

MCCOOK CITY COUNCIL

REGULAR MEETING

Monday, November 18, 2024
5:30 PM - City Council Chambers

Roll Call.

Excuse Absences.

Open Meetings Act Announcement.

Invocation - McCook Ministerial Association - Walter Ray, McCook Baptist Church.

Pledge of Allegiance.

Call to Order.

Items.

1. Announcements & Recognitions.

2. Consent Agenda.

**The Consent Agenda is approved on one motion. Any item listed on the Consent Agenda may, by the request of any single Council member or public in attendance, be considered as a separate item under the Regular Agenda.*

A. Approve the minutes of the November 4, 2024 regular City Council meeting.

B. Approve the use of \$50,000 of LB 840 Motor Vehicle funds to assist with the construction of West 14th Street.

C. Approve the payment of \$10,000 to Mike and Sally Daffer in return for a drainage easement on property located at 1510 West 14th Street.

D. Receive and file the Financial Report for the period ending September 30, 2024.

E. Approve and authorize the Mayor to sign a consent to effectuate the First Amendment to the Water Tower Lease Agreement between the City of McCook and Alltel Communications of Nebraska, LLC d/b/a Verizon Wireless for the addition and modification of existing equipment.

F. Approve Change Order No. 2, for the amount of (\$2,516.66), to the contract with Gerih Concrete Construction for the Business Park Phase II Grading & Paving Project and authorize the Mayor to sign.

G. Receive and file the claims for the month of October 2024, published November 12, 2024.

H. Accept the Letter of Conditions with the United States Department of Agriculture (USDA) for the FY24 Wastewater Treatment Plant Improvement Project.

3. Regular Agenda.

A. Update regarding the sports complex project.

- B. Ordinance No. 2024-3094 amending the City of McCook Code of Ordinances by revising Section 90.33 -Dangerous Dogs and/or Hybrid Animals Prohibited; Terms, Defined; Section 90.36 - Dangerous Dogs and/or Hybrid Animals; Confiscation, When; Costs; and Section 90.45 - Impoundment of Animals Without Immunization Tags; Disposition of Impounded Animals.
 - 1. Chairperson asks Clerk to read Ordinance by title.
 - 2. Consider approval of Ordinance No. 2024-3094 upon its first of three readings.
- C. Council Comments.
- 4. Adjournment.
 - MCCOOK COMMUNITY DEVELOPMENT AGENCY**
 - REGULAR MEETING**
- 5. Meeting of the McCook Community Development Agency.
 - A. Call to Order and Roll Call.
 - B. Open Meetings Act Announcement.
 - C. Accept a Promissory Note from the McCook Economic Development Corporation.
 - D. Adjourn the McCook Community Development Agency meeting.

**CITY MANAGER'S REPORT
NOVEMBER 18, 2024 CITY COUNCIL MEETING**

ITEM: 2.A.

Approve the minutes of the November 18, 2024 regular City Council meeting.

BACKGROUND:

Receive and approve the minutes.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

November 13, 2024

McCook City Council
November 4, 2024
5:30 P.M. Central

A MEETING OF THE MAYOR AND COUNCIL OF THE CITY OF MCCOOK, NEBRASKA convened in open, regular, and public session at 5:30 o'clock P.M. in the City Council Chambers.

Present: Mayor Taylor, Councilmembers Weedon, Muehlenkamp, Rambali.

Absent: Councilmember Calvin.

Motion to excuse the absence of Councilmember Calvin. This motion, made by Weedon and seconded by Muehlenkamp, passed.

Calvin: ABSENT, Taylor: YEA, Weedon: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 4, NAY: 0, ABSENT: 1

City Officials present: City Manager Schneider, City Attorney Mustion, City Clerk Doak, Assistant City Manager Koetter, Utilities Director Fawver, Fire Chief Harpham, Police Chief Hodgson, and Public Works Superintendent Kalinski.

Notice of the meeting was given in advance thereof by publication in the McCook Daily Gazette on October 31, 2024, the designated method of giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the Mayor and members of the City Council and a copy of the Acknowledgement of Receipt of such notice is attached to these minutes. Availability of the agenda was communicated in the advance notice to the Mayor and Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

Mayor Taylor announced that a copy of the Open Meetings Act was posted by the entrance to the Council Chambers and available for public review. Invocation was provided by Jamie Mockry. Following the Pledge of Allegiance to the flag of the United States of America, Mayor Taylor called the meeting to order.

1. Announcements & Recognitions.

City Manager Schneider announced that the City of McCook received \$1,500,000 from the Nebraska Department of Economic Development (DED) through the Rural Community Recovery Program. The funds are earmarked \$500,000 for the Kelley Park all-inclusive playground, \$400,000 for a new playground at Barnett Park, and \$600,000 for amenities at the new sports complex. The DED received 49 applications requesting more than \$43 million, resulting in an especially competitive evaluation process. Grants were awarded to 11 recipients. Mr. Schneider thanked Jessica Bortner, Tera Koetter, and Kyle Potthoff for all of the time that they put into McCook's successful application

2. Public Hearings.

- 2.A. Conduct a public hearing on the application of Schmitz Station, LLC; dba "The Station:", for a Class "I" - (Beer, Wine Distilled Spirits, On Sale Only) under the Nebraska Liquor Control Commission, to be located at 404 West "A" Street, McCook, Nebraska; replacing existing License #093350.

Motion to recess as a City Council and convene a public hearing for the purpose of receiving public comment on the application of Schmitz Station, LLC; dba "The Station:", for a Class "I" - (Beer, Wine Distilled Spirits, On Sale only) under the Nebraska Liquor Control Commission, to be located at 404 West "A" Street, McCook, Nebraska; replacing existing License #093350, with the City Attorney to act as hearing officer. This motion, made by Weedin and seconded by Muehlenkamp, passed.

Calvin: ABSENT, Taylor: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 4, NAY: 0, ABSENT: 1

The City Attorney offered and received into evidence Exhibit #1 - the City Manager's Report dated November 4, 2024 (1 page); Exhibit #2 - Notice of Hearing published (1 page); Exhibit #3 - Redacted application and all attachments (30 pages); and Exhibit #4 - Police Department Report (6 pages).

City Manager Schneider stated that staff has completed their review and found that everything has been addressed and recommend approval of the application.

The applicants were present to address questions from the council and public.

With no one present to comment, motion to adjourn the public hearing and to reconvene as a City Council. This motion, made by Taylor and seconded by Muehlenkamp, passed.

Calvin: ABSENT, Taylor: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 4, NAY: 0, ABSENT: 1

- 2.B. Recommend approval to the Nebraska Liquor Control Commission the application of Schmitz Station, LLC; dba "The Station", for a Class "I" License - (Beer, Wine Distilled Spirits, On Sale Only) under the Nebraska Liquor Control Commission, to be located at 404 West "A" Street, McCook, Nebraska; replacing existing License #093350.

Motion to recommend approval to the Nebraska Liquor Control Commission the application of Schmitz Station, LLC; dba "The Station", for a Class "I" License - (Beer, Wine Distilled Spirits, On Sale Off only) under the Nebraska Liquor Control Commission, to be located at 404 West "A" Street, McCook, Nebraska; replacing existing License #093350. This motion, made by Muehlenkamp and seconded by Rambali, passed.

Calvin: ABSENT, Taylor: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 4, NAY: 0, ABSENT: 1

- 2.C. Public Hearing - A report from the Economic Development Plan Citizen's Advisory Review committee regarding meeting held October 28, 2024.

Motion to recess as a City Council and convene a public hearing for the purpose of receiving public comment on a report from the Economic Development Plan Citizen's Advisory Review Committee regarding meeting held October 28, 2024 with the City Attorney to act as hearing officer. This motion, made by Weedin and seconded by Rambali, passed.

Calvin: ABSENT, Taylor: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 4, NAY: 0, ABSENT: 1

The City Attorney offered and received into evidence Exhibit #1 - the City Manager's Report dated November 4, 2024 (1 page); Exhibit #2 - Notice of Hearing published (1 page); Exhibit #3 - Agenda for the July 22, 2023 meeting of the Economic Development Plan Citizen's Advisory Review Committee and attachments (7 pages); and Exhibit #4 - the minutes of the April 22, 2024 Economic Development Plan Citizen's Advisory Review Committee (4 pages).

Charlie McPherson, McCook Economic Development Director, reviewed the information presented in Exhibit #3, gave an update on the McCook Business Park Phase II, and answered questions from the Council. Mr. McPherson extended an invitation to the community to a duplex open house on December 10, 2024 from 2:00 - 4:00 P.M.

With no one else present to comment, motion to adjourn the public hearing and to reconvene as a City Council. This motion, made by Weedin and seconded by Muehlenkamp, passed.

Calvin: ABSENT, Taylor: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 4, NAY: 0, ABSENT: 1

2.D. Accept the minutes of the July 22, 2024 Economic Development Plan Citizen's Advisory Review Committee meeting.

Motion to accept the minutes of the July 22, 2024 Economic Development Plan Citizen's Advisory Review Committee meeting. This motion, made by Muehlenkamp and seconded by Weedin, passed.

Calvin: ABSENT, Taylor: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 4, NAY: 0, ABSENT: 1

3. Consent Agenda.

Motion to approve the consent agenda. This motion, made by Weedin and seconded by Taylor, passed.

Calvin: ABSENT, Taylor: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 4, NAY: 0, ABSENT: 1

3.A. Approve the minutes of the October 21, 2024 regular City Council meeting and the October 25, 2024 special City Council meeting.

3.B. Approve technical specifications and procurement documents for Injection Well Building Modifications at the Wastewater Treatment Plant and set date to receive bids for December 5, 2024 at 2:00 P.M.

- 3.C. Accept the minutes of the July 16, 2024 Senior Center Advisory Board meeting.
- 3.D. Approve Bid Specifications for (1) one new current model year, all-wheel drive or 4-wheel drive police interceptor/pursuit utility vehicle for use by the McCook Police Department and set the date to receive bids as November 25, 2024.
- 3.E. Receive and file the City of McCook Snow and Ice Control and Removal Operation Procedures and Policies.
- 3.F. Receive and file the confirmation of an emergency purchase of one (1) used 2015 Ford F-750, 4 X 2 Terex HRX-55 Bucket Truck for the Street Department, from Custom Truck One Source at a cost of \$55,000.00, which includes delivery.
- 3.G. Accept City Manager Nate Schneider's appointment of Greg A. Wolford, Class A License S-875 and Professional Engineer License No. E-6362, as the City of McCook Street Superintendent January 1 through December 31, 2025, for the purpose of the 2025 calendar year Highway Incentive Payment, to be issued to the City by the Nebraska Department of Transportation, in February 2026.
- 3.H. Adopt Resolution No. 2024-29 authorizing the signing of the Year-End Certification of City Street Superintendent Form 2024.
- 3.I. Accept and authorize the Mayor to sign the Annual Certification Form confirming that funds received by the City of McCook from the State of Nebraska Department of Transportation as part of the Federal Aid Transportation Fund Purchase-Sale Agreement have been used according to such agreement.
- 3.J. Approve Resolution No. 2024-30 approving the rates for the ambulance service and fire department services operated by the City of McCook, Nebraska.

4. Regular Agenda.

- 4.A. Council Comments.

Councilmember Muehlenkamp thanked those on Norris Avenue who helped to make Halloween night a success.

Adjournment.

There being no further business to come before the Council, Mayor Taylor declared the meeting adjourned at 5:55 P.M.

**MCCOOK COMMUNITY DEVELOPMENT AGENCY
REGULAR MEETING**

1. Meeting of the McCook Community Development Agency.

1.A. Call to Order and Roll Call.

1.B. Open Meetings Act Announcement.

