

**White Salmon City Special Council Meeting
A G E N D A**

February 25, 2021 – 5:30 PM

Via Zoom Teleconference

Meeting ID: 839 9032 0164 Passcode: 508496

Call in Numbers:

669-900-6833

929-205-6099

301-715-8592

346-248-7799

253-215-8782

312-626-6799



We ask that the audience call in instead of videoing in or turn off your camera, so video does not show during the meeting to prevent disruption. Thank you.

I. Call to Order and Roll Call

II. Business Items

A. Resolution 2021-02-519 Accepting Jewett Water Main Improvement Project as Complete

1. Presentation and Discussion
2. Action

B. Approval of USDA Outlay Report No. 11/Final

1. Presentation and Discussion
2. Action

C. Resolution 2021-02-518, Authorizing and Providing for Incurrence of Indebtedness

1. Presentation and Discussion
2. Action

D. Ordinance 2021-02-1073, Authorizing Issuance of Water Revenue Bond in the Amount of \$2,371,000

1. Presentation and Discussion
2. Action

III. Adjournment

File Attachments for Item:

A. Resolution 2021-02-519 Accepting Jewett Water Main Improvement Project as Complete

1. Presentation and Discussion

2. Action

RESOLUTION 2021-02-519

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF WHITE SALMON, WASHINGTON,
ACCEPTING THE JEWETT WATER MAIN IMPROVEMENT PROJECT AS
COMPLETE**

WHEREAS, on January 10, 2020 the City of White Salmon awarded a Public Works Contract in the amount of \$2,307,501.48 to Crestline Construction Company LLC. for the Jewett Water Main Improvement Project; and

WHEREAS, there were six (6) change orders throughout the project resulting in a final contract amount of \$2,350,983.07; and

WHEREAS, Anderson Perry & Associates, acting as project managers, has recommended the acceptance of the project as complete by the city; and

NOW, THEREFORE, be it resolved by the City Council of the City of White Salmon:

1. The White Salmon City Council accepts the work under Public Works Contract – Jewett Water Main Improvement Project as complete.

ADOPTED by the Council of the City of White Salmon, Washington. Dated this 25th day of February, 2021

Marla Keethler, Mayor

ATTEST:

APPROVED AS TO FORM:

Jan Brending, Clerk Treasurer

Kenneth B. Woodrich, City Attorney

NOTICE OF ACCEPTABILITY OF WORK

Owner:	City of White Salmon, Washington
Contractor:	Crestline Construction Company, LLC
Engineer:	Anderson Perry & Associates, Inc.
Project:	Jewett Water Main Improvements - 2019

January 29, 2021

Date Project is Ready for Final Payment

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor subject to the provisions of 15.07 of the General Conditions, and, to the best knowledge and belief of the Engineer, the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated July 26, 2016, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Anderson Perry & Associates, Inc.

David Jepsen PE
(Authorized Signature)

By: David Jepsen, P.E.
(Name)

Title: Senior Engineer

Date: 1/30/2021

The Owner hereby accepts the Work on the above-referenced Project and concurs the Project is ready for final payment.

City of White Salmon, Washington

(Authorized Signature)

By: _____
(Name)

Title: _____

Date: _____

cc: Crestline Construction Company, LLC

File Attachments for Item:

B. Approval of USDA Outlay Report No. 11/Final

A. Presentation and Discussion

B. Action

OUT LAY REPORT AND REQUEST FOR REIMBURSEMENT							
Draw Request Number:	City of White Salmon			Jewett Water Main Improvements 2019		USDA Rural Development	
	Initial Budget	Current Budget	Previous Paid to Date	Payment Requested	Paid to Date	Balance Remaining	%
No. 11				No. 11	Paid to Date		
Misc. Soft Costs							
Administrative & Legal	10,000.00	10,000.00	3,193.00		3,193.00	6,807.00	31.93%
Bond Counsel	15,000.00	15,000.00	-	12,000.00	12,000.00	3,000.00	80.00%
Interim Financing	95,000.00	95,000.00	-	43,271.30	43,271.30	51,728.70	45.55%
							0.00%
							0.00%
							0.00%
							0.00%
							0.00%
							0.00%
							0.00%
Engineering/Architectural							
Design Services	105,000.00	268,700.00	267,319.32		267,319.32	1,380.68	99.49%
Bidding, Construction & Observation Services	325,000.00	325,000.00	320,972.99		320,972.99	4,027.01	98.76%
							0.00%
							0.00%
							0.00%
							0.00%
							0.00%
							0.00%
Construction w/ sales tax							
Crestline Construction Comp LLC	2,307,501.48	2,350,983.07	2,241,635.02	109,348.05	2,350,983.07	-	100.00%
							0.00%
							0.00%
							0.00%
							0.00%
							0.00%
							0.00%
							0.00%
							0.00%
Contingency	589,498.52	395,056.61				395,056.61	
Contingency as a Percent of Total	17.10%	11.42%					
Total	3,447,000.00	3,459,739.68	2,833,120.33	164,619.35	2,997,739.68	462,000.00	86.65%
PROJECT FUNDING BREAKDOWN							
Applicant contribution	254,000.00	266,739.68	266,308.75	430.93	266,739.68	-	100.00%
Other Funders 1							0.00%
Other Funders 2							0.00%
Other Funders 3							0.00%
Other Funders 4							0.00%
Other Funders 5							0.00%
Other Funders 6							0.00%
Other Funders 7							0.00%
Other Funders 8							0.00%
Other Funders 9							0.00%
USDA RD Loan	3,193,000.00	3,193,000.00	2,566,811.58	164,188.42	2,731,000.00	462,000.00	85.53%
USDA RD Grant							0.00%
Total	3,447,000.00	3,459,739.68	2,833,120.33	164,619.35	2,997,739.68	462,000.00	86.65%
FUNDS - DIFFERENCE	-	-	-	-	-	-	-
Date of Outlay Report	1/29/2021						
APPROVAL AND SIGNATURE SECTION				Version 3.2 - 12/24/2009			
OWNER'S APPROVAL:							
Mayor Murla Keethler	DATE						
ENGINEER/ARCHITECT APPROVAL:				OWNER CERTIFICATION: I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.			
<i>David Jensen</i>	2/23/2021			Invoices will be approved by the borrower and their engineer, as appropriate, and submitted in the processing office for concurrence. The review and acceptance of project costs, including construction pay estimates, by USDA Rural Development does not attest to the correctness of the amounts, the quantities shown or that the work has been performed under the terms of the agreements or contracts.			
Dave Jensen	DATE			Notes:			
USDA RURAL DEVELOPMENT CONCURRENCE:							
RD Specialist Name				DATE			

File Attachments for Item:

C. Resolution 2021-02-518, Authorizing and Providing for Incurrence of Indebtedness

A. Presentation and Discussion

B. Action

RESOLUTION 2021-02-518

LOAN RESOLUTION

LOAN RESOLUTION
(Public Bodies)A RESOLUTION OF THE CouncilOF THE City of White Salmon

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

Municipal

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the City of White Salmon

(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

Two Million Seven Hundred Thirty-One Thousand & 00 100pursuant to the provisions of RCW 35; and**WHEREAS**, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

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 0572-0121. 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.

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA’s concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
17. To accept a grant in an amount not to exceed \$ N/A

under the terms offered by the Government; that the City Council

and Mayor of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was: Yeas _____ Nays _____ Absent _____

IN WITNESS WHEREOF, the Council of the

City of White Salmon has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this _____, 25th day of February 2020

(SEAL)

By Marla Keethler
Title Mayor

Attest:

Jan Brending
Title Clerk Treasurer

CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as Mayor of the City of White Salmon

hereby certify that the Council of such Association is composed of

five members, of whom , _____ constituting a quorum, were present at a meeting thereof duly called and

held on the 25th day of February 2021 ; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of March 10, 2021 ,

the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been rescinded or amended in any way.

Dated, this 26th day of February 2021

Marla Keethler

Title Mayor

File Attachments for Item:

D. Ordinance 2021-02-1073, Authorizing Issuence of Water Revenue Bond in the Amount of \$2,371,000

A. Presentation and Discussion

B. Action

CITY OF WHITE SALMON, WASHINGTON

WATER REVENUE BOND, 2021

\$2,731,000

ORDINANCE NO. 2021-02-1073

AN ORDINANCE of the City of White Salmon, Washington, authorizing the issuance of a water revenue bond of the City in the aggregate principal amount of \$2,731,000 to provide permanent financing for the cost of acquiring, constructing and installing certain additions and betterments to the water utility of the City; fixing the date, form, terms, maturity and covenants of such bond; reserving the right to issue future revenue bonds on a parity with such bond upon compliance with certain conditions; and authorizing the sale of the bond to the United States of America, acting through its Department of Agriculture, Rural Utilities Service.

