance of the terms of this Agreement shall commence on the effective date of this Agreement.

12. Approval. Chesapeake warrants and represents that this Agreement represents the binding obligation of Chesapeake and that Chesapeake has acquired, or prior to the effective date will acquire, any and all necessary approvals, other than approval to collect the franchise fee from the Company's customers within the City, from any third party whose approval is necessary, including but not limited to any approvals required by the Delaware Public Service Commission.

13. Compliance with Laws. Chesapeake shall comply with all applicable federal, state and local laws, ordinances and regulations related to the provision of gas services under this Agreement and any activity related thereto, including but not limited to, any rules and regulations adopted by the Delaware Public Service Commission, the Underground Utility Damage Prevention and Safety Act of Title 26 of the Delaware Code (as amended) and Chapter 13 ("Gas, Water and Oil Corporations") of Title 26 of the Delaware Code (as amended).

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If to the City:

City of Harrington
Attn: City Manager
106 Dorman Street
Harrington, DE 19952

With a copy to: City Solicitor

William W. Pepper Sr., Esquire
414 South State Street
Dover DE 19901

If to Chesapeake:

Chesapeake Utilities Corporation, Inc.
Attn: Director, Energy Services 350 S. Queen St.
Dover, DE 19904

With a copy to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze
PO Box 598
Dover, DE 19903

15. Entire Agreement. This Agreement comprises the entire Agreement between the parties hereto relative to the subject matter hereof, and upon the effective date hereof no earlier agreements, promises or other understandings entered into by either party or its predecessors or assignors in connection therewith, shall be of any force or effect.
16. Governing Law. This Agreement shall be governed by the laws of the State of Delaware and the parties hereto agree that any litigation relating to this Agreement shall be conducted in the state courts of Delaware.
17. Severability. In the event that any part of this Agreement is ruled invalid or unenforceable, the parties agree that this Agreement is deemed severable and that the balance of the terms will remain in full force.
18. Amendments. This Agreement shall not be amended except in writing executed by all parties hereto.
19. Contra Proferentum. The fact that one party has drafted this Agreement shall in no way be used against that party in construing the terms, conditions, and obligations hereunder.

ADOPTED with the concurrence of a majority of all members of the Council of the City of
Harrington at the regular meeting this ____ day of _____, 2016.

ATTEST: THE CITY OF HARRINGTON

CLERK OF COUNCIL

MAYOR

The foregoing franchise is hereby accepted this ____ day of _____, 2016, by Chesapeake
Utilities Corporation.

ATTEST: CHESAPEAKE UTILITIES CORPORATION

SECRETARY

VICE PRESIDENT

CITY OF HARRINGTON

RESOLUTION 16-R-09

A RESOLUTION OUTLINING PROPOSED FUNDING OF UP TO \$1,462,925 OF A GENERAL OBLIGATION BOND TO FINANCE THE COST OF SEWER CAPACITY IMPROVEMENTS AND ESTABLISHING THE TIME AND PLACE FOR A PUBLIC HEARING THEREON

WHEREAS, the City Council of the City of Harrington has determined that it is in the City's best interest to increase the capacity of the City's sewer system; and

WHEREAS, the City Council has determined that it would be advantageous to finance a portion of the sewer capacity improvement repairs in order to accept the offered Delaware Department of Natural Resources and Environmental Control (DNREC) principal forgiveness of three hundred six thousand one hundred twenty dollars (\$306,120); and

WHEREAS, the City pursuant to Section 16.2 of 69 Del. Laws Ch. 115, as amended, (the "Charter") proposes to issue up to one million four hundred sixty-two thousand nine hundred twenty-five dollars (\$1,462,925) maximum principal amount of the City's general obligation bonds in order to pay costs of improvements to the sanitary sewer system and pay the costs of issuance of the bond (collectively, the "Project"); and

WHEREAS, the City has applied for and DNREC has offered the City a loan for the construction costs of the Project in the amount of one million four hundred sixty-two thousand nine hundred twenty-five dollars (\$1,462,925) with three hundred six thousand one hundred twenty dollars (\$306,120) of the outstanding loan balance to be principally forgiven at the completion of the Project; and

WHEREAS, as part of the agreement with DNREC, the City will be using a grant and loan package from the United States Department of Agriculture (USDA) to pay off the DNREC construction loan at the completion of the Project; and

WHEREAS, the Charter of the City of Harrington allows for long-term borrowing for certain projects without voter approval under § 16.2.

