



June 25, 2018

Town of Wadesboro
Attn: Mr. Bill Thacker, Mayor
PO Box 697
Wadesboro, NC 28170

RE: Town of Wadesboro – Sewer Pump Station Replacement & Forcemain Installation

Dear Mr. Thacker:

This letter establishes the conditions, which must be understood and agreed to by the **Town of Wadesboro** (“**Town**”) before further consideration may be given to the application. The State and Area Office Staffs of USDA Rural Development (“**Agency**”) will administer the loan and grant funds for this project on behalf of Rural Utilities Service (“**RUS**”).

The proposed sewer project will abandon, relocate, and replace the Burns Street Pump Station and forcemain, and Coffin Hoist Pump Station to address the aging infrastructure, and to correct the deficiencies that contribute to non-compliance issues and present concerns with public health and sanitation.

Any changes in project costs, sources of funds, scope of services, or any other significant changes in the project must be reported to and approved by the Agency by written amendment to this letter. If significant changes are made without concurrence from the Agency, the Agency may discontinue processing of the application.

This letter is not to be considered as loan and grant approval or as a representation as to the availability of funds. The application may be completed based on a RUS Loan not to exceed \$2,189,000 and a RUS Grant not to exceed \$902,000, and Applicant Contribution of \$19,000 for a total project cost of \$3,110,000.

If RUS makes the loan, the interest rate will be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing, unless the **Town** chooses otherwise. Should the interest rate be reduced, the annual payment will be based on the lower interest rate.

The loan and grant will be considered approved on the date Form RD 1940-1, “Request for Obligation of Funds”, is signed by the USDA Rural Development State Director, or an appointed representative, and a copy mailed to the **Town**.

Rural Development • Asheboro Area Office
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Voice (336) 629-4449, Ext. 4 • Fax2Mail 1-844-325-6822

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Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions", if the **Town** desires that further consideration be given to its application.

If conditions set forth in this letter are not met within **thirty-six months (36) months** from the date of this letter, or the date of loan closing, whichever occurs first, USDA Rural Development reserves the right to discontinue processing of the application. Further, the Notice to Proceed to construction should be initiated within at least two (2) years from the date of obligation.

PROJECT BUDGET

Funding for the project is based on the following estimated project expenditures as follows:

<u>Project Costs</u>	<u>Budgeted</u>
Construction:	\$2,376,875
Contingency (5%):	\$ 238,625
Engineering Fees:	\$ 326,900
Preliminary Engineering Report:	\$ 7,500
Environmental Report	\$ 10,000
Biological Survey	\$ 15,000
Wetland Delineation	\$ 8,000
Design, Bidding, & Construction:	\$200,000
RPR Services (Project Inspection):	\$ 86,400
Land & Rights – Easement Survey & Acquisition:	\$ 42,200
Legal Services – Bond Counsel:	\$ 15,000
Legal Services – Local Attorney:	\$ 7,500
Permitting:	\$ 5,000
Interest – Interim Financing:	\$ 97,900
Total Project Cost:	\$3,110,000

REPAYMENT SCHEDULE

The loan will be scheduled for repayment over a period of forty (40) years. The first payment, consisting of principal and interest, will become due and payable on June 1st following the date of the loan closing, or delivery of the bond, and annually thereafter on the 1st day of June of each year until maturity.

SECURITY REQUIREMENTS

Security for the loan will consist of a **\$2,189,000 Water and Sewer System Revenue Bond** authorized and prepared in accordance with RUS Instruction 1780, Paragraph 1780.14, and the Local Government Bond Act. USDA Rural Development will negotiate the purchase of the bond with the **Town** and the North Carolina Local Government Commission ("LGC").

LGC reserves the right to require a public offering of the bond. 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 of resolution relating thereto, must not contain any provision in conflict with RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)" RUS Bulletin 1780-12, "Water and Waste System Grant Agreement", applicable regulations, and laws.

PREAUTHORIZED DEBIT PAYMENT (PAD)

Prior to loan closing, the **Town** must complete Form RD 3550-28, "Authorization Agreement for Preauthorized Payments". This form will authorize the government to electronically debit the **Town's** RUS loan payment from its designated bank account on June 1st of each year. Preauthorized Debit is accomplished through the Automated Clearing House process method; thus, eliminating the need to write a check for each payment, the expense of mailing the payment, and allows the **Town** the certainty of when its payment will be applied.

INTERIM FINANCING

The **Town** will obtain interim construction financing in accordance with RUS Instruction 1780, paragraph 1780.39(d) and the Local Government Bond Act. Interim financing will be obtained through the sale of a Bond Anticipation Note with the assistance of the LGC for the amount of the USDA loan obligation. These funds will be placed into an appropriate construction fund. The **Town** will provide USDA Rural Development with a copy of the interim loan financing agreement. The Agency approval official may make an exception when interim financing is cost prohibitive or unavailable.