PASSED: February 25, 2021

Prepared by:

K&L GATES LLP
Seattle, Washington

**CITY OF WHITE SALMON, WASHINGTON
ORDINANCE NO. 2021-02-1073**

TABLE OF CONTENTS*

	Page
Section 1. Definitions.....	2
Section 2. Authorization of Project.....	6
Section 3. Compliance with Parity Conditions.....	6
Section 4. Authorization and Description of Bond.....	7
Section 5. Registration, Transfer and Exchange.....	8
Section 6. Prepayment.....	9
Section 7. Water Fund.....	9
Section 8. Short-Lived Asset Reserve Fund.....	9
Section 9. Bond Fund and Reserve Fund.....	10
Section 10. Sufficiency of Revenues.....	11
Section 11. General Covenants.....	11
Section 12. Tax Covenants.....	14
Section 13. Future Parity Bonds.....	15
Section 14. Junior Lien Bonds.....	17
Section 15. Form of Bond.....	18
Section 16. Execution of the Bond.....	20
Section 17. Lost or Destroyed Bond.....	21
Section 18. Sale of Bond.....	21
Section 19. Application of Bond Proceeds.....	21
Section 20. Amendments.....	21
Section 21. Prepayment.....	22
Section 22. General Authorization.....	22
Section 23. Prior Acts.....	22
Section 24. Effective Date.....	23

* This Table of Contents and the cover page are provided for convenience of the reader only and are not a part of this ordinance.

CITY OF WHITE SALMON, WASHINGTON

ORDINANCE NO. 2021-02-1073

AN ORDINANCE of the City of White Salmon, Washington, authorizing the issuance of a water revenue bond of the City in the aggregate principal amount of \$2,731,000 to provide permanent financing for the cost of acquiring, constructing and installing certain additions and betterments to the water utility of the City; fixing the date, form, terms, maturity and covenants of such bond; reserving the right to issue future revenue bonds on a parity with such bond upon compliance with certain conditions; and authorizing the sale of the bond to the United States of America, acting through its Department of Agriculture, Rural Utilities Service.

WHEREAS, the City of White Salmon, Washington (the “City”) operates a water supply and distribution as part of its water utility (the “Water System”); and

WHEREAS, the City is undertaking construction of improvements to the Water System, including moving hydraulics, reducing system pressures and improving fire flow (the “Project”) for the benefit of the City; and

WHEREAS, the United States of America, acting through its Department of Agriculture, Rural Utilities Service (the “Government”) issued its Letter of Conditions on April 17, 2019, and an Amended Letter of Conditions on September 3, 2019, and an Amended Letter of Conditions on February 24, 2021 (collectively, the “Letter of Conditions”) setting forth the conditions for a \$2,731,000 loan for the Project;

WHEREAS, pursuant to Ordinance No. 2019-09-1051 of the City, passed on September 4, 2019 (the “Note Ordinance”), the City issued its Water Revenue Bond Anticipation Note, 2020, in the principal amount of not to exceed \$3,193,000 (the “Note”) to establish a line of credit with North Cascades Bank to provide interim financing for costs of the Project; and

WHEREAS, the City issued its Water and Sewer Revenue Bond, 1981 under date of October 30, 1981, pursuant to Ordinance No. 1981-16-374 of the City in the original principal amount of \$681,800 of which \$29,200.00 in principal allocated to the Water payment remains outstanding and having a final maturity of October 1, 2021 (the “1981 Bond”); and

WHEREAS, the City issued its Water Revenue Bond, 2015, under date of October 22, 2015, pursuant to Ordinance No. 2015-04-964, as amended by Ordinance No. 2015-09-975, of the City in the original principal amount of \$405,000 of which \$352,775.23 in principal remains outstanding and having a final maturity date of October 22, 2055 (the “2015 Bond” and together with the 1981 Bond, the “Outstanding Parity Bonds”); and

WHEREAS, the Project has been completed, and the City has satisfied the conditions for a loan from the Government for the Project and wishes now to authorize the issuance of a water revenue bond to the Government on a parity with the Outstanding Parity Bonds in the principal

amount of \$2,731,000 (the “Bond”) to secure the loan, the proceeds of which will be used, together with other available funds of the City, to pay and redeem the Note and pay costs of issuance of the Bond; and

WHEREAS, the Government has agreed to purchase the Bond pursuant to its Letter of Conditions dated April 17, 2019, and its Amended Letter of Conditions dated September 3, 2019, and its Amended Letter of Conditions dated February 24, 2021;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITE SALMON, WASHINGTON, DO HEREBY ORDAIN, as follows:

Section 1. **Definitions.** As used in this ordinance the following terms shall have the following meanings:

Annual Debt Service for any calendar year means the sum of:

- (a) the interest due in such year on all outstanding Parity Bonds excluding, however, interest to be paid from the proceeds of sale of any Parity Bonds,
- (b) the principal of all outstanding Serial Bonds due in such year, and
- (c) the Sinking Fund Requirement, if any, for such year.

Average Annual Debt Service means for any Parity Bonds the amount determined by dividing (a) the sum of all interest and principal to be paid on such Parity Bonds from the date of determination to the last maturity date of such Parity Bonds, by (b) the number of fiscal years or calendar years from and including the fiscal year or calendar year in which the determination is made to the last fiscal year or calendar year in which any of such Parity Bonds will be outstanding.

Bond means the City’s Water Revenue Bond, 2021, authorized to be issued by this ordinance, to evidence a loan from the Government.

Bond Fund means the special fund of the City designated as the “Water Bond Redemption Fund” established by Ordinance No. 2012-05-888 and codified at Section 3.24.151 WMCH to pay and secure the payment of all Parity Bonds.

Bond Register means the books or records maintained by the Bond Registrar containing the name and mailing address of the owner of the Bond.

Bond Registrar means the City Clerk/Treasurer of the City, for the purposes of registering and authenticating the Bond, maintaining the Bond Register, transferring ownership of the Bond, and paying the principal of and interest on the Bond.

Bond Year means each one-year period that ends on the date selected by the City. The first and last Bond Years may be short periods. If no day is selected by the City before the earlier of the final maturity date of the Bond or the date that is five years after the date of issuance of the Bond, Bond Years end on each anniversary of the date of issue and on the final maturity date of the Bond.

City means the City of White Salmon, Washington, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of Washington.

City Clerk/Treasurer means the City Clerk/Treasurer of the City of White Salmon, or his/her successor in functions, if any.

City Council means the City Council, the general legislative authority of the City, as the same shall be duly and regularly constituted from time to time.

Code means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder.

Costs of Maintenance and Operation means all normal operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, insurance and administrative expense as pro rata budget charges for City departments where such charges represent a reasonable distribution or share of actual cost; but exclude depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the Water System, municipal taxes, or payments to the City in lieu of taxes.

Future Parity Bonds means any revenue obligations of the City issued after the date of issuance of the Bond that are payable from the Bond Fund and the payment of which, both principal and interest, will constitute a lien and charge upon Net Revenue of the Water System and upon all ULID Assessments equal in rank to the lien and charge thereon for the payments required to pay and secure the payment of the Bond.

Government means the United States of America, acting through its Department of Agriculture, Rural Utilities Service.

Government Obligations means those obligations now or hereafter defined as such in chapter 39.53 RCW, as such chapter may be amended or restated.

Gross Revenue means all earnings and revenue, except ULID Assessments, received by the City from the operation of the Water System, including proceeds from the sale, lease or other disposition of any of the properties or facilities of the Water System, and the income from investments of money in the Water Fund and any bond fund or from any other investment thereof except the income from investments irrevocably pledged to the payment of revenue bonds pursuant to a plan of retirement or refunding. The term “Gross Revenue” does not include grants or bond proceeds, but does include federal or state reimbursements of operating expenses to the extent that such expenses are included as “Costs of Maintenance and Operation” of the Water System.

Letter of Conditions means the Letter of Conditions from the Government, dated April 17, 2019, and an Amended Letter of Conditions dated September 3, 2019, and an Amended Letter of Conditions dated February 24, 2021, as the same may be amended in the future.

Loan Resolution shall mean that certain Loan Resolution (Public Bodies) adopted by the City on February 25, 2021 in the form required and provided by the Government pursuant to its RUS Bulletin 1780-27.