NOW, THEREFORE, BE IT RESOLVED that notice is hereby given to the residents and property owners of the City of Harrington that the City Council proposes to borrow an amount of money not to exceed one million four hundred sixty-two thousand nine hundred twenty-five dollars (\$1,462,925) principal amount to fund the Project; and

BE IT FURTHER RESOLVED that pursuant to Section 16.2.2 (a) of the Charter, notice is hereby given of the following information regarding the loan:

Amount of Borrowing: Total principal amount not to exceed one million four hundred sixty-two thousand nine hundred twenty-five dollars (\$1,462,925).

Municipal Purpose: Increasing the capacity of the City's sanitary sewer lines qualifies as a municipal purpose for which the City Council may make long-term borrowings without voter approval under Section 16.2.3 of the Charter because the Project is for the following purposes:

- (1) Enlarging, repairing, or replacing any structure for the collection of sanitary sewer (Section 16.2.3 (a)); and
- (2) Paying all expenses deemed necessary for the issuance of said bonds (Section 16.2.3 (d)).

Manner of Securing: The funds are to be borrowed through a general obligation bond of the City of Harrington issued to DNREC and secured on the full faith and credit and taxing power of the City to pay the principal and interest on the bond.

Other Facts Deemed Pertinent: The loan is part of a principal forgiveness/grant and loan package from both DNREC and the USDA and the City must issue the debt in order to receive the principal forgiveness/grant of an aggregate amount of six hundred twelve thousand two hundred forty dollars (\$612,240). After the completion of the Project, the balance of the DNREC loan will be paid with a grant and loan package from the USDA.

BE IT FURTHER RESOLVED that a Public Hearing will be held on the matter of this resolution on **May 16, 2016 at 7:00 p.m.**, prevailing time, at City Hall, 106 Dorman Street, Harrington, Delaware 19952; and

BE IT FURTHER RESOLVED that notice of such public hearing will be published in a newspaper of general circulation in the City and posted in at least five (5) places in the City not less than ten (10) days nor more than twenty (20) days prior to the date of the public hearing as required in Section 16.2.2 (b) of the Charter; and

BE IT FURTHER RESOLVED that pursuant to Section 16.2.2 (c) following the public hearing, the City Council may pass a second resolution and by the affirmative vote of at least five (5) members, proceed with the proposed borrowing.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Resolution was passed by a majority of the City Council of the City of Harrington on this 2nd day of May 2016.

Anthony R. Moyer, Mayor

Attest: _____
Kelly Blanchies, Clerk of Council

Date

CITY OF HARRINGTON

RESOLUTION 16-R-10

A RESOLUTION OUTLINING PROPOSED FUNDING OF UP TO \$850,685 OF A GENERAL OBLIGATION BOND TO FINANCE THE COST OF SEWER CAPACITY IMPROVEMENTS AND ESTABLISHING THE TIME AND PLACE FOR A PUBLIC HEARING THEREON

WHEREAS, the City Council of the City of Harrington has determined that it is in the City's best interest to increase the capacity of the City's sewer system; and

WHEREAS, the City Council has determined that it would be advantageous to finance a portion of the sewer capacity improvement repairs in order to accept the offered United States Department of Agriculture (USDA) grant of three hundred six thousand one hundred twenty dollars (\$306,120); and

WHEREAS, the City pursuant to Section 16.2 of 69 Del. Laws Ch. 115, as amended, (the "Charter") proposes to issue up to eight hundred fifty thousand six hundred eighty-five dollars (\$850,685) maximum principal amount of the City's general obligation bonds in order to pay costs of improvements to the sanitary sewer system and pay the costs of issuance of the bond (collectively, the "Project"); and

WHEREAS, as part of the agreement with the Delaware Department of Natural Resources and Environmental Control (DNREC) for financing during the construction of the Project, the City will be using a grant and loan package from the USDA to pay off the DNREC construction loan at the completion of the Project; and

WHEREAS, the City has applied for and the USDA has offered the City a grant and loan package to pay off the remaining loan balance from the DNREC construction loan in the amounts of a grant for three hundred six thousand one hundred twenty dollars (\$306,120) and a loan of eight hundred fifty thousand six hundred eighty-five dollars (\$850,685) maximum principal amount; and

WHEREAS, the Charter of the City of Harrington allows for long-term borrowing for certain projects without voter approval under § 16.2.

NOW, THEREFORE, BE IT RESOLVED that notice is hereby given to the residents and property owners of the City of Harrington that the City Council proposes to borrow an amount of money not to exceed eight hundred fifty thousand six hundred eighty-five dollars (\$850,685) principal amount to fund the Project; and

BE IT FURTHER RESOLVED that pursuant to Section 16.2.2 (a) of the Charter, notice is hereby given of the following information regarding the loan:

Amount of Borrowing: Total principal amount not to exceed eight hundred fifty thousand six hundred eighty-five dollars (\$850,685).