A meeting of the Mayor and City Council of the City of McCook, Nebraska, acting as the governing body of the Community Development Agency of the City of McCook, Nebraska was convened in open and public session at 5:55 o'clock p.m. on November 4, 2024, at the McCook Municipal Center in McCook, Nebraska. Agency Members present were: Taylor, Weedin, Muehlenkamp, Rambali. Absent: Calvin. Notice of the meeting was given in advance thereof by publication, one of the City's designated methods for giving notice, a copy of the proof of publication being attached to these minutes. Advanced notice of the meeting was given to each member of the Agency and a copy of their acknowledgment of receipt of notice and the agenda is attached to these minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and all members of the Council. Mayor Taylor presided and Clerk Doak recorded the proceedings. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

The Mayor publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held.

1.C. Receive and file a Promissory Note from the McCook Economic Development Corporation.

Upon the request of the McCook Economic Development Corporation, motion to move consideration of this item to a definite time, November 18, 2024 at 5:30 P.M. This motion, made by Taylor and seconded by Weedin, passed.

Calvin: ABSENT, Taylor: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 4, NAY: 0, ABSENT: 1

1.D. Approve MEDC Infill Housing Project Exhibit "F" - Form of Certificate of Completion and Exhibit "G" - Form of Certification of Eligible Project Costs and authorize the Mayor as Chair of the Community Development Agency to sign.

Motion to approve MEDC Infill Housing Project Exhibit "F" - Form of Certificate of Completion and Exhibit "G" - Form of Certification of Eligible Project Costs and authorize the Mayor as Chair of the Community Development Agency to sign. This motion, made by Muehlenkamp and seconded by Weedin, passed.

Calvin: ABSENT, Taylor: YEA, Weedin: YEA, Muehlenkamp: YEA, Rambali: YEA
YEA: 4, NAY: 0, ABSENT: 1

1.E. Adjourn the McCook Community Development Agency meeting.

With no further business, Mayor Taylor declared the Community Development Agency meeting adjourned at 5:58 P.M.

Linda Taylor, Ex-officio Mayor
and Council President

ATTEST:

Lea Ann Doak, City Clerk-Treasurer

CITY MANAGER'S REPORT

NOVEMBER 18, 2024 MCCOOK CITY COUNCIL MEETING

ITEM 2.B. Approve the use of \$50,000 of LB 840 Motor Vehicle funds to assist with the construction of West 14th Street.

ITEM 2.C. Approve the payment of \$10,000 to Mike and Sally Daffer in return for a drainage easement on property located at 1510 West 14th Street.

BACKGROUND:

Over the past twenty to thirty years, there has been rapid commercial and industrial development in the Third Fairacres Addition to the City of McCook. Third Fairacres Addition to McCook is located between West Q Street and West O Street, and West 17th Street and West Fair Acres Drive. Third Fairacres Addition to the City of McCook contains platted West 14th Street, however, West 14th Street has not been developed. Topographically, West Fairacres Addition drains from the southwest to the northeast. Due to the rapid development of the West Fairacres Addition, natural grasses and other drainage deterrents have been replaced with hard surfaces. Runoff from rain events have become a concern in the Third Fairacres Addition. Rain and associated sediment drains toward the properties located in the northeast and eastern portions of the Addition. If you have driven on West Q Street during or after a rain event, you will notice substantial runoff strewn across the street.

In 2012, there was an effort to create a street improvement district for West 14th Street. The effort did not pass. During the twelve years since the original efforts, drainage continues to be major problem. Over the past year, new discussions have occurred between the City and property owners in the Third Fairacres Addition. The discussions have focused on trying to quell the drainage concerns in the area. During our discussions, impacted property owners have expressed a desire for the City to provide financial assistance should a street improvement district be implemented. After reviewing the City of McCook's LB 840 Motor Vehicle Fund, staff recommends utilizing \$50,000 from the LB 840 Motor Vehicle Fund to assist with the construction of West 14th Street. The City's portion will assist in offsetting the costs associated with a West 14th Street improvement district.

In addition to a street improvement district, a storm water improvement district is needed to slow storm water as it runs west to east in the Third Fairacres Addition. A different set of properties will be affected by the implementation of a storm water improvement district. The property that will be most impacted by the creation of a storm water improvement district is Mike and Sally Daffer's property located at 1510 West 14th Street. W Design Associates has developed a drainage plan that includes the construction of three storm water detention ponds on Mike and Sally Daffer's property. The City of McCook would be responsible for maintaining the detention ponds through the grant of an easement from Mike and Sally Daffer to the City of McCook. The detention ponds will

restrict the ability of the Daffers to use portions of their property. Specifically, the detention ponds will be located in the southwest, northwest, and west portions of the Daffer's property, making those sections unusable for commercial purposes. City staff recommends compensating the Daffers \$10,000 in return for the grant of an easement. The Daffers are agreeable to this arrangement.

APPROVALS:



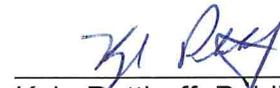
Nathan A. Schneider, City Manager

November 12, 2024



Lea Ann Doak, City Clerk

November 12, 2024



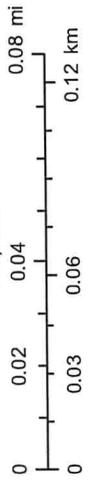
Kyle Potthoff, Public Works Director

November 12, 2024



November 13, 2024 14:36 PM **DISCLAIMER:** This map is not intended for conveyances, nor is it a legal survey. The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments.

1:2,349



- Parcels
- Sections

CITY MANAGER'S REPORT

NOVEMBER 18, 2024 MCCOOK CITY COUNCIL MEETING

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APPROVALS:



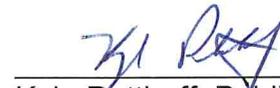
Nathan A. Schneider, City Manager

November 12, 2024



Lea Ann Doak, City Clerk

November 12, 2024



Kyle Potthoff, Public Works Director

November 12, 2024

**CITY MANAGER'S REPORT
NOVEMBER 15, 2024 CITY COUNCIL MEETING**

ITEM: 2.D.

Receive and file the Financial Report for the period ending September 30, 2024.

BACKGROUND:

The Treasurer's Report (Attachment A) gives the beginning cash balances as of October 1, 2023, plus Total (YTD) Receipts, minus Total (YTD) Disbursements, giving the ending cash balance on September 30, 2024.

Per the Banking Services Agreement with McCook National Bank, all funds are deposited into the Public Funds Account at a higher rate of interest. The bank then sweeps in increments of \$100,000 to the Primary Operating Account to cover disbursements as they clear the bank. That is why the Ending Cash Balance in the Primary Operating Account is (\$379,658.88), issued checks had not yet cleared the bank. The Payroll Account is also a sweep account and maintains a \$1,000 balance.

All of the bank accounts are interest bearing, except the Payroll Account and the Purchase Account. The Purchase Account is our VISA credit card.

Attachment B gives the ending cash balances by fund as of September 30, 2024.

Attachment C is a Financial Summary of Revenue and Expense by Fund for the quarter ending September 30, 2024.

Staff is always available to address any questions that the Council may have. The Department Heads receive monthly financial reports and it is their responsibility to monitor their individual budgets. It is the bottom-line per department that is monitored. If they go over on a line item, they must adjust for it in another line item.

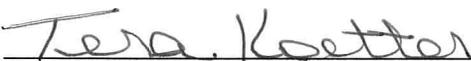
**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk-Treasurer

November 14, 2024



Tera Koetter, Assistant City Manager

November 14, 2024



Nathan A. Schneider, City Manager

November 14, 2024

ATTACHMENT

A

City of McCook, Nebraska
 TREASURER'S REPORT
 Period Ending: September 30, 2024 (unaudited)

Beginning Cash on Hand, October 1, 2023			
McCook National Bank - Public Funds	\$	24,891,382.03	
McCook National Bank - Primary Operating	\$	(238,986.17)	
McCook National Bank - LB840 Funds	\$	1,313,478.19	
McCook National Bank - Payroll	\$	(30,640.55)	
McCook National Bank - CRA	\$	57.93	
Purchases Account	\$	10,000.00	
Petty Cash	\$	1,150.00	
NDEQ Irrevocable Escrow	\$	89,029.76	
McCook National Bank - Pension	\$	4,565.82	
TOTAL BEGINNING CASH			\$ 26,040,037.01
Receipts:			
Taxes	\$	7,710,158.06	
Fees, Permits and Licenses	\$	599,016.67	
Intergovernmental Services	\$	1,979,744.54	
Charges - Current Services	\$	2,339,102.10	
Public Utilities	\$	4,288,662.61	
Use of Money & Property	\$	3,044,650.01	
Interfund Transfers	\$	5,420,304.00	
Other Revenue	\$	8,836,022.76	
Unapplied/Accounts Payable	\$	701.00	
PLUS TOTAL RECEIPTS			\$ 34,218,361.75
Disbursements:			
Personal Services	\$	8,112,911.47	
Supplies	\$	2,062,447.93	
Services & Charges	\$	12,333,212.20	
Budget Transfers	\$	3,489,900.71	
Capital Outlay	\$	8,761,382.42	
Unapplied/Accounts Payable	\$	1,954.74	
MINUS TOTAL DISBURSEMENTS			\$ 34,761,809.47
Ending Cash Balance September 30, 2024			
McCook National Bank - Public Funds	\$	24,315,060.36	
McCook National Bank - Primary Operating	\$	(379,658.88)	
McCook National Bank - LB840 Funds	\$	1,447,404.48	
McCook National Bank - Payroll	\$	1,000.00	
McCook National Bank - CRA	\$	57.93	
Petty Cash	\$	1,350.00	
Purchase Account	\$	10,000.00	
NDEQ Irrevocable Escrow	\$	95,550.62	
McCook National Bank - Pension	\$	5,824.78	
TOTAL ENDING CASH	\$	25,496,589.29	\$ 25,496,589.29

Dated: September 30, 2024

-s- Lea Ann Doak, City Clerk

ATTACHMENT B

City of McCook, Nebraska
 TREASURER'S REPORT
 CASH BALANCE BY FUNDS
 Period Ending September 30, 2024 (unaudited)

Beginning Cash on Hand, October 1, 2023	Beginning Cash	YTD Revenue	YTD Expenditures	Ending Cash
General Fund - 10	\$ 3,713,273.61	\$ 12,259,836.58	\$ 11,947,134.74	\$ 4,025,975.45
General Fund Unapplied/Accts. Payable	\$ 2,519.00	\$ 701.00	\$ 1,513.08	\$ 1,706.92
Street Fund - 15	\$ 542,044.26	\$ 211,710.40	\$ -	\$ 753,754.66
Special Revenue - 20	\$ 6,915,980.44	\$ 4,589,970.09	\$ 6,552,958.88	\$ 4,952,991.65
Special Revenue Unapplied/Accts. Payable	\$ -		\$ -	\$ -
Debt Service - 30	\$ 413,572.43	\$ 19,374.00	\$ -	\$ 432,946.43
Community Redevelopment Authority - 40	\$ 83,322.24	\$ 446,720.60	\$ 404,225.48	\$ 125,817.36
Economic Development Fund - 45	\$ 1,313,478.19	\$ 733,238.62	\$ 580,111.28	\$ 1,466,605.53
Pension Trust - 50	\$ 4,565.82	\$ 20,132.92	\$ 18,873.96	\$ 5,824.78
Trust & Agency - 60	\$ 342,798.60	\$ 147,726.87	\$ 116,013.28	\$ 374,512.19
Trust & Agency Unapplied/Accts. Payable			\$ -	\$ -
Internal Service Fund - 65	\$ 812,266.31	\$ 3,180,140.15	\$ 2,535,251.95	\$ 1,457,154.51
Enterprise Fund - 70	\$ 10,389,917.22	\$ 10,779,185.58	\$ 11,387,111.27	\$ 9,781,991.53
Enterprise Fund Unapplied/Accts. Payable	\$ 482.46	\$ -	\$ 441.66	\$ 40.80
Capital Improvement - 80	\$ 1,505,816.43	\$ 1,829,624.94	\$ 1,218,173.89	\$ 2,117,267.48
Capital Improve Unapplied/Accts. Payable			\$ -	\$ -
BALANCES	\$ 26,040,037.01	\$ 34,218,361.75	\$ 34,761,809.47	\$ 25,496,589.29