Net Proceeds, when used with reference to the Bond, shall mean the face amount of the Bond, plus accrued interest and original issue premium, if any, and less original issue discount.

Net Revenue means the Gross Revenue less Costs of Maintenance and Operation of the Water System.

1981 Bond means the portion of the City's Water and Sewer Revenue Bond, 1981, issued pursuant to Ordinance No. 1981-16-374, passed on October 21, 1981, and subsequently allocated 2/3 to the Water System and 1/3 to the City's wastewater utility.

Note means the City's Water and Revenue Bond Anticipation Note, 2019, issued in the principal amount of not to exceed \$3,193,000 pursuant to the Note Ordinance to provide interim financing for costs of the Project.

Note Ordinance means Ordinance No. 2019-09-1051 of the City, passed by the Council on September 4, 2019, authorizing issuance of the Note.

Outstanding Parity Bonds means, the 1981 Bond and the 2015 Bond.

Parity Bonds means, the Outstanding Parity Bonds, the Bond and any Future Parity Bonds.

Private Person means any natural person engaged in a trade or business or any trust, estate, partnership, association, company or corporation.

Private Person Use means the use of property in a trade or business by a Private Person if such use is other than as a member of the general public. Private Person Use includes ownership of the property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management or incentive payment contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use of property as a member of the general public includes attendance by the Private Person at municipal meetings or business rental of property to the Private Person on a day-to-day basis if the rental paid by such Private Person is the same as the rental paid by any Private Person who desires to rent the property. Use of property by nonprofit community groups or community recreational groups is not treated as Private Person Use if such use is incidental to the governmental uses of property, the property is made available for such use by all such community groups on an equal basis and such community groups are charged only a *de minimis* fee to cover custodial expenses.

Project means the plan or system of additions and betterments to the Water System specified and adopted in Section 2 of the Note Ordinance.

Reserve Fund means the Water Bond Reserve Fund established by Ordinance No. 2012-05-888 and codified at Section 3.24.152 WSMC to secure the payment of all Parity Bonds.

Reserve Requirement means during any calendar year an amount equal to the Annual Debt Service payable during the following calendar year.

Registered Owner means the person named as the registered owner of the Bond in the Bond Register.

Serial Bonds means Parity Bonds other than Term Bonds.

Short-Lived Asset Reserve Fund means the Fund of that name established pursuant to Section 8 of this ordinance.

Short-Lived Asset Reserve Requirement means a dollar amount equal to at least \$15,900 annually (or such lower amount as may be agreed to by the Government).

Sinking Fund Requirement means, for any fiscal year or calendar year, the principal amount of Term Bonds required to be purchased, redeemed, or paid at maturity in such year as established by the ordinance of the City authorizing the issuance of such Term Bonds.

Term Bonds means any Parity Bonds identified as Term Bonds in the ordinance or resolution authorizing the issuance thereof, the payment of the principal of which is provided for by a mandatory schedule of deposits of money equal (in the aggregate) to the full principal amount of such Term Bonds, into the Bond Fund, and by a mandatory redemption schedule corresponding (as to time and amounts) to such mandatory schedule of deposits.

Treasurer means the City Clerk/Treasurer, or the successor or successors to the duties of such officer.

2015 Bond means the Water Revenue Bond, 2015, of the City issued and sold to the Government in the principal amount of \$405,000 pursuant to Ordinance No. 2015-04-964, as amended by Ordinance No. 2015-09-975.

ULID means any utility local improvement district of the City.

ULID Assessments means the assessments (including installments thereof and interest and any penalties thereon) levied in any ULID hereafter created under State law, if such assessments are to be paid into the Bond Fund for the payment of any Parity Bonds.

Water Fund means the City of White Salmon Water Fund heretofore established in the office of the Clerk/Treasurer, into which all Gross Revenue is deposited as collected.

Water System means the existing water supply and distribution system and all additions and betterments thereto and extensions thereof for as long as any Parity Bonds remain outstanding.

WSMC means the White Salmon Municipal Code, as it may be amended from time to time.

Rules of Interpretation. In this ordinance, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect; and

(e) All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

Section 2. Authorization of Project. The City has specified and adopted a Water System Plan for municipal water system improvements, including the reconstruction of several City streets and replacements and upgrades to below grade utilities in those streets, including certain improvements to facilities of the Water System to move hydraulics, reduce system pressures and improve fire flow referred to in the Letter of Conditions as the Jewett Water Main Improvement Project and authorized in Section 2 of the Note Ordinance (the “Project”).

The Project is described with particularity in the plans and specifications prepared by Anderson Perry & Associates, Inc., consulting engineers for the Project, and those plans and specifications are now on file with the City and available for public inspection.

The Project has been or will be constructed and installed with all necessary equipment and appurtenances. The City may make such changes in the Project as may be necessary or desirable, either prior to or during the course of acquisition and construction. The City is authorized to acquire by purchase, lease or condemnation all property, both real and personal, or any interest therein, or rights of way and easements necessary to carry out the Project.

The estimated cost of the acquisition, construction and installation of the Project is hereby declared to be as near as may be the sum of \$2,997,739.68, including costs of issuing the Bond, a portion of which will be financed from the Government’s loan evidenced by the Bond, and the balance of the Project will be paid from other funds available to the City.

Section 3. Compliance with Parity Conditions. The City has reserved the right in Section 16 of Ordinance No. 1981-16-374, and Section 13 of Ordinance No. 2015-04-964, as amended, which are the ordinances that authorized issuance of the Outstanding Parity Bonds, to issue Future Parity Bonds upon compliance with the conditions set forth therein.

The City therefore finds and determines as required by the provisions of Ordinance No. 1981-16-374 and Ordinance No. 2015-04-964, as follows:

First, that the Bonds are being issued for the purpose of acquiring, constructing and installing additions, betterments and improvements to and extensions of, acquiring necessary equipment for, or making necessary replacements of or repairs or capital improvements to the Water System, as described in Section 2 of this ordinance; and

Second, that at the time of passage of this ordinance and at the time of issuance of the Bond, there is not, nor will there be, any deficiency in the Bond Fund or the Reserve Fund; and

Third, that by Section 9(b) of this ordinance, the City has covenanted and provided that it will pay into and maintain in the Reserve Fund the amounts required by the Letter of Conditions in lieu of the otherwise applicable requirement of Section 10 of Ordinance No. 1981-16-374; and

Fourth, that the City has been assured that at the time of the issuance of the Bond, the City will have on file a report from the Clerk/Treasurer showing sufficient Net Revenue of the Water System for 2018 to satisfy the requirements of Section 16.B.2 of Ordinance No. 1981-16-374 and Section 13(e)(1) of Ordinance No. 2015-04-964.

The parity conditions having been complied with or assured, the lien and charge on the Gross Revenue for the payment of the principal of and interest on the Bond shall be equal to the lien and charge on Gross Revenue for the payment of that portion of the principal of and interest on the Outstanding Parity Bonds.

Section 4. Authorization and Description of Bond. For the purpose of providing permanent financing for the Project, the City shall now issue and sell its water revenue bond (the “Bond”) in the aggregate principal amount of \$2,731,000.

In the event that the Bond is purchased by the Government, the City hereby agrees to comply with the requirements of the Government as contained in the Letter of Conditions and in the RUS Bulletin 1780-27, Loan Resolution, pertaining to the Project.

The Bond shall be designated “City of White Salmon, Washington, Water Revenue Bond, 2021,” shall be dated as of the date of delivery thereof to the Government, as the initial purchaser, shall be numbered R-1, shall be in the denomination of \$2,731,000, shall be fully registered, shall bear interest from the date of its issuance on the unpaid principal balance thereof at the rate of 1.75% per annum and shall be amortized over a 40-year period and shall be repaid in monthly installments of principal and interest in the amount of \$7,920 beginning one (1) month following the date of the Bond and monthly thereafter, with the last payment to be made not later than the 40th anniversary of the date of the Bond, except that the last payment may be more or less than \$7,920 as required to pay the remaining principal and interest due. If the date of loan closing is the 29th, 30th, or 31st of the month, the due date will be the 28th.

Payments shall be applied first to interest and then to principal, and interest shall accrue on the basis of a 365-day year.