Municipal Purpose: Increasing the capacity of the City's sanitary sewer lines qualifies as a municipal purpose for which the City Council may make long-term borrowings without voter approval under Section 16.2.3 of the Charter because the Project is for the following purposes:

- (1) Enlarging, repairing, or replacing any structure for the collection of sanitary sewer (Section 16.2.3 (a)); and
- (2) Paying all expenses deemed necessary for the issuance of said bonds (Section 16.2.3 (d)).

Manner of Securing: The funds are to be borrowed through a general obligation bond of the City of Harrington and issued to the USDA and secured on the full faith and credit and taxing power of the City to pay the principal and interest on the bond.

Other Facts Deemed Pertinent: The loan is part of a principal forgiveness/grant and loan package from both DNREC and the USDA and the City must issue the debt in order to receive the principal forgiveness/grant of an aggregate amount of six hundred twelve thousand two hundred forty dollars (\$612,240). During the construction of the Project, the funds are to be borrowed through a loan and principal forgiveness package from DNREC.

BE IT FURTHER RESOLVED that a Public Hearing will be held on the matter of this resolution on **May 16, 2016 at 7:00 p.m.**, prevailing time, at City Hall, 106 Dorman Street, Harrington, Delaware 19952; and

BE IT FURTHER RESOLVED that notice of such public hearing will be published in a newspaper of general circulation in the City and posted in at least five (5) places in the City not less than ten (10) days nor more than twenty (20) days prior to the date of the public hearing as required in Section 16.2.2 (b) of the Charter; and

BE IT FURTHER RESOLVED that pursuant to Section 16.2.2 (c) following the public hearing, the City Council may pass a second resolution and by the affirmative vote of at least five (5) members, proceed with the proposed borrowing.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Resolution was passed by a majority of the City Council of the City of Harrington on this 2nd day of May 2016.

Anthony R. Moyer, Mayor

Attest: _____
Kelly Blanchies, Clerk of Council

Date



Rural Development

April 28, 2016

Delaware/Maryland
State Office

1221 College Park
Drive, Dover, DE
19904

Voice: (302) 857-3625
Fax: (855) 389-2243

The Honorable Anthony Moyer
Mayor of the City of Harrington
106 Dorman Street
Harrington, Delaware 19952

SUBJECT: Recipient Name: City of Harrington
Project Name: Sewer System Improvements 2016
Wastewater Application
CFDA NUMBER – 10.760

Loan: \$776,000.00
Grant: \$417,000.00
State Funding: \$306,120.00

Dear Mayor Moyer:

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

All conditions set forth under Section III – Requirements Prior to Advertising for Bids must be met within 30 days of the date of this letter. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 6 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"
Form RD 1940-1, "Request for Obligation of Funds"
RUS Bulletin 1780-12, "Water and Waste System Grant Agreement"

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

provided to you for your signature. After you sign and return the form to the Agency, the request will be processed and loan and grant funds will be approved and obligated.

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

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. Project Description – Funds will be used to make sanitary sewer capacity improvements.

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

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

Agency Loan -	\$ 776,000.00
Agency Grant -	\$ 417,000.00

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

State Funding -	\$ 306,120.00
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TOTAL PROJECT COST - \$1,499,120.00

This funding is offered based on the amounts stated above. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

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.

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

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Administration	\$ 10,000.00

Construction	\$1,130,000.00	
Contingency	\$ 154,000.00	
Engineering Fees	\$ 170,000.00	
Includes:		
Design, Administration, Planning		\$100,000.00
Resident Project Representation (Inspection)		\$70,000.00
Interest – Interim	\$ 16,000.00	
Land and Rights-of-Way	\$ 8,400.00	
Legal Fees	\$ 10,720.00	
TOTAL	\$1,499,120.00	

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

SECTION II – LOAN AND GRANT TERMS

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

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal quarterly amortized installments, beginning three months after closing. For planning purposes, use a 1.75% interest rate and an amortization factor of 8.71, which provides for a quarterly payment of \$ 6,759.00. The precise payment amount will be based on the interest rate at which the loan is closed, and may be different than the one above.

The payment due date will be established as the day that the loan closes. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided.

5. Security – The loan will be secured by a General Obligation bond with first lien position in the amount of \$776,000. The bond will be fully registered as to both principal and interest in the name of the United States of America, Acting through the United States Department of Agriculture.

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or its authorizing law. In particular, there must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

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

duly adopted and executed prior to loan closing. The Grant Agreement must be fully executed prior to the first disbursement of grant funds.