CONSTRUCTION ACCOUNT

The **Town** must establish a separate construction account with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. All project funds will be deposited into this account. 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. 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.

DISBURSEMENT OF FUNDS

The Town's contribution of \$19,000 shall be the first project funds expended, followed by Agency loan funds of \$2,189,000 (in the form of interim financing), followed by Agency grant funds of \$902,000.

Grant funds from the Agency will be disbursed by multiple advances through electronic transfer system, after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45. SF 3881, "ACH Vendor /Miscellaneous Payment Enrollment Form", must be completed and submitted to the Agency prior to advertising for bids.

Rural Development must approve the disbursement of all project funds.

RESERVE REQUIREMENT

Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs, and assist with debt service, should the need arise. The following reserves are required to be established as a condition of this loan:

- a. **Debt Service Reserve:** The **Town** must establish and maintain a Debt Service Reserve Account in accordance with RUS Instruction 1780, paragraph 1780.39(e) (2) to provide for at least one annual loan installment. The **Town** will make annual deposits into this account in an amount equal to at least one-tenth (1/10) of the annual installment per year for ten (10) years, or until the balance is equal to one annual installment on the loan. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue until the fully-funded amount is reached.
- b. **Short Lived Asset Reserve:** In addition to the debt service reserve, the **Town** must establish and maintain a Short-Lived Asset Reserve Account, and make annual deposits of \$14,800 into this account until this balance is at least \$139,000. It is the **Town's** responsibility to assess its facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

LOAN RESOLUTION, EQUAL OPPORTUNITY AND ASSURANCE AGREEMENTS

The **Town** must formally adopt Form RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)," in the amount of **\$2,189,000**, Form RD 400-1, "Equal Opportunity Agreement", and Form RD 400-4, "Assurance Agreement", at a properly called meeting of the governing body. Adoption of these documents should be made a part of the official minutes of the above meeting. A certified copy of the said minutes should be attached to the resolution and be provided to USDA Rural Development.

GRANT AGREEMENT

The **Town** will be required to execute RUS Bulletin 1780-12, "Water and Waste System Grant Agreement," in the amount of **\$902,000**, prior to the disbursement of any USDA Rural Development grant funds.

OPERATING BUDGET AND WATER RATE SCHEDULE

The **Town** must adopt an Operating Budget and Rate Schedule for its **Sewer System** that provides for sufficient revenues for the payment of all **Sewer System** operating and maintenance expenses, the proposed repayment of the new USDA loan, and required reserves. Certified copies of these documents should be provided to USDA Rural Development prior to loan closing.

The **Town** will be required to submit an Annual Budget at least thirty days prior to the beginning of its fiscal year to USDA Rural Development, along with a current rate schedule, and a listing of the current **Town** officials.

USER REQUIREMENTS AND VERIFICATION

Prior to loan closing or the project being authorized for construction bids, whichever occurs first, the **Town** must certify, in writing, that it has **1,484** full-time residential users and **97** commercial/industrial/institutional users on the existing **Sewer System**. If there is an existing mandatory connection ordinance requiring users to connect to the system, the above certification is not necessary. A copy of said ordinance shall be submitted to the Agency.

PERMITS

Prior to advertising for bids, the owner, contractor, or responsible party will be required to obtain all required permits necessary for construction of the project and such should be provided to the Agency. 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 and specifications, and bid documents.

AMERICAN IRON AND STEEL REQUIREMENT

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

- (1) No Federal funds made available for this fiscal year for the rural water, waste water, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all the iron and steel products used in the project are produced in the United States.
- (2) The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- (3) The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the “Secretary”) or the designee of the Secretary finds that—
 - (a) applying the requirement would be inconsistent with the public interest;
 - (b) iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - (c) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

The **Town** is ultimately responsible for compliance with AIS requirements and will be responsible for the following:

- (1) **Signing** loan resolutions, grant agreements and letters of intent to meet conditions which include AIS language, accepting AIS requirements in those documents and in the letter of conditions.
- (2) **Signing** change orders (i.e. C-941 of EJCDC) and partial payment estimates (i.e. C-620 of EJCDC) and thereby **acknowledging** responsibility for compliance with American and Iron Steel requirements.
- (3) **Obtaining** the certification letters from the consulting engineer upon substantial completion of the project and **maintaining** this documentation for the life of the loan.
- (4) Where the owner provides their own engineering and/or construction services, **providing** copies of engineers', contractors', and manufacturers' certification letters (*as applicable*) to the Agency to insert into the Agency file. All certification letters must be kept in the engineer's project file and on site during construction. For Owner Construction (Force Account), all clauses from Section 17 must be included in the Agreement for Engineering Services.
- (5) Where the owner directly procures AIS products, **including** AIS clauses in the procurement contracts and **obtaining** manufacturers' certification letters and **providing** copies to consulting engineers and contractors.