Both principal of and interest on the Bond shall be payable in lawful money of the United States of America to the owner or owners thereof at the address appearing on the registration books of the City maintained by the Bond Registrar; provided, however, that as long as Government is the owner and holder of the Bond, the City shall make payments directly to the Government office serving the City of White Salmon, Washington, area; and provided further, however, that the City Clerk/Treasurer is hereby requested to establish a Preauthorized Debit Payment (“PAD”) process whereby the Bond Registrar authorizes funds to be withdrawn electronically from the City’s bank account on the exact day that the payment is due.

As long as the Government is the Registered Owner of the Bond, the City agrees not to defease the Bond.

The Bond is payable solely from the Bond Fund and is not a general obligation of the City. Gross Revenue shall be deposited in the Bond Fund as pledged pursuant to the provisions of Section 9 of this ordinance in accordance with the priority of payments set forth in Section 7 of this ordinance.

Section 5. Registration, Transfer and Exchange.

(a) *Bond Registrar/Bond Register.* The Clerk/Treasurer will act as registrar, authenticating agent, paying agent and transfer agent for the Bond (collectively, the “Bond Registrar”). The Bond Registrar shall keep sufficient records for the registration and transfer of the Bond (the “Bond Register”). The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver the Bond transferred or exchanged in accordance with the provisions of the Bond and this ordinance and to carry out all of the Bond Registrar’s powers and duties under this ordinance. The Bond Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bond.

(b) *Registered Ownership.* The City and the Bond Registrar may deem and treat the Registered Owner of the Bond as the absolute owner for all purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary. Payment of the Bond shall be made as described in Section 2 hereof, but such registration may be transferred as herein provided. All such payments made as described in Section 2 shall be valid and shall satisfy the liability of the City upon the Bond to the extent of the amount or amounts so paid.

(c) *Transfer or Exchange of Registered Ownership; Change in Denominations.* The registered ownership of the Bond may be transferred or exchanged, but no transfer of the Bond shall be valid unless it is surrendered to the Bond Registrar with the assignment form appearing on the Bond duly executed by the Registered Owner or such Registered Owner’s duly authorized agent in a manner satisfactory to the Bond Registrar. Upon such surrender, the Bond Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Registered Owner or transferee therefor, a new Bond of the same date, maturity and interest rate and for the same principal amount, naming as Registered Owner the person listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond. The Bond Registrar shall not be obligated to transfer or exchange the Bond during a period beginning at the opening of business on the 15th day of the month next preceding any interest payment date and ending at the close of business on such interest payment date.

The Bond may be transferred in whole by Government to another institutional investor, and any such transfer shall be noted on the bond registration books of the City.

Section 6. Prepayment. Extra payments may be made at any time with no penalty. The amount of such extra payment shall be applied first to interest on the Bond accrued to the date of receipt of such extra payment, and shall be applied second to the outstanding principal of the Bond. After such extra payment is received by the Registered Owner, the amount of the annual installments of principal and interest on the Bond shall remain unchanged but shall be recalculated to reflect the reduction in the outstanding principal balance of the Bond and the resulting increase in the portion of each future installment payment credited to the principal of the Bond. Advance notice of intended prepayment or redemption shall be as required by the Government. Partial prepayment shall not affect the obligation of the City to pay the remaining installments as scheduled.

Section 7. Water Fund. A special fund of the City designated as the City of White Salmon Water Fund (the “Water Fund”) has been established in the office of the Clerk/Treasurer. All of the Gross Revenue shall be deposited in the Water Fund as collected. The Water Fund must be held separate and apart from all other funds and accounts of the City, and the Gross Revenue deposited in the Water Fund may be used only for the following purposes and in the following order of priority:

First, to pay the Costs of Maintenance and Operation;

Second, to make all payments required to be made into the Bond Fund to pay principal of and interest on any Parity Bonds;

Third, to make all payments required to be made into the Reserve Fund;

Fourth, to make all payments required by subsequent ordinances of the City to be made out of Gross Revenue into any revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the City having a lien upon the Gross Revenue junior and inferior to the lien thereon of the Parity Bonds; and

Fifth, to make all payments required to be made into the Short-Lived Asset Reserve Fund; and

Sixth, to retire by redemption or purchase in the open market any outstanding revenue bonds or revenue warrants of the City, to make necessary additions, betterments, improvements and repairs to or extensions and replacements of the Water System.

Section 8. Short-Lived Asset Reserve Fund. A special fund of the City designated the “Water Short-Lived Asset Reserve Fund” (the “Short-Lived Asset Reserve Fund”) is hereby authorized to be established in the office of the Clerk/Treasurer. Money in the Short-Lived Asset Reserve Fund may be used from time to time to replace short-lived assets of the Water System. So long as the Bond remains outstanding, subject to the priorities established in Section 7 of this ordinance, the City must deposit \$15,900 annually into the Short-Lived Asset Reserve Fund. Payments into the short-lived Asset Reserve Fund are payable from Gross Revenue, and Gross

Revenue is hereby pledged to make the payments out of the Water Fund into the Short-lived Asset Reserve Fund. As described in Section 7, the amounts so pledged are hereby declared to be a lien and charge upon Gross Revenue and the money in the Water Fund junior to the lien thereon for the Costs of Maintenance and Operation and to the lien and charge thereon to pay and secure the payment of the principal of and interest on the Bond and any future Parity Bonds and junior lien bonds, and superior to all other charges of any kind or nature.

Section 9. Bond Fund and Reserve Fund.

(a) *Bond Fund.* A special fund of the City designated as the “Water Bond Redemption Fund” (the “Bond Fund”) has been established in the office of the Clerk/Treasurer by Ordinance No. 2012-05-888 (codified as Section 5.24.151 WSMC) to pay principal of and interest on all Parity Bonds. The Bond Fund shall be drawn upon for the sole purpose of paying the principal of, premium, if any, and interest on the Parity Bonds.

As long as the Bond remains outstanding, the City hereby irrevocably obligates and binds itself to set aside and pay from the Water Fund into the Bond Fund, in addition to amounts required to be paid therein on account of any other issue of Parity Bonds, those amounts necessary, after taking into consideration other funds on hand in the Bond Fund and available for the payment of principal and interest on the Bond, to pay the interest or principal and interest next coming due on the Bond. Such amounts from the Water Fund shall be paid into the Bond Fund on or before the day on which such payment is due and payable.

On each day on which a payment of principal of and/or interest on any Parity Bond is due and payable, the funds will be withdrawn electronically from the City’s bank account in accordance with the previously established Preauthorized Debit Payment (“PAD”) process.

(b) *Reserve Fund.* A special fund of the City designated as the Water Bond Reserve Fund (the “Reserve Fund”) has been established in the office of the Clerk/Treasurer by Ordinance No. 212-05-888 (codified as Section 5.24.152 WSMC) to secure the payment of the principal of and interest on all Parity Bonds. The City covenants and agrees that it will pay into the Reserve Fund out of Gross Revenue or any other funds on hand legally available for such purposes not less than approximately equal monthly deposits of \$792.00 sufficient with other money in the Reserve Fund to have on deposit therein within ten years (as permitted by the Letter of Conditions) from the date of delivery of the Bond, a total amount equal to the greater of \$95,040 or the Reserve Requirement.

The City hereby covenants and agrees that if it issues any Future Parity Bonds, it will provide in the ordinance authorizing the issuance of the same that it will pay into the Reserve Fund out of proceeds of such Future Parity Bonds, Gross Revenue, or any other funds on hand legally available for such purpose, above and beyond the initial Reserve Requirement, approximately equal monthly or annual payments of any Reserve Requirement amount not paid into the Reserve Fund at closing of such Future Parity Bonds, so that within not less than five years from the date of issuance of such Future Parity Bonds there will have been paid into the Reserve Fund an amount that, with the money already on deposit therein, will be equal to the then-applicable Reserve Requirement.

The City further covenants and agrees that when the required deposits have been made into the Reserve Fund, it will at all times maintain therein an amount at least equal to the Reserve Requirement, as it may be adjusted from time to time. Amounts in the Reserve Fund in excess of the Reserve Requirement may from time to time be transferred to the Water Fund. Whenever there is a sufficient amount in the Bond Fund and the Reserve Fund to pay the principal of, premium if any, and interest on all outstanding Parity Bonds, the money in the Reserve Fund may be used to pay such principal, premium, if any, and interest. Money in the Reserve Fund may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any outstanding Parity Bonds, as long as the money left remaining on deposit in the Reserve Fund is equal to the Reserve Requirement.