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

7. Construction Completion Timeframe - All projects must be completed and all funds disbursed within five years of obligation. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances beyond your control. Requests for waivers beyond the initial extension will be submitted to the Assistant Administrator for concurrence decision.

8. Disbursement of Agency Funds - Agency funds will be disbursed into the borrower’s depository account through an electronic transfer system. SF 3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” must be completed and submitted to the Agency prior to advertising for bids.

Any applicant contribution will be the first funds expended, followed by other funding sources. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached 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 Agreement must not be closed and 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.

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

9. Environmental Requirements – At the conclusion of the proposal’s environmental review process, specific action(s) were determined necessary to avoid or minimize adverse environmental impacts. As outlined in the Environmental Report dated April 2016, the following action is required for successful completion of the project and must be adhered to during project design and construction:

Project must adhere to all State Historic Preservation Office comments/requirements.

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

10. Engineering Services – You have been required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents Committee (EJCDC)

documents as indicated in RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance," or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids, and must approve any modifications to this agreement.

11. 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.

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

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

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

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

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

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

- a. **Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place an up-to-date written policy on conflict of interest. The policy will include, at a minimum: (1) a requirement for those with a conflict or potential conflict to disclose the conflict/potential conflict; (2) a clause that prohibits 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.

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

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

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

16. Interim Financing – For all loans exceeding \$500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.

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

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

18. System Users – This letter of conditions is based upon your indication at application that there will be at least 1,627 residential users and 148 non-residential users on the existing system when construction is completed.

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

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

required if there is cause to modify the anticipated flows or volumes presented following approval.

If you are relying on mandatory connection requirements, you must provide evidence of the authorizing ordinance or statute along with your user certification.

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

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

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

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

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

For new systems, see Section V of this letter of conditions. For VA/ERP requirements throughout the life of the loan, see Section VII. Technical assistance at no cost is available in preparing these documents.

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

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

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

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

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

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

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

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

- b. **Workers' Compensation** – In accordance with appropriate State laws.
- c. **Fidelity or Employee Dishonesty Bonds** – Include coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through blanket coverage providing protection for all appropriate workers. During construction, each position should be bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The coverage may be increased during construction based on the anticipated monthly advances. After construction and throughout the life of the loan, the amount of coverage must be for at least the total annual debt service of all outstanding Agency loans. The Agency will be identified in the fidelity bond for receipt of notices. Form RD 440-24, "Position Fidelity Schedule Bond," or similar format may be used.
- d. **National Flood Insurance** - If the project involves acquisition or construction in designated special flood or mudslide prone areas, you must purchase a flood insurance policy at the time of loan closing.
- e. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

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

27. Initial Compliance Review – The Agency will conduct an initial compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E.

SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING

Interim financing is being used. Loan closing will occur near the end of construction when interim funds are about to be completely disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing. In addition, the following items are required prior to closing:

28. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operation, and a certification that a VA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that a VA and ERP are completed prior to authorization to advertise for bids. The VA/ERP documents are not submitted to the Agency. Technical assistance is available in preparing these documents at no cost to you. The VA/ERP must address potential impacts from natural disasters and other

emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

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

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

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

- b. **Litigation**. You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.
- c. **Certified Operator**. Evidence must be provided that your system has or will have, as defined by applicable State or Federal requirements, a certified operator available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

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

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

32. Inspections - The Agency requires a pre-construction conference, pre-final and final inspections, and a warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any warranty issues. The Agency will conduct an inspection with you of your records management system at the same time, and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.

33. Change Orders – Prior Agency concurrence is required for all Change Orders.

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

35. Use of Remaining Funds – Applicant contribution and connection or tap fees will be the first funds expended in the project, followed by non-Agency sources of funds. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

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

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

37. Reporting Requirements Related to Expenditure of Funds

- a. **Financial Audit**– 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. 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.

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

- b. **Reporting Subawards and Executive Compensation** – You as a recipient of Federal funds and your first-tier contractors are required by 2 CFR Part 170 to report disbursements to subrecipients in accordance with Appendix B of this letter and www.fsrs.gov. Your Agency processing office can provide more information.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

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

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

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

39. Graduation - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you are able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

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

41. Annual Financial Reporting/Audit Requirements – You are required to submit an annual financial report at the end of each fiscal year. The annual report will be certified by the

appropriate organization official, and will consist of financial information and a rate schedule. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP), and must include at a minimum a balance sheet and income and expense statement. The annual report will include separate reporting for each water and waste disposal facility, and itemize cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available at no cost with preparing financial reports.