Dated: September 30, 2024

-s- Lea Ann Doak, City Clerk

ATTACHMENT C

CITY OF MCCOOK
 STATEMENT OF REVENUES - BUDGET VS. ACTUAL
 AS OF: SEPTEMBER 30TH, 2024

10 -GENERAL FUND
 FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
REVENUE SUMMARY							
GENERAL REVENUE	11,414,579	11,414,579	2,228,356.99	11,913,105.30	9,368,216.20 (	498,526.30)	4.37-
RESERVES/CO TREASURER BAL	<u>1,887,442</u>	<u>1,887,442</u>	<u>50,250.00</u>	<u>346,731.28</u>	<u>215,407.42</u>	<u>1,540,710.72</u>	<u>81.63</u>
TOTAL REVENUES	<u>13,302,021</u>	<u>13,302,021</u>	<u>2,278,606.99</u>	<u>12,259,836.58</u>	<u>9,583,623.62</u>	<u>1,042,184.42</u>	<u>7.83</u>
	=====	=====	=====	=====	=====	=====	=====
	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
ADMINISTRATION	879,209	879,209	81,071.95	852,428.32	770,016.76	26,780.68	3.05
PUBLICITY	6,750	6,750	94.74	6,398.40	5,229.02	351.60	5.21
AUDITORIUM	57,603	57,603	5,729.90	66,305.64	45,601.83 (	8,702.64)	15.11-
COUNCIL	631,558	631,558	154,281.27	2,101,272.64	396,991.93 (	1,469,714.64)	232.71-
POLICE	2,342,951	2,342,951	128,093.65	1,977,842.09	2,019,591.76	365,108.91	15.58
MUNICIPAL CENTER	130,120	130,120	6,411.18	125,994.13	118,568.94	4,125.87	3.17
FIRE	2,393,557	2,393,557	98,482.52	1,319,172.92	1,467,978.73	1,074,384.08	44.89
AMBULANCE	529,995	529,995	19,349.06	158,193.12	168,415.93	371,801.88	70.15
CIVIL DEFENSE	10,456	10,456	6,261.58	8,537.24	5,531.16	1,918.76	18.35
BUILDING & ZONING	100,190	100,190	6,562.85	93,627.17	100,468.65	6,562.83	6.55
LIBRARY	404,757	404,757	36,719.34	385,434.43	362,267.51	19,322.57	4.77
STREET	1,203,175	1,203,175	1,168,830.12	2,201,890.26	1,634,373.94 (	998,715.26)	83.01-
CEMETERY	234,407	234,407	29,671.19	205,623.35	219,224.84	28,783.65	12.28
PARKS	304,222	304,222	33,549.77	300,965.02	255,564.36	3,256.98	1.07
BALL PARKS	142,129	142,129	13,366.49	110,644.90	116,958.22	31,484.10	22.15
POOL	120,000	120,000	34,766.85	106,564.62	5,893.18	13,435.38	11.20
AIRPORT	195,336	195,336	19,143.24	183,394.38	161,746.14	11,941.62	6.11
UNEMPLOYMENT	10,000	10,000	0.00	0.00	0.00	10,000.00	100.00
UNCOLLECTABLE TAX	16,000	16,000	4,918.07	17,804.77	15,938.99 (	1,804.77)	11.28-
SENIOR CENTER	537,343	537,343	44,234.67	488,326.86	471,041.77	49,016.14	9.12
PUBLIC TRANSPORTATION	200,864	200,864	18,690.82	202,031.79	191,154.76 (	1,167.79)	0.58-
HEALTH OPERATING	916,900	916,900	76,408.33	916,899.96	861,252.00	0.04	0.00
RESERVES/CO TREASURER BAL	<u>637,442</u>	<u>637,442</u>	<u>4,000.00</u>	<u>117,782.73</u>	<u>50,674.88</u>	<u>519,659.27</u>	<u>81.52</u>
TOTAL EXPENDITURES	<u>12,004,964</u>	<u>12,004,964</u>	<u>1,990,637.59</u>	<u>11,947,134.74</u>	<u>9,444,485.30</u>	<u>57,829.26</u>	<u>0.48</u>
	=====	=====	=====	=====	=====	=====	=====
REVENUES OVER/(UNDER) EXPENDITURES	1,297,057	1,297,057	287,969.40	312,701.84	139,138.32	984,355.16	75.89

CITY OF MCCOOK
 STATEMENT OF REVENUES - BUDGET VS. ACTUAL
 AS OF: SEPTEMBER 30TH, 2024

15 -STREET FUND
 FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
<u>REVENUE SUMMARY</u>							
STREET IMPROVEMENTS	<u>702,413</u>	<u>702,413</u>	<u>3,111.00</u>	<u>211,710.40</u>	<u>202,201.15</u>	<u>490,702.60</u>	<u>69.86</u>
TOTAL REVENUES	<u>702,413</u>	<u>702,413</u>	<u>3,111.00</u>	<u>211,710.40</u>	<u>202,201.15</u>	<u>490,702.60</u>	<u>69.86</u>
	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
STREET IMPROVEMENTS	<u>702,413</u>	<u>702,413</u>	<u>0.00</u>	<u>0.00</u>	<u>88,000.00</u>	<u>702,413.00</u>	<u>100.00</u>
TOTAL EXPENDITURES	<u>702,413</u>	<u>702,413</u>	<u>0.00</u>	<u>0.00</u>	<u>88,000.00</u>	<u>702,413.00</u>	<u>100.00</u>
REVENUES OVER/(UNDER) EXPENDITURES	0	0	3,111.00	211,710.40	114,201.15 (	211,710.40)	0.00

CITY OF MCCOOK
STATEMENT OF REVENUES - BUDGET VS. ACTUAL
AS OF: SEPTEMBER 30TH, 2024

20 -SPECIAL REVENUE
FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
REVENUE SUMMARY							
FAA GRANTS	376,861	376,861	22,374.00	100,938.60	39,887.00	275,922.40	73.22
PUBLIC TRANSIT GRANTS	90,000	90,000	0.00	0.00	0.00	90,000.00	100.00
ACE REVENUE SHARING	31,922	31,922	126.00	21,770.00	11,767.00	10,152.00	31.80
MCCOOK RECREATIONAL TRAIL	56,179	56,179	235.00	2,600.00	2,028.00	53,579.00	95.37
CCCF GRANT-SWIMMING POOL	0	0	0.00	0.00	2,625.00	0.00	0.00
MCCOOK COMM FOUNDATION	0	0	0.00	4,000.00	25,000.00 (	4,000.00)	0.00
COVID-19 CARES ACT	150,460	150,460	563.00	6,355.00	12,344.61	144,105.00	95.78
ENHANCED E911	60,063	60,063	575.00	38,382.67	20,792.68	21,680.33	36.10
INSURANCE REIMBURSEMENT	436,121	436,121	1,909.00	25,521.56	16,297.00	410,599.44	94.15
PSAP FUNDS	102,112	102,112	143.00	42,804.76	51,586.26	59,307.24	58.08
MUNICIPAL FACILITY CONST	34,785	34,785	0.00	0.00	0.00	34,785.00	100.00
SKATE PARK IMPROVEMENTS	0	0	0.00	0.00	0.00	0.00	0.00
AME RESCUE PLAN ACT-ARPA	325,199	325,199	900.00	12,311.00	26,978.00	312,888.00	96.21
BIRDELLA NELSON TECH CTR	25,000	25,000	0.00	7,781.40	16,620.06	17,218.60	68.87
SWIMMING POOL PROJECT	6,699,072	6,699,072	2,161.00	145,951.00	6,422,743.30	6,553,121.00	97.82
DISC GOLF PROJECT	0	0	1,267.00	20,394.00	0.00 (	20,394.00)	0.00
PLAYGROUND EQUIPMENT PROJ	0	0	4.00	6,775.50	0.00 (	6,775.50)	0.00
CCCF GRANT-CREATIVE DIST	0	0	20,462.00	151,508.00	0.00 (	151,508.00)	0.00
SPORTS COMPLEX PROJECT	0	0	4,002,376.60	4,002,876.60	0.00 (	4,002,876.60)	0.00
TOTAL REVENUES	8,387,774	8,387,774	4,053,095.60	4,589,970.09	6,648,668.91	3,797,803.91	45.28

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
FAA GRANTS	376,861	376,861	23,278.15	63,726.61	32,497.63	313,134.39	83.09
PUBLIC TRANSIT GRANTS	90,000	90,000	0.00	0.00	0.00	90,000.00	100.00
ACE REVENUE SHARING	31,922	31,922	2,910.00	26,000.00	5,389.00	5,922.00	18.55
MCCOOK RECREATIONAL TRAIL	56,179	56,179	0.00	1,021.25	0.00	55,157.75	98.18
CCCF GRANT-SWIMMING POOL	0	0	0.00	0.00	1,331.25	0.00	0.00
MCCOOK COMM FOUNDATION	0	0	0.00	4,000.00	25,000.00 (	4,000.00)	0.00
COVID-19 CARES ACT	150,460	150,460	0.00	21,138.00	21,558.57	129,322.00	85.95
ENHANCED E911	60,063	60,063	0.00	1,800.00	15,825.49	58,263.00	97.00
INSURANCE REIMBURSEMENT	436,121	436,121	108,344.25	108,344.25	51,910.25	327,776.75	75.16
PSAP FUNDS	102,112	102,112	1,643.75	87,660.60	80,795.66	14,451.40	14.15
MUNICIPAL FACILITY CONST	34,785	34,785	0.00	0.00	0.00	34,785.00	100.00
SKATE PARK IMPROVEMENTS	0	0	0.00	0.00	0.00	0.00	0.00
AME RESCUE PLAN ACT-ARPA	325,199	325,199	9,954.00	106,819.33	645,971.02	218,379.67	67.15
BIRDELLA NELSON TECH CTR	25,000	25,000	0.00	0.00	22,203.14	25,000.00	100.00
SWIMMING POOL PROJECT	6,699,072	6,699,072	148,428.98	6,060,020.84	629,994.30	639,051.16	9.54
DISC GOLF PROJECT	0	0	7,390.00	7,390.00	0.00 (	7,390.00)	0.00
PLAYGROUND EQUIPMENT PROJ	0	0	0.00	0.00	0.00	0.00	0.00
CCCF GRANT-CREATIVE DIST	0	0	19,966.00	59,898.00	0.00 (	59,898.00)	0.00
SPORTS COMPLEX PROJECT	0	0	3,730.00	5,140.00	0.00 (	5,140.00)	0.00
TOTAL EXPENDITURES	8,387,774	8,387,774	318,185.13	6,552,958.88	1,532,476.31	1,834,815.12	21.87
REVENUES OVER/(UNDER) EXPENDITURES	0	0	3,734,910.47	(1,962,988.79)	5,116,192.60	1,962,988.79	0.00

CITY OF MCCOOK
 STATEMENT OF REVENUES - BUDGET VS. ACTUAL
 AS OF: SEPTEMBER 30TH, 2024

30 -DEBT SERVICE
 FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
<u>REVENUE SUMMARY</u>							
GENERAL OBLIGATION	0	0	0.00	0.00	0.00	0.00	0.00
SPECIAL ASSESSMENTS	411,745	411,745	1,782.00	19,374.00	14,827.00	392,371.00	95.29
BOND RESERVE	<u>0</u>	<u>0</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL REVENUES	411,745	411,745	1,782.00	19,374.00	14,827.00	392,371.00	95.29
	=====	=====	=====	=====	=====	=====	=====
	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
GENERAL OBLIGATION	0	0	0.00	0.00	0.00	0.00	0.00
SPECIAL ASSESSMENTS	411,745	411,745	0.00	0.00	0.00	411,745.00	100.00
BOND RESERVE	<u>0</u>	<u>0</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL EXPENDITURES	411,745	411,745	0.00	0.00	0.00	411,745.00	100.00
	=====	=====	=====	=====	=====	=====	=====
REVENUES OVER/(UNDER) EXPENDITURES	0	0	1,782.00	19,374.00	14,827.00 (	19,374.00)	0.00