If there is a deficiency in the Bond Fund to make a payment of interest on or principal of any outstanding Parity Bonds, the deficiency will be made up from the Reserve Fund by the withdrawal of money therefrom. Any deficiency created in the Reserve Fund by reason of any such withdrawal will then be made up out of Gross Revenue after making necessary provision for the payments required to be made prior thereto by Section 5 of this ordinance.

(c) *Lien of Bond Fund and Reserve Fund.* Principal of and interest on the Bond are payable from Gross Revenue, and Gross Revenue is hereby pledged to make the payments out of the Water Fund into the Bond Fund and the Reserve Fund as provided in Section 9(a) and 9(b) of this ordinance. The amounts so pledged are hereby declared to be a lien and charge upon Gross Revenue and the money in the Water Fund junior to the lien thereon for the Costs of Maintenance and Operation, equal to the lien and charge thereon to pay and secure the payment of the principal of and interest on the Outstanding Parity Bonds and any Future Parity Bonds, and superior to all other charges of any kind or nature.

(d) *Investment of Money in Bond Fund and Reserve Fund.* All money in the Bond Fund or Reserve Fund may be kept in cash or invested in Permitted Investments maturing not later than the last maturity of the Parity Bonds outstanding at the time of such purchase. Interest earned on or profits made from the sale of such investments shall be deposited in and become a part of the Water Fund.

Section 10. Sufficiency of Revenues. The Council hereby declares that in fixing the amounts to be paid into the Bond Fund, Reserve Fund, and Short-Lived Asset Reserve Fund as aforesaid it has exercised due regard to the Costs of Maintenance and Operation and the charges necessary to pay and secure the payment of the principal of and interest on the Bond and has not obligated the City to set aside and pay into the Bond Fund, Reserve Fund, and Short-Lived Asset Reserve Fund a greater amount of the Gross Revenue than in its judgment will be available over and above such Costs of Maintenance and Operation.

Section 11. General Covenants. So long as the Bond remains unpaid, the City hereby covenants and agrees with the owner of the Bond from time to time, as follows:

(a) *Maintenance and Operations.* The City will at all times keep and maintain the Water System in good repair, working order and condition, will at all times operate the Water System and the business in connection therewith in an efficient manner and at a reasonable cost, and will comply with all applicable laws of the State of Washington.

(b) *Rates.* All service rendered by the Water System shall be subject to the full rates prescribed in the rules and regulations of the City; and that no free service by the Water System will be permitted. The City will impose and collect rates and charges for service rendered by the Water System that are fair and nondiscriminatory (within the limits provided by law) and will adjust those rates and charges from time to time so that

(1) Gross Revenue, together with ULID Assessments collected, will at all times be sufficient (i) to provide for the payment of the Costs of Maintenance and Operation, (ii) to pay the principal of and interest on the Bond and all other Parity Bonds, including any Sinking Fund Requirements, as and when the same become due and payable, (iii) to make when due any required payments into the Bond Fund and the accounts therein, and (iv) to pay all taxes, assessments or other governmental charges lawfully imposed on the Water System or on the Gross Revenue, or payments in lieu thereof, and (v) to pay all other amounts that the City may now or hereafter be obligated to pay from Gross Revenue by law or contract; and

(2) Net Revenue in each calendar year will be equal to at least 1.20 times Annual Debt Service for that year (after deducting from “Annual Debt Service” the amount of ULID Assessments actually collected for that year).

(c) *Books and Records.* The City will maintain complete books and records relating to the operation of the Water System and its financial affairs in accordance with applicable rules and regulations prescribed by the State of Washington and will cause those books and records to be audited periodically in accordance with the laws of the State of Washington. At all reasonable times, representatives of the Government have the right to inspect the Water System and the books, records, accounts and data of the City relating to the Water System.

(d) *Financial Audit.* If the City expends in any fiscal year \$750,000 or more in federal financial assistance, the City shall submit an audit performed in accordance with the requirements of 2 CFR Part 200, as adopted by the Government through 2 CFR Part 400. If the City expends in any fiscal year less than \$750,000 in federal financial assistance, but has debt owing to the Government in excess of \$1,000,000, including the Bond, the City shall submit an audit to the Government within 150 days after the end of each fiscal year performed in accordance with water and waste audit requirements (i.e., a GAGAS audit). Two copies of each audit report shall be provided to the Government and a copy submitted to the Federal clearinghouse in accordance with RUS Bulletin 1780-30 “Water Programs Audit Guide and Compliance Supplement” (as the same may be supplemented or replaced by the Government during the term of the Bond). If the City expends in any fiscal year less than \$500,000 in federal financial assistance and has debt owing to the Government, including the Bond, less than \$1,000,000, the City may submit a management report in lieu of an audit report unless notified by the Government otherwise. Such management reports shall be submitted to the Government no later than 60 days after the end of the fiscal year. The management report shall consist of: Form RD 442-3, “Balance Sheet”, and Form RD 442-2, “Statement of Budget, Income and Equity”, or forms that provide the information in a similar format. Form 442-2 shall have Schedule 1, all Columns completed on page 1 and page 2. Schedule 2 shall not be required for year-end reports. Annual audit reports or similar financial statements may be submitted in lieu of Forms RD 442-2 and 442-3; provided that so long as the Government is the Registered Owner, prior written consent to the use of alternative forms must be obtained from the Government

(e) *Insurance.* The City will carry fire and extended coverage insurance for all above-ground structures of the Water System, including equipment and machinery, as is ordinarily carried on the property of similar municipal utilities, in an amount at least equal to the depreciated replacement value. The City will also carry adequate public liability insurance, workers' compensation insurance and other kinds of insurance as under good practice are ordinarily carried on such properties by similar municipal utilities. The premiums paid for all such insurance shall be regarded and paid as Costs of Maintenance and Operation. The City may, if deemed necessary and advisable by the Council and with the prior written consent of the Government, institute or continue a self-insurance program with respect to any or all of the risks described in this Section 11(d).

(f) *ULID Assessments.* All ULID Assessments shall be paid into the Bond Fund as collected.

(g) *Delinquencies.* The City covenants that it will promptly collect all rates, charges and ULID Assessments, determine in a timely manner all delinquencies, and take all necessary legal action to enforce collection of such delinquencies.

(h) *Fidelity Bond.* The City will maintain an officer's fidelity bond for its Clerk/Treasurer, and any other City position(s) responsible for City funds, for as long as the Government is the registered owner of the Bond. A certified copy of the bond will be delivered to the Government.

(i) *Disposition of Facilities.* After obtaining the consent of the Government as long as the Government is the owner and holder of the Bond, the City will not sell or otherwise dispose of the Water System in its entirety unless simultaneously with such sale or disposition, provision is made (i) for the payment into the Bond Fund of cash or Government Obligations sufficient together with interest to be earned thereon to pay the principal of and interest on all then outstanding Parity Bonds and (ii) for the prompt defeasance or redemption of all such Parity Bonds, nor will it sell or otherwise dispose of any part of the useful operating properties of the Water System unless such facilities are replaced or provision is made for payment into the Bond Fund of the greatest of the following:

(1) An amount that will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and accounts therein) that the Gross Revenue from the portion of the Water System sold or disposed of for the preceding year bears to the total Gross Revenue for that period; or

(2) An amount that will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined in paragraph (1) above) that the Net Revenue from the portion of the Water System sold or disposed of for the preceding year bears to the total Net Revenue for that period; or

(3) An amount that will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined in paragraph (1) above) that the depreciated cost value

of the facilities sold or disposed of bears to the depreciated cost value of the entire System immediately prior to such sale or disposition.

The proceeds of any such sale or disposition of a portion of the properties of the Water System (to the extent required above) shall be paid into the Bond Fund.

Notwithstanding any other provision of this subsection (h) to the contrary, however, the City may sell or otherwise dispose of any of the works, plant, properties and facilities of the Water System or any real or personal property comprising a part of the same with a value less than 5% of the net utility plant of the Water System or that has become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Water System, or no longer necessary, material to or useful in such operation, without making any deposit into the Bond Fund to retire Parity Bonds.

(j) *Compliance with Loan Resolution.* The City will comply with the requirements of the Loan Resolution, unless the City obtains an express written waiver from the Government of any such requirements.

Section 12. Tax Covenants. The covenants of this section shall be applicable to any Bond issued as a tax-exempt obligation or Bond that is required to observe the applicable rules and regulations under the Code for tax-exempt bonds.