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

- a. **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.

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

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

42. Annual Budget and Projected Cash Flow - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. With the submission of the annual budget, you will be required to provide a current rate schedule, and a current listing of the Board or Council members and their terms. The budget

must be signed by the appropriate borrower official. Form RD 442-2 or similar format may be used.

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

43. Vulnerability Assessment/Emergency Response Plan (VA/ERP) – You will be required to submit a certification to the servicing office every three years that the VA/ERP is current and covers all sites related to the facility. The documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

44. Insurance. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

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

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of

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

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

46. Compliance Reviews and Data Collection – The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

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

We look forward to working with you to complete this project. If you have any questions, please contact Angela Tilghman at (302) 857-3598 or by e-mail at Angela.Tilghman@dc.usda.gov.

Sincerely,


DENISE MACLEIGH
Community Program Director

Attachments

cc: Community Programs Director
Accountant
Attorney
Bond Counsel
Engineer

ACRONYMS:

ABA - Architectural Barriers Act
ACH - Automated Clearing House
AD - Agriculture Department
ADA - Age Discrimination Act
CFDA - Catalog of Federal Domestic Assistance
CFR - Code of Federal Regulations
CPAP - Commercial Programs Application Processing
DUNS - Dun and Bradstreet Data Universal Numbering System
EJCDC - Engineers Joint Contract Documents Committee
ERP - Emergency Response Plan
GAAP - Generally Accepted Accounting Principles
LEP - Limited English Proficiency
OC - Owner Construction
OPS - Owner-Performed Services
O&M - Operation and Maintenance
PER - Preliminary Engineering Report
RD - Rural Development
RUS - Rural Utilities Service
SAM - System for Award Management
SF - Standard Form
UCC - Uniform Commercial Code
USC - United States Code
USDA - United States Department of Agriculture
VA - Vulnerability Assessment

FORMS and BULLETINS:

Form AD-3031 "Assurance Regarding Felony Convictions or Tax Delinquent Status for Corporate Applicants" – Item 29
Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy" - Item 15
Form RD 440-22, "Promissory Note" – Item 5
Form RD 440-24, "Position Fidelity Schedule Bond" – Item 28
Form RD 442-2, "Statement of Budget, Income and Equity" – Items 44 and 45
Form RD 442-3, "Balance Sheet" – Item 44
Form RD 442-7, "Operating Budget" – Item 21
Form RD 442-20, "Right-of-Way Easement" – Item 14
Form RD 442-21, "Right-of-Way Certificate" – Item 14
Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way" – Item 14
Form RD 1927-9, "Preliminary Title Opinion" – Item 14
Form RD 1927-10, "Final Title Opinion" – Item 27
Form RD 1940-1, "Request for Obligation of Funds" – Pages 1 and 2
Form RD 1942-8, "Resolution of Members or Stockholders" – Item 5
Form RD 1942-46, "Letter of Intent to Meet Conditions" – Page 1
Form RD 3550-28, "Authorization Agreement for Preauthorized Payments" – Items 6 and 30
Form UCC-1, "Financing Statement" – Item 5
Form UCC-1Ad, "UCC Financing Statement Addendum" – Item 5
SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form" – Items 8 and 18
RUS Bulletin 1780-7, "Legal Services Agreement" – Item 13
RUS Bulletin 1780-9, "Water Users Agreement" - Items 15 and 19
RUS Bulletin 1780-12, "Water and Waste System Grant Agreement" – Page 1 and Item 5
RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance" – Items 11 and 12
RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)" – Item 5
RUS Bulletin 1780-28, "Loan Resolution Security Agreement" – Item 5

[The following two appendices are included as required by 2 CFR Parts 25 and 170 and apply to all direct and guaranteed loans and grants]

Appendix A

2 CFR Part 25

SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another appendix.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this appendix) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this appendix:

1. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.

3. Entity, as it is used in this appendix, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:
 - a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).
 - c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:
 - a. Receives a subaward from you under this award; and
 - b. Is accountable to you for the use of the Federal funds provided by the subaward.