CITY OF MCCOOK
 STATEMENT OF REVENUES - BUDGET VS. ACTUAL
 AS OF: SEPTEMBER 30TH, 2024

40 -COMMUNITY DEVELOPMENT
 FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
REVENUE SUMMARY							
KEYSTONE BUS CENTER PROJ	31,000	31,000	0.00	29,244.21	27,474.93	1,755.79	5.66
CITY INVESTMENTS	82,656	82,656	496.00	38,239.00	10,186.00	44,417.00	53.74
NORTH POINTE	30,000	30,000	11,204.65	37,458.67	44,111.04 (	7,458.67)	24.86-
CLARY VILLAGE LLC	9,500	9,500 (	1,813.68)	7,419.52	3,950.91	2,080.48	21.90
MCCOOK HOTEL GROUP/COBBL	60,000	60,000	23,146.79	49,423.14	50,276.24	10,576.86	17.63
QUILLAN COURTS	15,000	15,000	1,247.95	11,453.28	4,610.18	3,546.72	23.64
MCCOOK LODGING/HOLIDAY I	100,000	100,000	0.00	130,730.98	94,052.91 (	30,730.98)	30.73-
NEXT GENERATION	220,000	220,000	0.00	124,712.14	308,334.15	95,287.86	43.31
N-STANT CONVENIENCE	20,000	20,000	2,178.77	4,649.18	4,740.22	15,350.82	76.75
BLACKWOOD ENTERPRISES	20,400	20,400	0.00	8,840.12	189.88	11,559.88	56.67
MEDC INFILL HOUSING	0	0	2,132.46	4,550.36	0.00 (	4,550.36)	0.00
ENG INTL - RESTORED HOMES	0	0	0.00	0.00	0.00	0.00	0.00
NORTH POINTE II	0	0	0.00	0.00	0.00	0.00	0.00
MCK BUSINESS PK PHASE II	0	0	0.00	0.00	0.00	0.00	0.00
ELEVATE WELLNESS	0	0	0.00	0.00	0.00	0.00	0.00
R PERRY DEVELOPMENT	0	0	0.00	0.00	0.00	0.00	0.00
TOTAL REVENUES	588,556	588,556	38,592.94	446,720.60	547,926.46	141,835.40	24.10
=====							
	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
KEYSTONE BUS CENTER PROJ	31,000	31,000	0.00	29,244.21	27,474.93	1,755.79	5.66
CITY INVESTMENTS	82,656	82,656	0.00	754.00	0.00	81,902.00	99.09
NORTH POINTE	30,000	30,000	16,645.69	37,458.67	44,111.04 (	7,458.67)	24.86-
CLARY VILLAGE LLC	9,500	9,500	3,898.09	7,419.52	3,950.91	2,080.48	21.90
MCCOOK HOTEL GROUP/COBBL	60,000	60,000	23,146.79	49,423.14	50,276.24	10,576.86	17.63
QUILLAN COURTS	15,000	15,000	0.00	6,253.28	4,610.18	8,746.72	58.31
MCCOOK LODGING/HOLIDAY I	100,000	100,000	40,889.30	130,730.98	94,052.91 (	30,730.98)	30.73-
NEXT GENERATION	220,000	220,000	0.00	124,712.14	308,334.15	95,287.86	43.31
N-STANT CONVENIENCE	20,000	20,000	2,178.77	4,649.18	4,740.22	15,350.82	76.75
BLACKWOOD ENTERPRISES	20,400	20,400	5,695.00	9,030.00	0.00	11,370.00	55.74
MEDC INFILL HOUSING	0	0	2,417.90	4,550.36	0.00 (	4,550.36)	0.00
ENG INTL - RESTORED HOMES	0	0	0.00	0.00	0.00	0.00	0.00
NORTH POINTE II	0	0	0.00	0.00	0.00	0.00	0.00
MCK BUSINESS PK PHASE II	0	0	0.00	0.00	0.00	0.00	0.00
ELEVATE WELLNESS	0	0	0.00	0.00	0.00	0.00	0.00
R PERRY DEVELOPMENT	0	0	0.00	0.00	0.00	0.00	0.00
TOTAL EXPENDITURES	588,556	588,556	94,871.54	404,225.48	537,550.58	184,330.52	31.32
=====							
REVENUES OVER/(UNDER) EXPENDITURES	0	0 (	56,278.60)	42,495.12	10,375.88 (	42,495.12)	0.00

CITY OF MCCOOK
 STATEMENT OF REVENUES - BUDGET VS. ACTUAL
 AS OF: SEPTEMBER 30TH, 2024

45 -ECONOMIC DEVELOPMENT FUND
 FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
<u>REVENUE SUMMARY</u>							
ECONOMIC DEVELOPMENT FUN	<u>1,925,222</u>	<u>1,925,222</u>	<u>72,907.85</u>	<u>733,238.62</u>	<u>652,839.40</u>	<u>1,191,983.38</u>	<u>61.91</u>
TOTAL REVENUES	<u>1,925,222</u>	<u>1,925,222</u>	<u>72,907.85</u>	<u>733,238.62</u>	<u>652,839.40</u>	<u>1,191,983.38</u>	<u>61.91</u>
	=====	=====	=====	=====	=====	=====	=====
	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
ECONOMIC DEVELOPMENT FUN	<u>1,925,222</u>	<u>1,925,222</u>	<u>25,573.00</u>	<u>580,111.28</u>	<u>352,735.11</u>	<u>1,345,110.72</u>	<u>69.87</u>
TOTAL EXPENDITURES	<u>1,925,222</u>	<u>1,925,222</u>	<u>25,573.00</u>	<u>580,111.28</u>	<u>352,735.11</u>	<u>1,345,110.72</u>	<u>69.87</u>
	=====	=====	=====	=====	=====	=====	=====
REVENUES OVER/(UNDER) EXPENDITURES	0	0	47,334.85	153,127.34	300,104.29	(153,127.34)	0.00

CITY OF MCCOOK
 STATEMENT OF REVENUES - BUDGET VS. ACTUAL
 AS OF: SEPTEMBER 30TH, 2024

50 -PENSION TRUST
 FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
REVENUE SUMMARY							
POLICE OFFICER DISABILIT	<u>23,470</u>	<u>23,470</u>	<u>6.07</u>	<u>20,132.92</u>	<u>18,096.57</u>	<u>3,337.08</u>	<u>14.22</u>
TOTAL REVENUES	<u>23,470</u>	<u>23,470</u>	<u>6.07</u>	<u>20,132.92</u>	<u>18,096.57</u>	<u>3,337.08</u>	<u>14.22</u>
	=====	=====	=====	=====	=====	=====	=====
	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
POLICE OFFICER DISABILIT	<u>23,470</u>	<u>23,470</u>	<u>1,572.83</u>	<u>18,873.96</u>	<u>18,873.96</u>	<u>4,596.04</u>	<u>19.58</u>
TOTAL EXPENDITURES	<u>23,470</u>	<u>23,470</u>	<u>1,572.83</u>	<u>18,873.96</u>	<u>18,873.96</u>	<u>4,596.04</u>	<u>19.58</u>
	=====	=====	=====	=====	=====	=====	=====
REVENUES OVER/(UNDER) EXPENDITURES	0	0	(1,566.76)	1,258.96	(777.39)	(1,258.96)	0.00

CITY OF MCCOOK
STATEMENT OF REVENUES - BUDGET VS. ACTUAL
AS OF: SEPTEMBER 30TH, 2024

60 -AGENCY FUND
FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
REVENUE SUMMARY							
PERPETUAL CARE	147,583	147,583	1,430.00	14,635.00	10,150.00	132,948.00	90.08
SENIOR CENTER CONTRIBUTIO	89,012	89,012	3,096.00	39,081.00	19,077.00	49,931.00	56.09
SCHOOL	8,050	8,050	675.00	7,595.00	7,452.50	455.00	5.65
FIRE CONTRIBUTIONS	10,417	10,417	0.00	660.00	14,484.76	9,757.00	93.66
LIBRARY MEMORIAL	63,082	63,082	0.00	6,931.50	28,125.00	56,150.50	89.01
COMMUNITY BETTERMENT	102,771	102,771	5,687.22	71,993.47	83,274.69	30,777.53	29.95
DARE CONTRIBUTIONS	3,388	3,388	0.00	220.00	2,226.50	3,168.00	93.51
PUBLIC WORKS CONTRIBUTION	7,370	7,370	297.00	4,679.55	1,246.05	2,690.45	36.51
AMBULANCE CONTRIBUTIONS	13,046	13,046	75.00	1,461.00	3,558.00	11,585.00	88.80
COMMUNITY PARAMEDIC PROG	4,316	4,316	0.00	0.00	0.00	4,316.00	100.00
POLICE CONTRIBUTIONS	22,822	22,822	0.00	370.35	19,470.60	22,451.65	98.38
FIRE TRAINING TRAILER	11,348	11,348	0.00	100.00	100.00	11,248.00	99.12
TOTAL REVENUES	483,205	483,205	11,260.22	147,726.87	189,165.10	335,478.13	69.43
EXPENDITURES SUMMARY							
	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
PERPETUAL CARE	147,583	147,583	750.00	5,025.00	50,263.52	142,558.00	96.60
SENIOR CENTER CONTRIBUTIO	89,012	89,012	0.00	2,750.06	4,628.52	86,261.94	96.91
SCHOOL	8,050	8,050	690.00	7,595.00	7,452.50	455.00	5.65
FIRE CONTRIBUTIONS	10,417	10,417	0.00	473.52	19,853.87	9,943.48	95.45
LIBRARY MEMORIAL	63,082	63,082	144.32	12,308.79	20,042.98	50,773.21	80.49
COMMUNITY BETTERMENT	102,771	102,771	4,167.00	71,017.00	99,455.00	31,754.00	30.90
DARE CONTRIBUTIONS	3,388	3,388	411.15	1,734.12	2,013.93	1,653.88	48.82
PUBLIC WORKS CONTRIBUTION	7,370	7,370	3,248.95	6,234.95	870.00	1,135.05	15.40
AMBULANCE CONTRIBUTIONS	13,046	13,046	8,617.10	8,874.84	225.00	4,171.16	31.97
COMMUNITY PARAMEDIC PROG	4,316	4,316	0.00	0.00	0.00	4,316.00	100.00
POLICE CONTRIBUTIONS	22,822	22,822	0.00	0.00	1,106.09	22,822.00	100.00
FIRE TRAINING TRAILER	11,348	11,348	0.00	0.00	251.75	11,348.00	100.00
TOTAL EXPENDITURES	483,205	483,205	18,028.52	116,013.28	203,950.98	367,191.72	75.99
REVENUES OVER/(UNDER) EXPENDITURES	0	0	(6,768.30)	31,713.59	(14,785.88)	(31,713.59)	0.00