(a) *Arbitrage Covenant.* Without limiting the generality of the foregoing, the City covenants that it will not take any action or fail to take any action with respect to the proceeds of sale of the Bond or any other funds of the City which may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code and the regulations promulgated thereunder which, if such use had been reasonably expected on the dates of delivery of the Bond to the Government, would have caused the Bond as an “arbitrage bond” within the meaning of such term as used in Section 148 of the Code.

The City represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is an issuer whose arbitrage certifications may not be relied upon. The City will comply with the requirements of Section 148 of the Code and the applicable regulations thereunder throughout the term of the Bond.

(b) *Private Person Use Limitation for Bond.* The City covenants that for as long as the Bond is outstanding, it will not permit:

(1) More than 10% of the Net Proceeds of the Bond to be used for any Private Person Use; and

(2) More than 10% of the principal or interest payments on the Bond in a Bond Year to be directly or indirectly: (A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or (B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use.

The City further covenants that, if:

(3) More than five percent of the Net Proceeds of the Bond are to be used for any Private Person Use; and

(4) More than five percent of the principal or interest payments on the Bond in a Bond Year are (under the terms of this ordinance or any underlying arrangement) directly or indirectly:

(A) secured by any interest in property used or to be used for any Private Person Use or secured by payments in respect of property used or to be used for any Private Person Use, or

(B) derived from payments (whether or not made to the City) in respect of property, or borrowed money, used or to be used for any Private Person Use,

then, (i) any Private Person Use of the projects described in subsection (3) hereof or Private Person Use payments described in subsection (4) hereof that is in excess of the five percent limitations described in such subsections (3) or (4) will be for a Private Person Use that is related to the state or local governmental use of the Project, and (ii) any Private Person Use will not exceed the amount of Net Proceeds of the Bond used for the state or local governmental use portion of the project to which the Private Person Use of such portion of the Project relates. The City further covenants that it will comply with any limitations on the use of the projects by other than state and local governmental users that are necessary, in the opinion of its bond counsel, to preserve the tax exemption of the interest on the Bond. The covenants of this section are specified solely to assure the continued exemption from regular income taxation of the interest on the Bond.

To that end, the provisions of this section may be modified or eliminated without any requirement for formal amendment thereof upon receipt of an opinion of the City's bond counsel that such modification or elimination will not adversely affect the tax exemption of interest on the Bond.

Section 13. Future Parity Bonds. The City hereby covenants and agrees with the owner from time to time of the Bond for so long as any of the same remains unpaid that it (i) will not issue any bonds hereafter with a lien on Gross Revenue superior to the lien on Gross Revenue of the Bond and (ii) will issue Future Parity Bonds and pledge that payments be made into the Bond Fund out of the Water Fund sufficient to pay the principal of and interest on such Future Parity Bonds and maintain the Reserve Requirement therefor (which payments may rank equally with the payments out of the Water Fund into the Bond Fund to pay and secure the payment of the principal of and interest on the Bond and any other Parity Bonds then outstanding), only as follows:

First, to provide funds for acquiring, constructing and installing additions and improvements to and extensions of, acquiring necessary equipment for, or making necessary replacements of or repairs and capital improvements to the Water System; or

Second, to provide funds for refunding by exchange or purchasing and retiring at or prior to their maturity any outstanding revenue bonds or other obligations payable out of Gross Revenue;

upon compliance with the following conditions:

(a) That at the time of the issuance of the Future Parity Bonds there is no deficiency in the Bond Fund or the Reserve Fund.

(b) If there are special assessments levied in any ULID in which additions and improvements to and extensions of the Water System will be constructed from the proceeds of such Future Parity Bonds, the ordinance authorizing those Future Parity Bonds must require that those special assessments be paid into the Bond Fund, except for prepaid assessments, which may be paid into a construction fund or account to pay costs of such additions and improvements to and extensions of the Water System.

(c) If there are special assessments levied in any ULID pledged to be paid into a warrant or bond redemption fund for revenue bonds or warrants being refunded by Future Parity Bonds, the ordinance authorizing those Future Parity Bonds must require that those special assessments be used for the refunding or paid into the Bond Fund.

(d) The principal of and interest on the Future Parity Bonds will be payable out of the Bond Fund, and the ordinance authorizing their issuance will further provide for payments into the Bond Fund to satisfy the Sinking Fund Requirement and payments into the Reserve Fund to satisfy the Reserve Requirement, all as required by Section 9(b) of this ordinance.

(e) At the time of the issuance of any Future Parity Bonds, the City must have on file one of the following:

(1) a statement or report from the Clerk/Treasurer or from an independent accountant showing that the Net Revenue for the fiscal year preceding the year in which such Future Parity Bonds are proposed to be issued was equal to at least 1.20 times the Average Annual Debt Service (after deducting ULID Assessments from "Annual Debt Service," with ULID Assessments allocated to the years in which they would be received if the unpaid balance of each assessment roll were paid in the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance confirming the assessment roll) for all Parity Bonds plus the Future Parity Bonds proposed to be issued, as well as the total proposed Reserve Requirement and Short-Lived Asset Reserve Requirement; or

(2) from and after the 1981 Bond is no longer outstanding, a certificate of a Professional Utility Consultant showing that the Net Revenue, which shall be determined and may be adjusted as hereafter provided (the "Adjusted Net Revenue"), is equal to at least 1.20 times the Average Annual Debt Service (after deducting ULID Assessments from "Annual Debt Service," with ULID Assessments allocated to the years in which they would be received if the unpaid balance of each assessment roll were paid in the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance confirming the assessment roll) for all Parity Bonds plus the Future Parity Bonds proposed to be issued.

The Adjusted Net Revenue shall be the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of the proposed Future Parity Bonds and may be adjusted by such Professional Utility Consultant to take into consideration changes in Net Revenue estimated to occur under any or all of the following

conditions for each year after such delivery for so long as any Parity Bonds, including the Future Parity Bonds proposed to be issued, will be outstanding:

(A) the additional Net Revenue that would have been received if any change in rates and charges adopted by the City prior to the date of such certificate and subsequent to the beginning of such 12-month period had been in force during the full 12-month period;

(B) the additional Net Revenue that would have been received if any facility of the Water System that became fully operational after the beginning of such 12-month period had been so operating for the entire period;

(C) the additional Net Revenue that would have been received if those customers added to the Water System subsequent to the beginning of such 12-month period had been customers for the entire period;

(D) the additional Net Revenue estimated to be received from any potential customers of the Water System with existing homes or other buildings who paid any required connection charge subsequent to the beginning of such 12-month period;

(E) The additional Net Revenue estimated to be received from any person, firm, association, private or municipal corporation under any executed service contract, which additional revenue is not included in any of the sources of Net Revenue heretofore described in this subsection (e)(2); and

The Professional Utility Consultant may rely upon, and his or her certificate must have attached to it, financial statements of the Water System certified by the Finance Director showing income and expenses for the period upon which the certification is based.

(3) It is hereby provided, however, that the limitations or conditions described in this subsection (e) may be waived or modified by the written consent of the Government.

(f) Notwithstanding the provisions of subsection (e), if Future Parity Bonds are to be issued to provide funds for refunding at or prior to their maturity any part or all of the then outstanding Parity Bonds and the issuance of those refunding Future Parity Bonds will result in a debt service savings and will not require an increase of more than \$5,000 in any fiscal or calendar year for principal of and interest on such refunding Future Parity Bonds over and above the amount required in such year for the principal of and interest on the bonds being refunded thereby, a certificate described in subsection (e) is not required.

(g) Prior to the delivery of any Future Parity Bonds, the City must have received the written consent of the Government to the issuance of such Future Parity Bonds, if required by the Letter of Conditions or the Loan Resolution; provided, however, that such consent is not required if proceeds of the Future Parity Bonds will be used to pay and redeem the Bond in full.

Section 14. Junior Lien Bonds. Nothing herein contained shall prevent the City from issuing revenue bonds or like obligations the payment of the principal of and interest on which is

a charge on money in the Water Fund junior or inferior to the payments required to be made from such money into the Bond Fund and the Reserve Fund, or from pledging the payment of special assessments into a fund or account created to pay and secure the payment of the principal of and interest on such junior lien bonds or obligations as long as such assessments are levied in a ULID or ULIDs created in connection with carrying out the improvements to be constructed from the proceeds of the sale of such junior lien bonds or obligations; provided, however, that the City must have received the written consent of the Government if required by the Letter of Conditions or the Loan Resolution. Nothing herein contained shall prevent the City from issuing revenue bonds to refund maturing revenue bonds of the City for the payment of which money is not otherwise available.