[75 FR 55673, Sept. 14, 2010, as amended at 79 FR 75879, Dec. 19, 2014; 80 FR 54407, Sept. 10, 2015]

Appendix B

2 CFR Part 170

Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this appendix, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this appendix).
2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this appendix to <http://www.fsr.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action listed in the submission instructions posted at <http://www.fsr.gov>.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this appendix:
 - i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this appendix, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this appendix:
 - i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month

of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

c. Definitions. For purposes of this appendix:

1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax-qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

[75 FR 55669, Sept. 14, 2010, as amended at 79 FR 75879, Dec. 19, 2014]

REQUEST FOR OBLIGATION OF FUNDS

INSTRUCTIONS-TYPE IN CAPITALIZED ELITE TYPE IN SPACES MARKED ()			
Complete Items 1 through 29 and applicable Items 30 through 34. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 07-001-*****0128		LOAN NUMBER	FISCAL YEAR 2016
2. BORROWER NAME Harrington, City of		3. NUMBER NAME FIELDS (1, 2, or 3 from Item 2)	
106 Dorman Street		4. STATE NAME Delaware	
Harrington		5. COUNTY NAME Kent	
GENERAL BORROWER/LOAN INFORMATION			
6. RACE/ETHNIC CLASSIFICATION 1 - WHITE 2 - BLACK 3 - HISPANIC 4 - AFI 5 - HISPANIC 6 - AFI	7. TYPE OF APPLICANT 1 - INDIVIDUAL 2 - PARTNERSHIP 3 - CORPORATION 4 - PUBLIC BODY 5 - ASSOC OF FARMERS 6 - ORG OF FARMERS 7 - NONPROFIT-SECULAR 8 - NONPROFIT-FAITH BASED 9 - INDIAN TRIBE 10 - PUBL C COLLEGE/UNIVERSITY 11 - OTHER	8. COLLATERAL CODE 1 - REAL ESTATE SECURED 2 - REAL ESTATE AND CHATTEL 3 - NOTE ONLY OR CHATTEL ONLY 4 - MACHINERY ONLY 5 - LIVESTOCK ONLY 6 - CROPS ONLY 7 - SECURED BY BONDS 8 - RLF AGCT	9. EMPLOYEE RELATIONSHIP CODE 1 - EMPLOYEE 2 - MEMBER OF FAMILY 3 - CLOSE RELATIVE 4 - ASSOC
10. SEX CODE 1 - MALE 2 - FEMALE 6	11. MARITAL STATUS 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOWED/DIVORCED)	12. VETERAN CODE 1 - YES 2 - NO 2	13. CREDIT REPORT 1 - YES 2 - NO 2
14. DIRECT PAYMENT (See FMI)	15. TYPE OF PAYMENT 1 - MONTHLY 2 - ANNUALLY 3 - SEMI-ANNUALLY 4 - QUARTERLY 4	16. FEE INSPECTION 1 - YES 2 - NO 2	
17. COMMUNITY SIZE 1 - 10 000 OR LESS (FOR SFH AND HPG ONLY) 2 - OVER 10,000	18. USE OF FUNDS CODE (See FMI)		
COMPLETE FOR OBLIGATION OF FUNDS			
19. TYPE OF ASSISTANCE 068 (See FMI)	20. PURPOSE CODE 1	21. SOURCE OF FUNDS	22. TYPE OF ACTION 1 - OBLIGATION ONLY 2 - OBLIGATION/CHECK REQUEST 3 - CORRECTION OF OBLIGATION
23. TYPE OF SUBMISSION 1 - INITIAL 2 - SUBSEQUENT 1	24. AMOUNT OF LOAN \$776,000.00	25. AMOUNT OF GRANT \$417,000.00	
26. AMOUNT OF IMMEDIATE ADVANCE	27. DATE OF APPROVAL MO DAY YR	28. INTEREST RATE 1.7500 %	29. REPAYMENT TERMS 40
COMPLETE FOR COMMUNITY PROGRAM AND CERTAIN MULTIPLE-FAMILY HOUSING LOANS			
30. PROFIT TYPE 1 - F.L.L. PROFIT 2 - LIMITED PROFIT 3 - NONPROFIT			
COMPLETE FOR EM LOANS ONLY		COMPLETE FOR CREDIT SALE-ASSUMPTION	
31. DISASTER DESIGNATION NUMBER (See FMI)		32. TYPE OF SALE 1 - CREDIT SALE ONLY 2 - CREDIT SALE WITH SUBSEQUENT LOAN 3 - ASSUMPTION ONLY 4 - ASSUMPTION WITH SUBSEQUENT LOAN	
FINANCE OFFICE USE ONLY		COMPLETE FOR FP LOANS ONLY	
33. OBLIGATION DATE MO DA YR		34. BEGINNING FARMER/RANCHER (See FMI)	

If the decision contained above in this form results in denial, reduction or cancellation of USDA assistance, you may appeal this decision and have a hearing or you may request a review in lieu of a hearing. Please use the form we have included for this purpose.