CITY OF MCCOOK
 STATEMENT OF REVENUES - BUDGET VS. ACTUAL
 AS OF: SEPTEMBER 30TH, 2024

65 -INTERNAL SERVICE FUND
 FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
<u>REVENUE SUMMARY</u>							
FLEX DEPENDENT CARE	5,851	5,851	0.00	0.00	1,152.00	5,851.00	100.00
FLEX - MEDICAL	66,687	66,687	2,568.88	34,224.86	37,155.56	32,462.14	48.68
SELF INSURED HEALTH INSUR	<u>3,100,211</u>	<u>3,100,211</u>	<u>227,954.05</u>	<u>3,145,915.29</u>	<u>2,883,142.65</u>	<u>(45,704.29)</u>	<u>1.47-</u>
TOTAL REVENUES	<u>3,172,749</u>	<u>3,172,749</u>	<u>230,522.93</u>	<u>3,180,140.15</u>	<u>2,921,450.21</u>	<u>(7,391.15)</u>	<u>0.23-</u>
	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
FLEX DEPENDENT CARE	5,851	5,851	0.00	0.00	2,092.00	5,851.00	100.00
FLEX - MEDICAL	66,687	66,687	6,361.88	38,087.38	41,497.37	28,599.62	42.89
SELF INSURED HEALTH INSUR	<u>3,100,211</u>	<u>3,100,211</u>	<u>171,169.93</u>	<u>2,497,164.57</u>	<u>3,015,634.06</u>	<u>603,046.43</u>	<u>19.45</u>
TOTAL EXPENDITURES	<u>3,172,749</u>	<u>3,172,749</u>	<u>177,531.81</u>	<u>2,535,251.95</u>	<u>3,059,223.43</u>	<u>637,497.05</u>	<u>20.09</u>
REVENUES OVER/(UNDER) EXPENDITURES	0	0	52,991.12	644,888.20	(137,773.22)	(644,888.20)	0.00

CITY OF MCCOOK
STATEMENT OF REVENUES - BUDGET VS. ACTUAL
AS OF: SEPTEMBER 30TH, 2024

70 -ENTERPRISE FUND
FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
<u>REVENUE SUMMARY</u>							
SOLID WASTE-LANDFILL POST	0	0	0.00	0.00	0.00	0.00	0.00
SOLID WASTE - RECYCLING	176,800	176,800	5,814.79	86,840.19	88,433.84	89,959.81	50.88
SOLID WASTE - COLLECTION	1,057,127	1,057,127	78,374.79	942,173.90	910,261.82	114,953.10	10.87
SOLID WASTE - TRANSFER ST LANDFILL RESERVE	1,586,962	1,586,962	114,947.70	1,336,509.78	1,235,616.47	250,452.22	15.78
SOLID WASTE - DISPOSAL	932,954	932,954	10,389.00	124,739.00	109,805.00	808,215.00	86.63
WATER MAINTENANCE & OPERA	600,639	600,639	39,609.51	495,537.22	412,334.84	105,101.78	17.50
WATER BOND & INTEREST RED	4,968,513	4,968,513	330,609.43	2,727,813.87	2,608,682.17	2,240,699.13	45.10
WATER CAPITAL - REPLACEME	1,265,750	1,265,750	37,465.00	448,824.00	405,982.00	816,926.00	64.54
WATER CAPITAL - DEVELOPME	23,396,301	23,396,301	40,483.00	886,945.00	471,550.00	22,509,356.00	96.21
WATER QUALITY SOLUTION	0	0	0.00	0.00	0.00	0.00	0.00
SEWER MAINTENANCE & OPERA	177,888	177,888	883.37	9,856.62	7,444.76	168,031.38	94.46
SEWER BOND & INTEREST RES	3,560,285	3,560,285	166,970.39	1,909,953.51	1,746,319.16	1,650,331.49	46.35
SEWER CAPITAL - REPLACEME	129,138	129,138	555.00	5,996.00	4,572.00	123,142.00	95.36
SEWER CAPITAL - DEVELOPME	16,107,069	16,107,069	41,227.00	493,513.00	491,046.00	15,613,556.00	96.94
COMBINED UTILITIES	1,430	1,430	8.00	102.00	73.00	1,328.00	92.87
ELECTRIC UTILITY	500,846	500,846	0.00	0.00	0.00	500,846.00	100.00
	<u>1,330,000</u>	<u>1,330,000</u>	<u>142,437.50</u>	<u>1,310,381.49</u>	<u>1,341,510.65</u>	<u>19,618.51</u>	<u>1.48</u>
TOTAL REVENUES	<u>55,791,702</u>	<u>55,791,702</u>	<u>1,009,774.48</u>	<u>10,779,185.58</u>	<u>9,833,631.71</u>	<u>45,012,516.42</u>	<u>80.68</u>
	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
SOLID WASTE-LANDFILL POST	14,550	14,550	0.00	8,167.96	8,250.27	6,382.04	43.86
SOLID WASTE - RECYCLING	216,328	216,328	9,281.98	124,932.34	124,740.66	91,395.66	42.25
SOLID WASTE - COLLECTION	1,057,127	1,057,127	70,722.02	922,855.44	893,865.70	134,271.56	12.70
SOLID WASTE - TRANSFER ST LANDFILL RESERVE	1,532,884	1,532,884	101,147.76	1,245,378.43	1,161,465.96	287,505.57	18.76
SOLID WASTE - DISPOSAL	932,954	932,954	0.00	326,636.34	74,465.00	606,317.66	64.99
WATER MAINTENANCE & OPERA	600,639	600,639	39,609.51	495,537.22	412,334.84	105,101.78	17.50
WATER BOND & INTEREST RED	4,968,513	4,968,513	275,381.76	2,732,020.36	2,959,515.88	2,236,492.64	45.01
WATER CAPITAL - REPLACEME	1,265,750	1,265,750	864.00	434,178.20	441,100.85	831,571.80	65.70
WATER CAPITAL - DEVELOPME	23,396,301	23,396,301	467,467.26	1,357,526.88	408,056.58	22,038,774.12	94.20
WATER QUALITY SOLUTION	0	0	0.00	0.00	0.00	0.00	0.00
SEWER MAINTENANCE & OPERA	177,888	177,888	0.00	0.00	0.00	177,888.00	100.00
SEWER BOND & INTEREST RES	3,560,285	3,560,285	149,316.57	2,018,006.73	1,344,051.04	1,542,278.27	43.32
SEWER CAPITAL - REPLACEME	129,138	129,138	0.00	0.00	0.00	129,138.00	100.00
SEWER CAPITAL - DEVELOPME	16,107,069	16,107,069	11,373.00	411,489.88	389,635.60	15,695,579.12	97.45
COMBINED UTILITIES	1,430	1,430	0.00	0.00	0.00	1,430.00	100.00
ELECTRIC UTILITY	500,846	500,846	0.00	0.00	0.00	500,846.00	100.00
	<u>1,330,000</u>	<u>1,330,000</u>	<u>142,437.50</u>	<u>1,310,381.49</u>	<u>1,341,510.65</u>	<u>19,618.51</u>	<u>1.48</u>
TOTAL EXPENDITURES	<u>55,791,702</u>	<u>55,791,702</u>	<u>1,267,601.36</u>	<u>11,387,111.27</u>	<u>9,558,993.03</u>	<u>44,404,590.73</u>	<u>79.59</u>
REVENUES OVER/(UNDER) EXPENDITURES	0	0	(257,826.88)	(607,925.69)	274,638.68	607,925.69	0.00

CITY OF MCCOOK
 STATEMENT OF REVENUES - BUDGET VS. ACTUAL
 AS OF: SEPTEMBER 30TH, 2024

80 -CAPITAL IMPROVEMENTS FUND
 FINANCIAL SUMMARY

% OF YEAR COMPLETED: 100.00

	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY REVENUE	YEAR-TO-DATE REVENUE	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
<u>REVENUE SUMMARY</u>							
2022 RECREATION BOND	1,292,868	1,292,868	96,053.50	1,128,574.98	355,733.63	164,293.02	12.71
CAPITAL IMPROVE 2018	1,319,378	1,319,378	57,276.33	680,950.96	658,984.96	638,427.04	48.39
CAPITAL IMPROVE PRE 2018	<u>425,827</u>	<u>425,827</u>	<u>1,833.00</u>	<u>20,099.00</u>	<u>16,038.00</u>	<u>405,728.00</u>	<u>95.28</u>
TOTAL REVENUES	<u>3,038,073</u>	<u>3,038,073</u>	<u>155,162.83</u>	<u>1,829,624.94</u>	<u>1,030,756.59</u>	<u>1,208,448.06</u>	<u>39.78</u>
	ORIGINAL BUDGET	CURRENT BUDGET	MONTHLY EXPENDITURES	YEAR-TO-DATE EXPENDITURES	PRIOR YEAR YEAR-TO-DATE	BUDGET REMAINING	% BUDGET REMAINING
2022 RECREATION BOND	1,292,868	1,292,868	292,627.00	458,293.66	0.00	834,574.34	64.55
CAPITAL IMPROVE 2018	1,319,378	1,319,378	393,752.20	744,003.04	240,560.64	575,374.96	43.61
CAPITAL IMPROVE PRE 2018	<u>425,827</u>	<u>425,827</u>	<u>0.00</u>	<u>15,877.19</u>	<u>17,579.69</u>	<u>409,949.81</u>	<u>96.27</u>
TOTAL EXPENDITURES	<u>3,038,073</u>	<u>3,038,073</u>	<u>686,379.20</u>	<u>1,218,173.89</u>	<u>258,140.33</u>	<u>1,819,899.11</u>	<u>59.90</u>
REVENUES OVER/(UNDER) EXPENDITURES	0	0	(531,216.37)	611,451.05	772,616.26	(611,451.05)	0.00

**CITY MANAGER'S REPORT
NOVEMBER 18, 2024 CITY COUNCIL MEETING**

ITEM: 2.E. Approve and authorize the mayor to sign a Consent to effectuate the First Amendment to Water Tower Lease Agreement between the City of McCook and Alltel Communications of Nebraska, LLC d/b/a Verizon Wireless for the addition and modification of existing equipment.

BACKGROUND:

Verizon Wireless is requesting written consent to effectuate certain modifications considered in the First Amendment to a Water Tower Lease Agreement approved by the City Council on July 17, 2023. Due to shortages, the equipment modifications were not completed following Council approval. Verizon is now ready to proceed with the modifications. As a reminder, the equipment to be removed includes six Commonslope Wireless Antennas, while the equipment to be added includes six JMA Wireless Antenna and three Ericsson C-Band and CBRS Wireless Antenna pairs and associated accessories.

APPROVALS:



Pat Fawver, Utilities Director

November 12, 2024



Nathan A. Schneider, City Manager

November 12, 2024



Lea Ann Doak, City Clerk

November 12, 2024



Verizon Wireless
The Grinnell Group
1515 Linden Street, Suite 210
Des Moines, IA 50309
Lisa@grinnellgroup.com
913-908-2827

October 3, 2024

VIA FEDERAL EXPRESS

Ms. Lea Ann Doak
City Clerk
City of McCook, NE
505 West "C" Street
McCook, NE 69001

RE: Water Tower Lease Agreement dated February 2, 2018, and First Amendment dated July 17, 2023, (the "Agreement"), by and between the City of McCook, Nebraska ("City") and Alltel Corporation d/b/a Verizon Wireless ("Verizon Wireless"), covering the leased site located at 1010 East 5th Street, McCook, Nebraska (the "Premises") – Verizon Wireless Site Name / Location Code: NE08 Shorty / 283564

Dear Ms. Doak:

My company represents Verizon Wireless in relation to this proposed project. The purpose of this letter is to obtain the City's written consent, pursuant to Section 7 of the Agreement, to certain proposed modifications by Verizon Wireless to its equipment, located on the Water Tank at the Premises, as described herein below. The First Amendment covered the main requirements for these equipment modifications but due to equipment shortages and discontinuances, a design change was required. Verizon Wireless hereby requests the City's consent to the following equipment modifications:

EQUIPMENT TO BE REMOVED:

6 – Commscope Wireless Antennas
Associated hardware and cabling

EQUIPMENT TO BE ADDED:

6 – JMA Wireless Antenna
3 – Ericsson C-Band and CBRS Wireless Antenna pairs
Mount Modifications
Associated hardware and cabling

A structural analysis has been performed based on the proposed equipment modifications and such analysis reflects that the existing structure is adequate to support the existing and proposed equipment loading.