Section 15. **Form of Bond.** The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. R-1

\$2,731,000

STATE OF WASHINGTON

CITY OF WHITE SALMON
WATER REVENUE BOND, 2021

INTEREST RATE: 1.75%

MATURITY DATE: March 10, 2061

REGISTERED OWNER: UNITED STATES OF AMERICA, ACTING THROUGH THE
UNITED STATES DEPARTMENT OF AGRICULTURE,
RURAL UTILITIES SERVICE

PRINCIPAL AMOUNT: TWO MILLION SEVEN HUNDRED THIRTY-ONE
THOUSAND AND NO/100 DOLLARS

The City of White Salmon (the “City”), a municipal corporation duly organized and existing under the laws of the State of Washington, hereby acknowledges itself to owe and for value received promises to pay, but only from the sources and as hereinafter provided, to the Registered Owner identified above, or registered assigns, the principal of and interest on this bond as provided in Ordinance No. 2021-02-1073 passed by the City on February 25, 2021, (the “Bond Ordinance”). Reference is made to the Bond Ordinance for the definitions of the capitalized terms used and not otherwise defined herein.

This bond shall bear interest at the rate of 1.75% per annum and interest shall accrue from the date of issuance of this bond. Principal of and interest on this bond shall be payable in monthly amortized installments in the amount of \$7,920 beginning one (1) month following the date of the Bond and monthly thereafter, with the last payment to be made not later than the 40th anniversary of the date of the Bond, except that the last payment may be more or less than \$7,920 as required to pay the remaining principal and interest due on the Maturity Date. If any installment of principal and interest is not paid when due, the City shall be obligated to pay interest on that installment at the same rate provided herein from and after its due date until that installment is paid in full.

This bond, designated as the “Water Revenue Bond, 2021,” is issued by the City in fully registered form to provide permanent financing for the costs of acquiring, constructing and installing certain additions and betterments to the Water System of the City as further described in the Bond Ordinance.

Installments of interest or principal of and interest on this bond are payable in lawful money of the United States of America and shall be paid electronically on each day due from the City’s bank account in accordance with the previously established Preauthorized Debit Payment (“PAD”) process. The last installment of principal and interest shall be payable upon presentation and surrender of this bond by the registered owner at the principal office of the Bond Registrar.

The City does hereby pledge and bind itself to set aside from Gross Revenue and to pay into the Bond Fund and Reserve Fund the various amounts required by the Bond Ordinance to be paid into and maintained in such funds, all within the times provided by the Bond Ordinance. The bond is not a general obligation of the City and the City’s full faith, credit and resources are not pledged for the principal of and interest on this bond.

To the extent more particularly provided by the Bond Ordinance, the amounts so pledged to be paid from Gross Revenue into the Bond Fund and Reserve Fund shall be a lien and charge thereon equal in rank to the lien and charge upon Gross Revenue of the amounts required to pay and secure the payment of the Outstanding Parity Bonds and any Future Parity Bonds, and superior to all other liens and charges of any kind or nature, except the Costs of Maintenance and Operation of the Water System.

Reference is made to the Bond Ordinance for a description of the Bond Fund, the Reserve Fund, and the covenants and declarations of the City and other terms and conditions upon which this bond has been issued and Future Parity Bonds may hereafter be issued.

This bond is subject to prepayment prior to maturity in accordance with the terms set forth in the Bond Ordinance.

This bond is issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and duly adopted ordinances of the City. The City hereby covenants and agrees with the owner of this bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed, and reference is hereby made to the Bond Ordinance for a complete statement of such covenants.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

It is hereby certified that all acts, conditions, and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done, and performed precedent to and in the issuance of this bond have happened, been done, and performed.

IN WITNESS WHEREOF, the City of White Salmon, Washington, has caused this bond to be signed on behalf of the City with the manual or facsimile signature of its Mayor and to be

of the Bond shall be the proper officers of the City although at the original date of the Bond any such person shall not have been such officer of the City.

Section 17. Lost or Destroyed Bond. In case the Bond shall be lost, stolen or destroyed, the City may execute and deliver a new bond of like date, number and tenor to the registered owner thereof in the manner provided by law and upon the owner's paying the expenses and charges of the City in connection therewith.

Section 18. Sale of Bond. The Bond shall be sold to the Government at a price of par on the terms and conditions set forth herein and in the Letter of Conditions and the Loan Resolution.

Section 19. Application of Bond Proceeds. Upon the date of issuance of the Bond, proceeds of the Bond shall be deposited in the Bond Fund in an amount sufficient, with other funds in the Bond Fund legally available for such purpose, to pay and redeem the Note in full. The balance of the proceeds of the Bond shall be used to pay costs of the Project, and the costs of issuing the Bond.

Section 20. Amendments.

(a) The City from time to time and at any time may adopt an ordinance or ordinances additional or supplemental hereto, which ordinance or ordinances thereafter will become a part of this ordinance, for any one or more or all of the following purposes:

(i) To add to the covenants and agreements of the City contained in this ordinance other covenants and agreements thereafter to be observed that shall not adversely affect the interests of the owners of any Parity Bond, or to surrender any right or power herein reserved to or conferred upon the City.

(ii) To make provisions for curing any ambiguities or of curing, correcting, or supplementing any defective provision contained in this ordinance or any supplemental ordinance in regard to matters or questions arising under such ordinances that the City may deem necessary or desirable and not inconsistent with such ordinances and that do not adversely affect the interest of the owners of any Parity Bonds.

Any such additional or supplemental ordinances of the City may be adopted without the consent of the owners of any of the Parity Bonds at any time outstanding, notwithstanding any of the provisions of subsection (b) of this section.

(b) With the consent of the owners of not less than a majority in aggregate principal amount of the Parity Bonds at the time outstanding (provided, however, that so long as the Government owns the Bond its consent must always be obtained), the City may adopt an amendatory ordinance for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this ordinance or of any supplemental ordinance; provided, however, that no such amendatory ordinance shall:

(i) Extend the fixed maturity of any of the Parity Bonds, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce

the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the owner of each Parity Bond so affected; or

(ii) Reduce the aforesaid percentage of Bondowners required to approve any such supplemental ordinance, without the consent of the owners of all of the Parity Bonds then outstanding.

It shall not be necessary for the consent of Parity Bond owners under this subsection (b) to approve the particular form of any such proposed amendatory ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

(c) Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this ordinance and all Registered Owners of the Parity Bonds outstanding hereunder shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all the terms and conditions of any such supplemental ordinance shall be deemed to be a part of the terms and conditions of this ordinance for any and all purposes.

(d) Parity Bonds executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this section may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, new bonds so modified as to conform, in the opinion of the Council, to any modification of this ordinance contained in any such supplemental ordinance may be prepared by the City and delivered without cost to the Registered Owners of any affected Parity Bonds then outstanding, upon surrender for cancellation of such bonds, in equal aggregate principal amounts.

Section 21. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 22. General Authorization. The Mayor, City Clerk/Treasurer and all other appropriate officers of the City are each hereby authorized and directed to take such steps, to do such other acts and things, and to execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance.

Section 23. Prior Acts. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified and confirmed.

Section 24. Effective Date. This ordinance shall become effective from and after its passage, and approval and publication as required by law.

PASSED by the City Council of the City of White Salmon, Washington, at a special open public meeting thereof this 25th day of February, 2021.

CITY OF WHITE SALMON,
WASHINGTON

Marla Keethler, Mayor

ATTEST:

Jan Brending, City Clerk/Treasurer

APPROVED AS TO FORM:

Kenneth B. Woodrich, City Attorney

CITY OF WHITE SALMON, WASHINGTON
WATER REVENUE BOND, 2021

Summary of Ordinance No. 2021-02-1073, passed on February 25, 2021

AN ORDINANCE of the City of White Salmon, Washington, authorizing the issuance of a water revenue bond of the City in the aggregate principal amount of \$2,731,000 to provide permanent financing for the cost of acquiring, constructing and installing certain additions and betterments to the water utility of the City; fixing the date, form, terms, maturity and covenants of such bond; reserving the right to issue future revenue bonds on a parity with such bond upon compliance with certain conditions; and authorizing the sale of the bond to the United States of America, acting through its Department of Agriculture, Rural Utilities Service.

Approved this 25th day of February, 2021.