Position 2

ORIGINAL - Borrower's Case Folder COPY 1 - Finance Office COPY 2 - Applicant/Lender COPY 3 - State Office

CERTIFICATION APPROVAL

For All Farmers Programs

EM, OL, FO, and SW Loans

This loan is approved subject to the availability of funds. If this loan does not close for any reason within 90 days from the date of approval on this document, the approval official will request updated eligibility information. The undersigned loan applicant agrees that the approval official will have 14 working days to review any updated information prior to submitting this document for obligation of funds. If there have been significant changes that may affect eligibility, a decision as to eligibility and feasibility will be made within 30 days from the time the applicant provides the necessary information.

If this is a loan approval for which a lien and/or title search is necessary, the undersigned applicant agrees that the 15-working-day loan closing requirement may be exceeded for the purposes of the applicant's legal representative completing title work and completing loan closing.

35. COMMENTS AND REQUIREMENTS OF CERTIFYING OFFICIAL

None

36. I HEREBY CERTIFY that I am unable to obtain sufficient credit elsewhere to finance my actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near my community for loans for similar purposes and periods of time. I agree to use the sum specified herein, subject to and in accordance with regulations applicable to the type of assistance indicated above, and request payment of such sum. I agree to report to USDA any material adverse changes, financial or otherwise, that occur prior to loan closing. I certify that no part of the sum specified herein has been received. I have reviewed the loan approval requirements and comments associated with this loan request and agree to comply with these provisions.

(For FP loans at eligible terms only) If this loan is approved, I elect the interest rate to be charged on my loan to be the lower of the interest rate in effect at the time of loan approval or loan closing. If I check "NO", the interest rate charged on my loan will be the rate specified in Item 28 of this form. YES NO

WARNING: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both."

Date _____, 20____ Anthony Moyer, Mayor (Signature of Applicant)

Date _____, 20____ (Signature of Co-Applicant)

37. I HEREBY CERTIFY that all of the committee and administrative determinations and certifications required by regulations prerequisite to providing assistance of the type indicated above have been made and that evidence thereof is in the docket, and that all requirements of pertinent regulations have been complied with. I hereby approve the above-described assistance in the amount set forth above, and by this document, subject to the availability of funds, the Government agrees to advance such amount to the applicant for the purpose of and subject to the availability prescribed by regulations applicable to this type of assistance.

(Signature of Approving Official)

Typed or Printed Name: William A. McGowan, Ed.D

Date Approved: _____ Title: State Director, Delaware and Maryland

38. TO THE APPLICANT: As of this date _____, this is notice that your application for financial assistance from the USDA has been approved, as indicated above, subject to the availability of funds and other conditions required by the USDA. If you have any questions contact the appropriate USDA Servicing Office.