Please indicate the City's consent to the proposed modifications by signing in the space provided below. Then, please return the original hereof to me in the enclosed FedEx envelope.

Thank you for your cooperation in connection with this matter. If you have any questions or concerns regarding this request, please feel free to contact me at Lisa@grinnellgroup.com or 913-908-2827.

Sincerely,



Lisa K. Kelley
Site Acquisition Consultant
The Grinnell Group
Verizon Wireless Agent

City of McCook, Nebraska

By: _____

Name: _____

Title: _____

Date: _____

ORIGIN ID:MYKA (308) 345-2022
MS. LEA ANN DOAK
CITY OF MCCOOK, NE
505 W C ST

SHIP DATE: 12OCT24
ACTWGT:
CAD: 1756831/NET4760

MC COOK, NE 69001
UNITED STATES, US

BILL SENDER

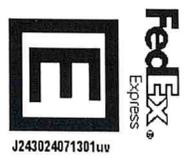
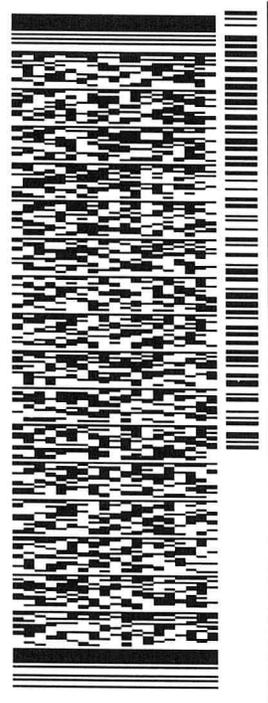
TO JENNI BOWLES

1710 CHERRY ST

DALLAS CENTER IA 50063

REF: NE08 SHORTY

INV: (515) 204-1438
PO: DEPT:



WED - 16 OCT 8:00P

EXPRESS SAVER

TRK# 7789 9408 0951
0201

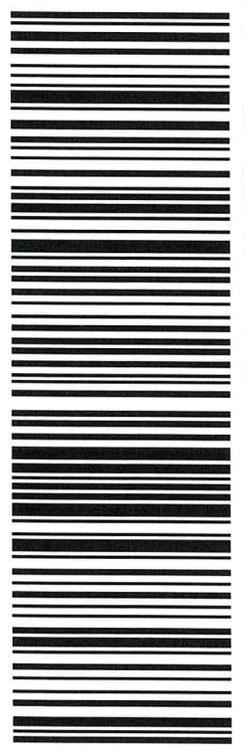
RES

DSMA 50063

SP DESMG

IA-US

DSM



58CJ2/B264/C6C4

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number. Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

**CITY MANAGER'S REPORT
NOVEMBER 18, 2024 CITY COUNCIL MEETING**

ITEM: 2.F.

Approve Change Order No. 2, for the amount of (\$2,516.66), to the contract with Gerih Concrete Construction for the Business Park Phase II Grading & Paving Project and authorize the Mayor to sign.

BACKGROUND:

As noted in the Change Order, increases were made for repair to an unknown irrigation line-\$1,394.50, over ex and crushed concrete-\$2,000.00, and a decrease of \$5,911.16 in final As Built Quantities, for a total deduction of \$2,516.66. The new Contract Sum including this Change Order will be \$585,877.32.

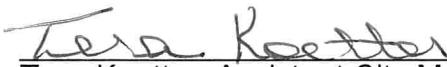
**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

November 13, 2024



Tera Koetter, Assistant City Manager

November 13, 2024



Nathan A. Schneider, City Manager

November 13, 2024

CHANGE
ORDER
WDA DOCUMENT CO1

OWNER
ARCHITECT
CONTRACTOR
OTHER



WDA

W DESIGN ASSOCIATES
Consulting Engineers and Architects
McCook, Nebraska Hastings, Nebraska
(308) 345-2370 (402) 463-2377
Fax: (308) 345-2371 (402) 463-2377

PROJECT: Business Park Phase II Grading & Paving
owner City of McCook
name, address P.O. Box 1059
McCook, NE 69001

CHANGE ORDER NUMBER: 2

DATE: November 4, 2024

TO CONTRACTOR: Gerih Concrete Construction
name, address P.O. Box 817
McCook, NE 69001

ARCHITECT'S PROJECT NO: 804-22

CONTRACT FOR: Grading & Paving

The contract is changed as follows:

No.	ITEM DESCRIPTION	ADD	DEDUCT
1.	Repair unknown irrigation line	\$1,394.50	
2.	Over ex & crushed concrete	\$2,000.00	\$0.00
3.	As Built Final Quantities		(\$5,911.16)
4.		\$0.00	
5.		\$0.00	

SUBTOTAL \$3,394.50 (\$5,911.16)
Profit and Overhead

TOTAL (\$2,516.66)

Not valid until signed by the Owner, Architect and Contractor

	Increased	Decreased	Total
The original Contract Sum was			\$588,393.98
Net change by previously authorized Change Orders		\$0.00	\$0.00
The Contract Sum prior to this Change Order was			\$588,393.98
The Contract Sum will be increased or decreased			
by this Change Order in the amount of	\$3,394.50	(\$5,911.16)	(\$2,516.66)
The new Contract Sum including this Change Order will be			\$585,877.32
The Contract Time will be changed by:		(0)	DAYS
The date of Substantial Completion as of the date of this Change Order therefore is			NA

W Design Associates Gerih Concrete Construction City of McCook
ARCHITECT CONTRACTOR OWNER

P.O. BOX 99 P.O. Box 817 P.O. Box 1059
address address address

McCook, Ne. 69001 McCook, NE 69001 McCook, NE 69001

BY BY BY

DATE DATE DATE

**CITY MANAGER'S REPORT
NOVEMBER 18, 2024 CITY COUNCIL MEETING**

ITEM: 2.G.

Receive and file the claims for the month of October 2024, published November 12, 2024.

BACKGROUND:

Claims are presented to the Council and published each month as outlined in the City Code of Ordinances.

Staff is always available to address any questions that the Council may have regarding a specific claim.

**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

November 13, 2024



Tera Koetter, Assistant City Manager

November 13, 2024



Nathan A. Schneider, City Manager

November 13, 2024

CITY OF MCCOOK
CLAIMS FOR OCTOBER 2024

ABBREVIATIONS FOR LEGALS: PS - PERSONAL SERVICES; S- SUPPLIES; SC - SERVICES & CHARGES; CO - CAPITAL OUTLAY; BT - BUDGET TRANSFERS

20/20 TECHS-SC 5017.12; 7-D LOCKSHOP-S 301.40; ACE-S 1545.07; ACME PRINTING-S 160.00; AKRS-S 42.10; AMERICAN AG LAB-SC 1870.81; AMERICAN ELECTRIC-S 5190.72; AMERITAS-CLAIMS-SC 12529.74; AMERITAS-DENTAL-SC 415.20; APCO INT'L-SC 391.00; ARROW CAR WASH-S 30.14; AT&T-SC 445.96; AURORA COOP-S 9958.26; AUTO-OWNERS INS-SC 7970.00; AXON ENT-S 12595.97; BAIRD HOLM-SC 4612.50; BIG D METALWORKS-S 220.00; BLACK HILLS ENERGY-SC 1360.86; BOMGAARS-S 89.28; BROOKS CONST-CO 475.00; BROWN & BROWN-SC 10000.00; BW TELECOM-SC 144.14; C&K-S 474.60; CAMBRIDGE TELEPHONE-SC 234.12; CAROLINA SOFTWARE-S 200.00; CARQUEST-S 1359.92; CARVER CINEMAS-SC 125.00; CASH WA-S 17181.98; CDW-G-SC 1026.95; CENTRAL NE BOBCAT-S 36.77; CENTURY LINK-SC 901.16; CITY OF MCCOOK-PS 446123.73; CITY SELF INS-BT ; SALES TAX-BT 44260.37; TRANSFER STATION-S 29.88; UTILITIES-SC 15338.44; CIVIC PLUS-SC 11231.84; CLINE WILLIAMS, WRIGHT JOHNSON-SC 1009.00; COMMUNITY HOSPITAL-SC 4504.76; COMPUTER SUPPLIES & SRVS-S 597.21; CONSOLIDATED MGMT-SC 11.35; J CROCKER-SC 138.02; CUMMINS SALES & SRVS-S 818.33; CUSTOM TRUCK ONE SOURCE-SC 55000.00; D&S HARDWARE-SC 58.19, S S 321.86; DAS ACCT-SC 1069.50, S 66.00; DEVENYS-S 345.15, SC 871.00; DIAMOND VOGEL-S 165.00; EAKES-S 451.76; ELLERBROCK-NORRIS-SC 243266.21; FEGLEY FENCING-SC 8607.53; FICA-PS 22617.68; FRENCHMAN VALLEY MUTUAL AID-SC 210.00; FRONTIER COMMUNICATIONS-SC 34.19; GALLS-S 194.89; GARRISONS-S 1226.38, SC 80.00; GOOGLE SVCS-SC 534.00; GRAHAM TIRE-S 21027.72; GREAT PLAINS COMM-SC 3256.35; HANCOCK LUMBER & SUPPLY-S 105.89; HENNING BROS-SC 59.00; HOMETOWN LEASING-SC 6450.00; HORIZON BANK-CO 18075.53; G. HUNTER-S 200.00; IDEAL LINEN-S 45.22; IMAGE TREND-SC 2137.50; INDELCO PLASTICS-S 754.83; ISLAND SPRINKLERS-S 557.58; J BAR J LANDFILL-SC 46951.19; JASPER ENGINEERING & EQ-S 2141.00; JUNIOR LIBRARY GUILD-S 1475.12; K&C GRAIN-S 15357.76; KATHRYN MESNER-SC 5200.00; L. KINNE-S 200.00; KOHLER TRAILER-SC 146.85; LAMP RYNEARSON-CO 6520.00; LEAGUE OF NE MUN-SC 3555.00; LIFE-ASSIST-S 2298.91; LOGAN CONTRACTORS SUPPLY-S 333.74; MACQUEEN EQ-SC 1368.36, S 137.00; MATHESON-LINWELD-S 283.32; MC CHAMBER-SC 3007.50; MC GAZETTE-SC 927.37; MC HUMANE SOCIETY-S 4732.88; MPPD-SC 1335.05; MCNET SC 113.90; MCKESSON MEDICAL-S 743.47; MEAD LUMBER-S 996.09, SC 120.00; MEDICARE-PS 6262.49; MICROMARKETING-S 1097.38; MNB BANK-CO 34253.83; MOTOROLA-S 933.60, CO 21483.00;

MUNICIPAL SUPPLY-S 4381.23; MURPHY TRACTOR & EQ-CO 6849.90; MUTUAL OF OMAHA-SC 1202.54; NE COUNCIL OF SCHOOL ADMIN-SC 115.00; NE DEPT OF REV SALES TAX-SC 12028.54; NE DEPT OF REV/MOTOR FUELS TAX-SC 3120.00; NE DEPT REV LOTTERY TAX-SC 3688.00; NE SAFETY & FIRE EQ-S 452.00; NEBRASKA LAW ENFORCEMENT INTEL-SC 400.00; NEBRASKALAND TIRE-S 145.17; NICK'S DIST-S 1212.59; NEBRASKA MACHINERY-CO 62099.71; NPPD-SC 36547.72; ONE BILLING SOLUTIONS-SC 4805.13; ONE CALL-SC 162.88; PAGE MY CELL-SC 600.00; PAULSEN-S 1422.76; PINPOINT COMM-SC 69.99; PLATTE VALLEY COMM-S 310.00; POAN-SC 260.00; POLYDYNE-S 828.00; PRAIRIE STATES COMMUNICATIONS-SC 135.00; PRS, INC-CO 1625.00; QUADIENT FINANCE-SC 600.18; QUILL CORP-S 1071.41; RWCO CRT-SC 34.00; RWCO CLERK-SC 948.75; D. RINEHART-SC 75.00; ROCHESTER MIDLAND-S 488.80; RR DONNELLEY-S 272.06; RUTT'S HEATING & AC-S 2175.00; SAMWAY FLOOR COVERING-S 2215.00; SEHNERT'S BAKERY-SC 72.90; SELECT TECH-S 136.06; B SIEGFRIED-SC 211.72, S 11.95; SMITH IRRIGATION EQ-S 42.00; SOUTHWEST FARM & AUTO-S 1054.60; STEVEN'S PAINTING-CO 6400.00; TELEFLEX-S 1330.00; TITAN- MACHINERY-S 730.28; TRAVELERS-SC 179010.00; TREE REBATE-S 574.99; TYLER TECH-SC 30963.87; UMR-SC 281495.66; US FOODS-S 748.89; USA BLUE BOOK-S 252.44; UTILITY REFUNDS-294.57; VERIZON-SC 1412.30; VOLZ-S 232.38; WAGNER FORD-CO 45481.00; WALMART-S 904.91, SC 314.36; WESTSIDE WELDING-CO 214.51; WEX BANK-S 28069.17; WPCI-SC 200.00; ZOLL MEDICAL-S 231.60.