PROFESSIONAL SERVICES AND CONTRACTS

Contracts or other forms of agreement between the **Town** and its professional and technical representatives are required and are subject to USDA Rural Development review and concurrence. **To ensure compliance with the American Iron and Steel (AIS) requirements, specific AIS contract language must be included in Engineering Services Agreements per RUS Bulletin 1780-35.** USDA Rural Development forms and/or guides are available for use by the **Town**, when appropriate.

CONSTRUCTION CONTRACT DOCUMENTS

The construction contract documents must be completed in accordance with RUS Bulletin 1780, Subpart C, paragraph 1780.61 and 1780.75 and as indicated in RUS Bulletin 1780-26 for projects funded, in whole or part, with Rural Utilities Service funds. *To ensure compliance with the American Iron and Steel (AIS) requirements, specific AIS contract language must be included in each contract per RUS Bulletin 1780-35.* This includes projects jointly funded by Rural Utilities Service and other Federal, State, or local agencies. Alternative methods of preparing contract documents or alternative contract documents for jointly funded projects may be considered and approved by USDA Rural Development on a case-by-case basis, but only under extenuating circumstances. The contract documents must be submitted to the Agency for concurrence prior to advertising for bids along with updated cost estimate.

The contract documents must take into consideration and allow the use of all materials and equipment normally used for the application(s) described in the plans and specifications, unless prior concurrence is received from USDA Rural Development to delete a particular type of material, brand or model of equipment, etc. Specifications must not contain unfair clauses, performance requirements, construction requirements, etc. designed to prevent or eliminate the use of any particular material or piece of equipment.

FINAL PLANS AND SPECIFICATIONS

The project described in the final plans and specifications must conform essentially in scope to the project as described in the most recent version of the Preliminary Engineering Report, including any addendums. If any significant change in the project should develop (i.e. major change in service area, change in type or source of treatment, source of supply, capacity of system, etc.), after Rural Utilities Service funding has been approved, the **Town** will take immediate action to stop incurring, to the extent practicable, any additional project costs or expenses. A supplement or addendum to the Preliminary Engineering Report will be prepared, which shall include a revised project costs summary and operating budget, if necessary, and submitted to USDA Rural Development for review and concurrence.

Final plans and specifications shall be submitted to USDA Rural Development and other appropriate agencies for review and approval within six (6) months from the date of this letter.

PROCUREMENT OF CONSTRUCTION SERVICES & SUPPLIES / EQUIPMENT

The project shall be formally advertised for bids in accordance with RUS Instruction 1780, paragraph 1780.72(b), and state and local laws and regulations applicable to this type of procurement. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency. Procurement by other than formal advertising may be used upon written concurrence by USDA Rural Development in accordance with RUS Instruction 1780, paragraphs 1780.70 and 1780.72. Formal advertising may be used for any procurement, however, at the option of the **Town**.

Contracts shall be awarded based on the lowest bid of acceptable materials and equipment and in accordance with 1780.70(g) and 1780.70(h). If contract award is proposed to other than the lowest bidder, documentation for such must be provided to USDA Rural Development. The USDA Rural Development State Engineer must provide written concurrence prior to the awarding of any contract by the **Town**.

CONSTRUCTION MONITORING

Full-time inspection is required unless a written exception is made by the Agency upon your written request. This service is to be provided by the consulting engineer or other arrangements as approved by the Agency. Prior to the pre-construction conference, a resume of qualifications of the resident inspector(s) will be submitted to the owner and Agency for review and approval. The owner will provide a letter of acceptance for all proposed observers to the engineer and Agency. The resident inspector(s) must attend the pre-construction conference.

The Agency requires prior agency concurrence with all Change Orders, Invoices, and Payment Estimates. The Agency also requires a pre-construction conference, pre-final, final, and warranty inspection.

PROPERTY RIGHTS

Prior to advertisement for construction bids, the **Town** must furnish satisfactory evidence that it has or can obtain adequate continuous and valid control over the lands and rights-of-ways needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation and Real Property Acquisition Act. Such evidence of control over the lands and rights must be in the following form:

- a. Right-of-Way Map – The **Town's** selected Project Engineer will provide a map showing clearly 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. A certification and legal opinion relative to title to rights-of-way and easements is required.
- b. Form RD 442-22, "Opinion of Counsel Relative to Right-of-Way" – The **Town's** Attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title. These forms may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, new forms must be provided which do not provide for any exceptions.