REQUEST FOR OBLIGATION OF FUNDS

INSTRUCTIONS-TYPE IN CAPITALIZED ELITE TYPE IN SPACES MARKED ()			
Complete Items 1 through 29 and applicable Items 30 through 34. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 07-001-*****C128		LOAN NUMBER	FISCAL YEAR 2016
2. BORROWER NAME Harrington, City of		3. NUMBER NAME FIELDS (1, 2, or 3 from Item 2)	
106 Dorman Street		4. STATE NAME Delaware	
Harrington		5. COUNTY NAME Kent	
GENERAL BORROWER/LOAN INFORMATION			
6. RACE/ETHNIC CLASSIFICATION 1 - WHITE 2 - BLACK 3 - ASIAN 4 - HISPANIC 5 - AFR 6 - OTHER	7. TYPE OF APPLICANT 1 - INDIVIDUAL 2 - PARTNERSHIP 3 - CORPORATION 4 - PUBLIC BODY 5 - ASSOC OF FARMERS 6 - ORG OF FARMERS 7 - NONPROFIT SECULAR 8 - NONPROFIT FAITH BASED 9 - INDIAN TRIBE 10 - PUBLIC COLLEGE/UNIVERSITY 11 - OTHER		8. COLLATERAL CODE 1 - REAL ESTATE SECURED 2 - REAL ESTATE AND CHATTEL 3 - NOTE ONLY OR CHATTEL ONLY 4 - MACHINERY ONLY 5 - LIVESTOCK ONLY 6 - CROPS ONLY 7 - SECURED BY BONDS 8 - RLF ACCT
9. EMPLOYEE RELATIONSHIP CODE 1 - EMPLOYEE 2 - MEMBER OF FAMILY 3 - CLOSE RELATIVE 4 - ASSOC	10. SEX CODE 1 - MALE 2 - FEMALE 3 - FAMILY UNIT 4 - ORGAN MALE OWNED 5 - ORGAN FEMALE OWNED 6 - PUBLIC BODY	11. MARITAL STATUS 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOW/DIVORCED)	12. VETERAN CODE 1 - YES 2 - NO
13. CREDIT REPORT 1 - YES 2 - NO	14. DIRECT PAYMENT (See FMI)	15. TYPE OF PAYMENT 1 - MONTHLY 2 - ANNUALLY 3 - SEMI-ANNUALLY 4 - QUARTERLY	16. FEE INSPECTION 1 - YES 2 - NO
17. COMMUNITY SIZE 1 - 10 000 OR LESS (FOR SFH AND HPG ONLY) 2 - OVER 10,000	18. USE OF FUNDS CODE (See FMI)		
COMPLETE FOR OBLIGATION OF FUNDS			
19. TYPE OF ASSISTANCE 068 (See FMI)	20. PURPOSE CODE 1	21. SOURCE OF FUNDS	22. TYPE OF ACTION 1 - OBLIGATION ONLY 2 - OBLIGATION/CHECK REQUEST 3 - CORRECTION OF OBLIGATION
23. TYPE OF SUBMISSION 1 - INITIAL 2 - SUBSEQUENT	24. AMOUNT OF LOAN \$776,000.00	25. AMOUNT OF GRANT \$417,000.00	
26. AMOUNT OF IMMEDIATE ADVANCE	27. DATE OF APPROVAL MO DAY YR	28. INTEREST RATE 1.7500 %	29. REPAYMENT TERMS 40
COMPLETE FOR COMMUNITY PROGRAM AND CERTAIN MULTIPLE-FAMILY HOUSING LOANS			
30. PROFIT TYPE 1 - FULL PROFIT 2 - LIMITED PROFIT 3 - NONPROFIT			
COMPLETE FOR EM LOANS ONLY		COMPLETE FOR CREDIT SALE-ASSUMPTION	
31. DISASTER DESIGNATION NUMBER (See FMI)	32. TYPE OF SALE 1 - CREDIT SALE ONLY 2 - ASSUMPTION ONLY 3 - CREDIT SALE WITH SUBSEQUENT LOAN 4 - ASSUMPTION WITH SUBSEQUENT LOAN		
FINANCE OFFICE USE ONLY		COMPLETE FOR FP LOANS ONLY	
33. OBLIGATION DATE MO DA YR	34. BEGINNING FARMER/RANCHER (See FMI)		

If the decision contained above in this form results in denial, reduction or cancellation of USDA assistance, you may appeal this decision and have a hearing or you may request a review in lieu of a hearing. Please use the form we have included for this purpose.

Position 2

ORIGINAL - Borrower's Case Folder COPY 1 - Finance Office COPY 2 - Applicant/Lender COPY 3 - State Office

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0570-0062. The time required to complete this information collection is estimated to average 13 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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(Signature of Approving Official)

Typed or Printed Name: William A. McGowan, Ed.D

Date Approved: _____ Title: State Director, Delaware and Maryland

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LETTER OF INTENT TO MEET CONDITIONS

Date 04-28-2016

TO: United States Department of Agriculture

USDA Rural Development

(Name of USDA Agency)

1221 College Park Drive, Suite 200
Dover, DE 19904

(USDA Agency Office Address)

We have reviewed and understand the conditions set forth in your letter dated 04-28-2016. It is our intent to meet all of them not later than the start of construction or loan closing whichever occurs first. We are also requesting we be given the interest rate in effect at the time of loan approval or at the time of loan closing, whichever is lower. In other words, we want the lowest rate possible.

City of Harrington

(Name of Association)

BY _____

The Honorable Anthony Moyer, Mayor

(Title)

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0015. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

LETTER OF INTENT TO MEET CONDITIONS

Date 04-28-2016

TO: United States Department of Agriculture

USDA Rural Development

(Name of USDA Agency)

1221 College Park Drive, Suite 200
Dover, DE 19904

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Water and Waste System Grant Agreement
United States Department of Agriculture
Rural Utilities Service

THIS AGREEMENT dated _____, between

Harrington, City of

_____ a public corporation organized and operating under

Delaware

_____ (Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of \$ 1,499,120.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 1,082,120.00 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 1,082,120.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 417,000.00 or 27.82 percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 27.82 percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated _____, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

All easements, Rights-of-way and other real estate interests heretofore or hereafter acquired by the Grantee with respect to the construction, ownership, operation and maintenance of the wastewater system.

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.
[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment(use continuation sheets as necessary).

All wastewater mains, laterals, pumping stations, treatment plant and related facilities and equipment useful by the Grantee in connection with the construction, ownership, operation and maintenance of the wastewater system,

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.