-s-Lea Ann Doak, City Clerk

PUBLISH: NOVEMBER 12, 2024

**CITY MANAGER'S REPORT
NOVEMBER 18, 2024 CITY COUNCIL MEETING**

ITEM: 2.H.

Accept the Letter of Conditions with the United States Department of Agriculture (USDA) for the FY24 Wastewater Treatment Plant Improvement Project.

BACKGROUND:

This letter establishes conditions for the City's loan with the USDA and were part of the application process. Staff, along with Miller & Associates, PFM, and Bond Counsel reviewed the letter of conditions and attachments. The Request for Obligation of Funds in the amount of \$7,497,000 was approved by the USDA on June 27, 2024 with an interest rate of 2.125%. The loan will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development (RD).

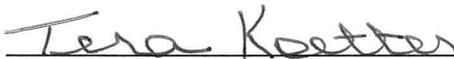
**FISCAL
IMPACT:** None.

APPROVALS:



Lea Ann Doak, City Clerk

November 14, 2024



Tera Koetter, Assistant City Manager

November 14, 2024



Nathan A. Schneider, City Manager

November 14, 2024



June 27, 2024

City of McCook
ATTN: Linda Taylor, Mayor
505 West C Street
McCook NE 69001

via email only: ldoak@cityofmccook.com

SUBJECT: Letter of Conditions
FY24 Wastewater Treatment Plant Improvement Project

Dear Ms. Taylor:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development (RD), 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. This includes any significant changes in the Applicant's financial condition, operation, organizational structure or executive leadership. Any changes made without Agency concurrence shall be cause for discontinuing processing of the application.

This letter does not constitute loan approval, nor does it ensure that funds are or will be available for the project. The funding is being processed on the basis of a loan not to exceed \$7,497,000. The loan will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds" is signed by the Agency approval official and is mailed to you.

The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not want the interest rate changed to the lower rate at loan closing, you should submit a written request to the Agency staff at least 30 calendar days before loan closing.

Rural Development • Lincoln State Office

100 Centennial Mall North, Suite 308 • Lincoln, NE 68508
Voice (402) 437-5551 • Fax (855) 207-0384

USDA is an equal opportunity provider, employer, and lender.

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

The applicant will ensure projects are completed in a timely, efficient, and economical manner. You must meet all conditions set forth under Section III – Requirements Prior to Advertising for Bids within 1 year of this letter.

If you do not meet the conditions of this letter, the Agency reserves the right to withdraw Agency funding.

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 30 days:

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

All parties may access information and regulations referenced in this letter at our website located at: [Water and Environmental Programs | Rural Development \(usda.gov\)](https://www.usda.gov/water-and-environmental-programs/rural-development)

The conditions are as follows:

SECTION I - PROJECT SCOPE

1. Project Description – Funds will be used for completing wastewater treatment plant improvements to alleviate health and sanitary issues. The proposed project consists of the following improvements:

- a. Extension of Collection System
- b. WWTP Improvements
- c. Lift Station Control System Rehabilitation

Any changes in the proposed development will result in the project funds being cancelled unless written approval is obtained from you and the Agency. However, design alternatives should be reviewed to determine if further project cost reductions can be obtained to allow reduction in user fees.

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), prepared by Miller & Associates dated 11/23/23 and any amendments as concurred with by the Agency.

2. Project Funding – The total proposed project development cost is \$14,497,000. The funding for this project will be provided from the following sources:

USDA RD Direct Loan -	\$7,497,000
Northland Securities, Inc. Loan -	\$7,000,000

Prior to advertisement for construction bids, you must provide evidence of applicant contributions and other funding sources. This evidence should include a copy of the other funding sources commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. 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.

The applicant must certify that they have exhausted all other funding avenues and have no pending funding considerations from any other sources. Further, the applicant must certify that they do not intend to apply anywhere else for funding for this project. If, after obligation of Agency funds, other funding becomes available, the Agency reserves the right to deobligate any and all funding for this project and to re-underwrite. This may result in the offering of a different funding package to for this project.

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

<u>Project Costs:</u>	<u>Total Budgeted:</u>
Development-Distribution	\$600,000
Development-Lift Station Controls	60,000
Development- WWTP Improvements	10,870,900
Land & Rights of Way	7,600
Contingencies	1,033,800
Engineering Fees	1,072,550
Resident Project Representation	390,550
Soil Investigation	43,000
Interest - Interim	400,500
Legal Fees	18,100
TOTAL	<u>14,497,000</u>

Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. Obligated loan funds not needed to complete the proposed project will be deobligated. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. An "Amended Letter of Conditions" will be issued for any changes to the total project budget.

4. Project Timeline – To ensure that the project proceeds in a timely manner, key processing milestones have been established in accordance with the PER or other Agency approved documentation. **Projects should be completed and Agency funds fully disbursed within three years of obligation.** By agreeing to the terms herein, you agree to comply with the milestones identified below. If, for any reason, one or more of the milestones cannot be met, you must notify the Agency in writing at least 30

days prior to the referenced date. Should your final completion date become more than three years after obligation the written request will follow the procedures outlined in Section VI of this letter, including the submission of not less than 90 days prior to the benchmark. The correspondence must contain a valid explanation as to why the milestone cannot be met and include a proposed revised project completion schedule. If the Agency agrees to the modification, a written confirmation will be issued. The Agency reserves the right to de-obligate loan funds, or take other appropriate action, if the established or amended deadlines are not met.

<u>Milestone</u>	<u>Date</u>
Enter into Engineering Agreement	7/2024
Require Engineer to submit final copies of Preliminary Design	7/2025
Require Engineer to submit Color Coded Map	9/2025
Require Attorney to submit RD442-21, RD 442-22, and Agreement	9/2025
Require Engineer to submit final copies of Bidding Documents	2/2026
Require Contractor to complete Construction: Construction of projects should begin within a year of obligation and be completed within 3 years for all but the most complicated of projects. Construction should rarely, if ever, take more than 5 years to complete.	10/2027
Request to use Remaining Funds (if any)	11/2027

SECTION II – RATES & TERMS

5. Interest Rates and Loan Terms – 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. The payment due date will be established as the day that the loan closes.

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal annual amortized installments, consisting of both principal and interest, beginning one year after loan closing. For planning purposes, use a 2.125% interest which provides for an annual payment of \$280,163. The precise payment amount will be based on the interest rate at which the loan is closed and may be different than the one above.

You will be required to participate in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Attached is RD Form 3550-28, Authorization Agreement for Preauthorized Payments. This must be completed and submitted to the Agency at the time of loan closing.

6. Security – The loan will be secured by a Combined Utility Revenue bond with a parity lien position with Northland Securities, Inc. The bond will be fully registered as to both principal and interest in the name of the “United States of America, Acting through the Rural Utilities Service, United States Department of Agriculture.” Bond Counsel will be utilized in preparation of these documents. These must be approved by the USDA Office of General Counsel and by Bond Counsel.

The bond instrument and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or associated laws. There must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

If the loan will be on parity with another lender, the bond must specify that, in the event of default, each lender will be affected on a proportionate basis.

Additional security requirements are contained in RUS Bulletin 1780-27, “Loan Resolution (Public Bodies). A draft of all security instruments, including draft bond resolution, must be reviewed and concurred in by the Agency prior to advertising for bids. Bond/loan resolutions must be duly adopted and executed prior to loan closing. The Loan Resolution (RUS Bulletin 1780-27) must be returned with the meeting minutes indicating the voting and the passing of the resolution.

7. Reserves – Reserves must be properly budgeted and set aside to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency repairs, to assist with debt service should the need arise, and for the replacement of assets which have a useful life less than the repayment period of the loan. The following reserves are required to be established as a condition of this loan:

- 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. For planning purposes, 10% of the proposed loan installment would equal \$2,335 per month; this amount should be deposited monthly until a total of \$280,200 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.

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 PER, the initial annual contribution to this account will be \$65,124. The amount of this annual contribution may need to be adjusted on a periodic basis to account for the impacts of inflation. This short-lived asset reserve is to be funded 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. This reserve is intended for the replacement of the following assets:

<u>Item</u>	<u>Useful Life</u>	<u>Annual Reserve Amount</u>	<u>Replacement Cost</u>
Screen	15 Years	\$20,000	\$300,000
Grit Pump	15 Years	\$1,334	\$20,000
Sludge Pump	15 Years	\$2,334	\$35,000
Controls	15 Years	\$6,667	\$100,000
UV System	15 Years	\$5,000	\$75,000
K Park LS	15 Years	\$12,000	\$60,000
W Golf LS	13 Years	\$3,462	\$45,000
B Park LS	13 Years	\$3,077	\$40,000
E Golf LS	8 Years	\$6,250	\$50,000
M LS	5 years	\$5,000	\$25,000

SECTION III – REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

8. Organization – The Bond Counsel transcripts of proceedings must show that your organization is a duly incorporated public body and has continued legal existence. Your organization must have the authority to own, construct, operate, and maintain the proposed facility, as well as for borrowing money, pledging security and raising revenues.

9. Suspension and Debarment Screening – You will be asked to provide information on the principals of your organization. Agency staff must conduct screening for suspension and debarment of the entity, as well as its principals through the Do Not Pay Portal.

Principal –

- i. An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
- ii. A consultant or other person, whether or not employed by the participant or paid with federal funds, who –
 1. Is in a position to handle federal funds;
 2. Is in a position to influence or control the use of those funds; or,
 3. Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction. (2 CFR §180.995)

You as the recipient must maintain the currency of your information in the SAM system until you submit the final financial report required under this award and all grant funds under this award have been disbursed or de-obligated, whichever is later.

This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term. Recipients can register online at <https://www.sam.gov>.

10. Environmental Requirements – The environmental review has been concluded with the following findings:

- a. At the conclusion of the proposal's environmental review process, no specific actions were needed to avoid or minimize adverse environmental impacts. Proper permitting will accomplish environmental protection.

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.

11. 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. This agreement must be executed between the applicant and the engineer and approved by the Agency prior to advertising for bids and the Agency must approve any modifications to this agreement.

12. Contract Documents, Final Plans, and Specifications- All development will be completed by contract in accordance with applicable provisions of RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Constructing and Inspections, (copy available upon request), and in compliance with all statutory requirements. You are responsible to share this with your engineer before pre-design.

- a. The plans and specifications and all proposals required by law must be approved by Nebraska Department of Environment and Energy
- b. In preparing final design and providing service to the planned project area, you and your engineer will comply with all zoning and planning requirements of the appropriate governing bodies where service is to be provided.
- c. The Agency will need to concur in the plans and specifications prior to advertising for bids. The Agency may require an updated cost estimate if a

significant amount of time has elapsed between the original project cost estimate and advertising for bids.