CITY OF WHITE SALMON,
WASHINGTON

Marla Keethler, Mayor

ATTEST:

Jan Brending, City Clerk/Treasurer

CERTIFICATE

I, the undersigned, City Clerk/Treasurer of the City of White Salmon, Washington (herein called the “City”), DO HEREBY CERTIFY:

1. That the attached ordinance numbered 2021-02-1073 (herein called the “Ordinance”) is a true and correct copy of an ordinance of the City as passed at a special meeting of the City Council of the City held on the 25th day of February, 2021, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of February, 2021.

City Clerk/Treasurer



Rural Development

February 24, 2021

Yakima Area Office

1606 Perry Street,
Suite D; Yakima, WA
98902-5798

City of White Salmon
100 N. Main Street
White Salmon, WA 98672

Voice 509.367-8570
Fax (855) 847-5491

Project Name: moving hydraulics, reducing system pressures and improving fire flow.

CFDA NUMBER – 10.760

Loan: \$3,193,000 amended to \$2,731,000

Dear Mayor Marla Keethler,

This letter establishes conditions of the loan and amends the August 17, 2019 original Letter of Conditions as it pertains to the loan amount, interest rate, and monthly payment amount. All of the conditions 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 months of the date of this letter due to permit timing. 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 3 days:

- Form RD 1942-46, “Letter of Intent to Meet Conditions” MKC
- Form RD 1940-1, “Request for Obligation of Funds” MKC

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

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

does not constitute loan 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 funds will be approved and obligated.

You may make extra copies of this letter 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 move hydraulics, reduce system pressures and improve fire flow.

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 -	\$3,193,000 amended to \$2,731,000 MKC
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This offer is based upon the following additional funding being obtained.

Applicant Contribution -	\$254,700 amended to \$266,739.68 MKC
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TOTAL PROJECT COST -	\$3,447,700 amended to \$2,997,739.68 MKC
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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. This evidence should include a commitment letter by the applicant. Agency funds will not be used to pre-finance funds committed to the project from other sources.

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

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Construction	\$2,274,100
Contingency	\$528,900
Engineering Inspection	\$270,000
Engineering Design	\$254,700
Interest - Interim	\$ 95,000
Admin and Legal Fees	\$ 25,000
TOTAL	\$3,447,700 amended to \$2,997,739.68 MKC

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

SECTION II – LOAN 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 amortized monthly installments, beginning 1 month from the date of closing. For planning purposes, use a 3.375% interest rate amended to 1.75% and an amortization factor of 3.80 amended to 2.90, which provides for a monthly payment of \$12,134.00 amended to 7,920. The precise payment amount will be based on the interest rate at the time the loan is closed and may be different than the one above. MKC

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 Revenue bond with a 1st position lien position in the amount of \$3,193,000.00 amended to \$2,731,000. 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. MKC

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 RUS Bulletin 1780-27, “Loan Resolution.” 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.

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. **MKC**

7. Construction Completion Timeframe - All projects must be completed, and all funds disbursed within three years of obligation. If funds are not disbursed within three 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. **MKC**

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. **MKC**

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. In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

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

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

9. Reserves – 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: **MKC**

- a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. Ten percent of the proposed loan installment would equal \$1,213.40 per month **amended to \$792 per month**; this amount should be deposited monthly until a total of \$145,608 **amended to \$95,040** has accumulated. 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 as designated above until the fully-funded amount is reached. **MKC**

- b. **Short-Lived Asset Reserve** –In addition to the debt service reserve fund, you must establish a short-lived asset reserve fund. Based on the preliminary engineering report, you must deposit at least \$15,900 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility’s short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs. **MKC**

Current assets can also be used to establish and maintain reserves for expected expenses, including but not limited to operation and maintenance, deferred interest during the construction period, and an asset management program.

SECTION III –REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. Pre-Design Report Requirements- A Pre-design Report must be presented to RD for review and approval prior to the development of the P&S. USDA will evaluate the project in accordance with 1780.44(e) (Actions Prior to loan/grant losing or start of construction) (Excess RUS loan & grant funds). If the updated project costs prove otherwise, USDA will reevaluate and de-obligate any excessive grant funds. **MKC**

11. Environmental 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. **MKC**

The following environmental mitigation measures must be followed:

1. Client to use Construction Best Management Practices (BMP) for temporary erosion, sedimentation and dust control during construction of project.

2. An Unanticipated Discovery Plan (UDP) must be in place before Notice to Proceed is issued. If earth disturbing activities during construction uncover cultural materials (i.e. structural remains, historic artifacts, or prehistoric artifacts) all work shall cease and the Washington State Department of Archaeology and Historic Preservation (DAHP) and the

RD State Environmental Coordinator (SEC- Paul Johnson) shall be immediately notified. The RD State Environmental Coordinator shall notify the interested tribes.

3. If earth disturbing activities on any area of the project uncover human remains, all work shall cease immediately in accordance with Washington State Statute RCW 37.44. The area around the discovery shall be secured and the Klickitat County Sheriff's Office. The Klickitat County Coroner's office and the RD SEC shall be notified immediately. If the remains appear to be prehistoric the RD SEC shall notify the State Archaeologist at DAHP, and the appropriate tribes without delay. MKC

12. 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. MKC

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

14. Legal Services – You are required to execute a legal services agreement with your attorney and bond counsel 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. MKC

15. 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. **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. **MKC**
- b. **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. **MKC**

16. 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. **MKC**

- 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. **MKC**

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. **MKC**

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.

17. 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. **MKC**

18. 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. **MKC**

19. 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. **MKC**

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. **MKC**

20. System Users – This letter of conditions is based upon your indication at application that there will be at least 1580 residential users, 278 non-residential users and 3 whole sale connections on the existing system when construction is completed. **MKC**

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. **MKC**

21. Other Funding – Prior to advertising for bids, you must provide evidence of applicant contributions. This evidence should include a copy of the commitment letter from each source. **MKC**

22. 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. **MKC**

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. **MKC**

23. Permits –The owner as the 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. **MKC**

24. American Iron & Steel Act (AIS) – This requirement applies to any Iron and Steel product to be incorporated into the project. **MKC**

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

- (b) iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (c) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.”

25. 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. MKC

26. 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. MKC

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

27. 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. MKC

- a. Cost Overruns. If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.
- b. Excess Funds. If bids are lower than anticipated at time of obligation, excess funds must be de-obligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and letter of conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be de-obligated. Excess funds do not include contingency funds as described in this letter.
- c.

28. 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). **MKC**

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.

29. Final Rights-of-Way – If any of the rights-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed. For projects involving the acquisition of land, you must provide evidence that you have clear title to the land prior to the issuance of the Notice to Proceed. **MKC**

Final Title Work - Your attorney must furnish a separate final title opinion on all existing real property related to the facility, now owned and to be acquired for this project, as of the day of loan closing or start of construction, whichever occurs first. Form RD 1927-10, “Final Title Opinion” may be used.

Final Title Work - Immediately after closing or prior to the start of construction, whichever comes first, a Title Insurance Policy must be provided for all existing real property related to the facility, now owned and to be acquired for this project.

30. 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. **MKC**

- 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.

31. 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. **MKC**

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: **MKC**

32. 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. **MKC**

33. 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. **MKC**

- 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>). MKC

- 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. MKC
- 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. MKC

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

34. 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. MKC

35. 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. MKC

36. 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. MKC

37. Change Orders – Prior Agency concurrence is required for all Change Orders. MKC

38. 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. MKC

39. Use of Remaining Funds – If funding should change from this date forward funding will be expended as follows: 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: MKC

- 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 remains the same.
- b. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

40. Technical, Managerial and Financial Capacity - It is required that members of the City Council 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. MKC

41. 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. MKC

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. MKC

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

42. **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. MKC

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.

43. **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. MKC

44. **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. MKC

45. **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. MKC

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. **MKC**

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. **MKC**
- c. **Quarterly Reports** – Quarterly Income and Expense Statements will be required until the processing office waives this requirement. You may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter’s end. The Agency will notify you in writing when the quarterly reports are no longer required. **Amended to read no quarterly reports due to the City of White Salmon is a current borrower in good standing. MKC**

46. 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. **MKC**

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.

47. 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. **MKC**

48. 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. **MKC**

49. 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: **MKC**

- 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 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.

50. 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. **MKC**

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. **MKC**

We look forward to working with you to complete this project. If you have any questions, please contact Marti Canatsey at 509-367-8570 or by e-mail at marlene.canatsey@wa.usda.gov

Sincerely,

MARLENE
CANATSEY

Digitally signed by
MARLENE CANATSEY
Date: 2021.02.24
07:51:08 -08'00'

Marti Canatsey
Community Programs Specialist
Attachments

cc: Community Programs Director