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

Construction contracts and performance and payment bonds furnished by the contractor or contractors will be forwarded to your attorney for legal examination and certification that they have been properly executed pursuant to RUS Instruction 1780, Subpart C. These contracts and all change orders must be approved by the Agency.

The owner's attorney will certify that the executed contract documents, including performance and payment bonds on contracts over \$100,000 are adequate and that the persons executing these documents have been properly authorized to do so in accordance with RUS Instruction 1780.61(b).

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

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

Owners are ultimately responsible for compliance with AIS requirements and will be responsible for the following:

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

Federal regulations for equal opportunity in employment (construction) and "Non-Discrimination by Recipients of RD Financial Assistance," in accordance with Title VI of Civil Rights Act of 1964 must be complied with. USDA Rural Development concurrence must be obtained prior to the award of contracts. All borrowers are subject to, and facilities must be operated in accordance with the Act and subpart E of part 1901 as of this title, particularly as it relates to conducting and reporting compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by paragraph 1901.202(e) of this title.

The Agency requires a pre-construction conference, pre-final, final, and warranty inspection.

13. Build America, Buy America (BABAA) Requirements- Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- a. all iron and steel permanently installed in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. all manufactured products permanently installed in the project are produced in the United States—this means the manufactured product was manufactured in

the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

- c. all construction materials permanently installed are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The BABAA requirement applies to the entirety of an infrastructure project even if only a portion of the project is funded by Federal funds.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Waivers

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:

- a. applying the domestic content procurement preference would be inconsistent with the public interest;
- b. the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- c. the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to

public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

Definitions

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Owners are ultimately responsible for compliance with the evidence standards as outlined in the Build America Buy America (BABAA) appendix to this Letter. Owners are required to maintain records as specified in their loan or grant agreement, but in all cases, they should maintain records for a minimum of three years after the final expenditure report. Minimum records include certifications from manufacturers, the architect/engineer, and the prime contractor. Supporting documentation includes purchasing records and notes and photos taken by the Resident Project Representative (RPR). Further guidance regarding certifications will be provided by the Agency.

14. Legal Services –A legal services agreement is required with your attorney and bond counsel, if applicable, for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a “not to exceed” amount for the services, including reimbursable expenses. RUS Bulletin 1780-7, “Legal Services Agreement,” or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled

out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

15. Property Docket - Prior to advertising for construction 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 evidence of control over the lands and rights must be in the following form:

- a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof. The map should be color-coded, with a legend and certification by the engineer and City on the map. The map should show that rights-of-way are continuous with no gaps. A certification and legal opinion relative to title to rights-of-way and easements is required. Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”, and Form RD 442-21, “Right-of-Way Certificate” may be used. These forms may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, new forms must be provided which do not provide for any exceptions. The color-coded map, along with all necessary rights-of-way instruments, including at a minimum the forms listed below, will be assembled into a property docket folder.
- b. **Form RD 442-20, “Right-of-Way Easement”** – This form, or similar format, may be used to obtain any necessary easements for the proposed project.
- c. **Form RD 442-21, “Right-of-Way Certificate”** – You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
- d. **Form RD 442-22, “Opinion of Counsel Relative to Rights-of-Way”** – Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.
- e. **Title Work**– A good and marketable title must be obtained for any property that is to be acquired as part of the project. You will need to secure an Owners’ Title Insurance policy on this real estate. The policy should be in an amount equal to the market value of the property as improved.

For property that is already owned by the City and will be impacted by the project a copy of the filed deed will need to be provided.

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

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

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

- a. **Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place up-to-date written standards of conduct covering conflict of interest. The standards of conduct must include disciplinary actions in the event of a violation by officers, employees, or agents of the borrower. The standards identified herein apply to any parent, affiliate or subsidiary organization of the borrower that is not a state or local government, or Indian Tribe. Policies and accompanying documents shall be furnished to Rural Development upon request.

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.

A Conflict-of-Interest Policy shall be implemented as required by Nebraska Revised Statute 49-14,102.

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

- b. **Contracts for Other Services/Lease Agreement** – Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.
- c. **Parity/Intercreditor Agreement** – Projects with parity liens must have in place a written agreement between the parity lenders. The draft agreement must receive Agency concurrence prior to advertising for bids.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements above 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’s Office of General Counsel will prepare closing instructions upon the completion of their review of the Property Docket and draft security instruments. Both your bond and legal counsel must comply with these instructions when closing the Agency loan.

A preliminary Opinion of Bond Counsel must be provided by the applicant’s bond counsel concurrent with loan closing.

A complete set of the bond transcripts and Final Opinion of Bond Counsel will need to be provided after the loan has been closed.

USDA Rural Development will not authorize advertising for bids or concur in the award of contracts until the property docket and proposed bond ordinance(s) has/have been received and it has been determined that requirements noted in the closing instructions and other applicable requirements can be met.

18. System Users – All potential users with access to the utility in the service area will be required to participate and/or use the facility. All connections will be metered and billed as utility customers. This letter of conditions is based upon your indication at application that there will be at least 2846 residential users and 427 non-residential users on the existing system when construction is completed. The City does not provide any services to wholesale users or any user that would be considered large single volume users.

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 will be required to include a **mandatory connection requirement** in your Rules and Regulation Ordinance for those users located within your jurisdictional boundaries. The City must provide evidence of this requirement in the ordinance prior to advertisement for construction bids. *(This provision would normally not apply to rural users served outside of the corporate limits of a community)*

19. Construction Account – A separate construction account, subject to USDA Rural Development audit, will be established for deposit of all project funds. The recipient must be able to separately identify, report and account for all Federal funds, including the receipt, obligation and expenditure of funds, in accordance with 2 CFR 200.305. These funds must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. **If the balances at the financial institution where federal funds will be deposited exceeds the FDIC insurance coverage, the excess amount must be collaterally secured up to 100 percent of the highest amount of funds expected to be deposited in the account at any one time, per the Department of Treasury regulations and requirements.**

20. Interim Financing – The Agency's policy is to utilize interim financing for all loans exceeding \$500,000. Prepayment penalties on interim financing are not allowed. Borrowers are required to seek interim financing initially from private or cooperative lenders if funds can be borrowed at reasonable interest rates on an interim basis from those sources for the construction period. The fact that a commercial lender's rates are higher than current Agency interest rates does not necessarily mean that the commercial rate is not reasonable.

You should, accordingly, seek the advice of Bond Counsel in meeting statutory requirements. The Agency must concur with the method of interim financing prior to making final arrangements for the financing.

21. 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, as well as your proposed rate schedule, which supports the proposed loan repayment. 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. The rate analysis will be required to show the number of users, their average consumption based on a twelve-month consecutive average, and the rates charged to each user classification. User rates will need to generate sufficient revenues to cover all costs of operating the system including any debt service and reserves for short lived depreciation. It is expected that O&M expenses will change over each successive year and user rates will need to be adjusted on a regular basis.

Implementation of User Rate Schedule:

This schedule should address the following elements –

1. Classification of customers served (i.e. residential, commercial, and industrial)
2. Frequency of billing
3. Charges or schedule of charges each classification of customer will be assessed

The schedule of charges generally should include a base charge to cover a majority of the fixed costs and a consumptive use charge tied to the variable costs of the system. The base charge should not include any allotment of water.

The new rate structure shall be implemented within 120 days from the date of this letter. The new rates can be either fully implemented within this time period or gradually implemented between the time period spanning 120 days from the date of this letter to the date of the completion of this project. If the rate schedule is implemented on a graduated basis, the initial rates will need to be implemented within 120 days of the date of this letter with the final rate structure enacted upon project completion or the closing of the permanent loan assistance from this Agency, whichever occurs first. The Agency will need to approve of all proposed rate schedules before they are adopted by the borrower.

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 either Nebraska Rural Water Association or the Midwest Assistance Program staff, or our office for information.

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

23. Risk and Resilience Assessment/Emergency Response Plan (RRA/ERP) –The Agency requires all financed water and wastewater systems to have a RRA/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 an RRA is complete must be submitted within one year of the start of operation. Borrowers with existing systems must provide a certification that an RRA/ERP has been completed prior to advertising for bids. Technical assistance is available in preparing these documents at no cost to you.

Before funds are drawn, you should have in place a cybersecurity plan, a supply chain plan, and a plan to comply with cybersecurity requirements of the National Institute of Science and Technology and the Cybersecurity and Infrastructure Security Administration. These items should be addressed in the RRA/ERP.

The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. 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 five years at a minimum.

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

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

25. Disbursement of Agency Funds - Agency funds will be disbursed electronically into the construction account as they are needed. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to commencement of construction or no later than 15 business days before closing, whichever occurs first.

The order of disbursement is as follows: 1) Applicant contribution, 2) other funding sources, and 3) interim financing or Agency loan funds. 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 the first disbursement.

The Agency's concurrence will be obtained prior to the payment of any bills or vouchers for authorized project expenses. The Form RD 402-2, "Statement of Deposits & Withdrawals" will be used by both the applicant and the Agency to monitor the use of all project funds.

Funds remaining after all costs incident to the basic project have been paid or provided will be handled as follows:

- a. The applicant contribution shall be considered the first funds expended.
- b. Funds remaining after the applicant contribution may be considered in direct proportion to the amounts of funding obtained from each source.
- c. The Agency loan funds not needed will be applied as an extra payment on the Agency indebtedness or will be cancelled (deobligated).

To facilitate the timely conclusion of this project, the recipient agrees that within 60 days of substantial completion, a plan for the use of any remaining funds will be presented to the Agency for concurrence. The Agency will concur in all or part of the presented plan according to Agency instructions. Any remaining funds will be expended within 120 days of the Agency's concurrence. All funds remaining after this plan is completed will be handled according to RD Instruction 1780, Section 1780.45(f).

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

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

27. Suspension and Debarment Screening – In accordance with 2 CFR Part 180, Subpart C, as a condition of the transaction and the responsibilities to persons at the next lower tier with whom you enter into transactions, you must conduct screening for suspension and debarment of lower tier recipients (e.g., vendors, contractors, etc.).

28. Contract Review – Your attorney will certify that the executed contract documents, including performance and payment bonds, if required, are adequate and that the persons executing these documents have been properly authorized to do so in accordance with 7 CFR 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for concurrence. Construction cannot commence until the Agency has concurred in the construction contracts.

29. Final Rights of Way – For fee simple title property or rights-of-way that were not fully acquired or contained exceptions that needed to be resolved, the City will need to provide a Final Title Insurance Policy, easements, licenses, permits, and updated Rights-of-Way Certifications as applicable.

If any of the Right-of-Way Certifications 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.

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 bond coverage is maintained.

- a. **General Liability Insurance** – Include vehicular coverage. Amounts based on the advice of your engineer, attorney, or insurance consultant.
- b. **Workers' Compensation** – Coverage on all employees connected with the operation of the facility in accordance with Nebraska State law.
- c. **Guaranty or Fidelity Insurance** – Coverage for all persons who have access to funds (receipt and/or disbursement), 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 employees. Each position is to be insured in an amount equal to the maximum amount of funds expected to be under the control of that position at any one time. The minimum coverage allowed will be an amount equal to the total annual debt service payment on the Agency loans. The coverage may be increased during construction based on the anticipated monthly advances.

For projects utilizing interim financing, insurance coverage will need to be adjusted to account for the total amount of funds being disbursed at any one time under this loan. Interim loans that require the advancement of all proceeds at the time of closing will require the insurance amount to be increased to the total amount of the interim loan, plus the maximum amount of other City funds that would be under the control of that position.

- d. **National Flood Insurance** - If the project involves acquisition or construction in a designated special flood area, the community in which the acquisition or construction is situated must be currently participating in the national flood insurance program. Additionally, if the project involves acquisition or construction in designated special flood or mudslide prone areas, a flood insurance policy must be in place 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. Coverage should be in the amount equal to the depreciated or replacement value.

The Agency is to be listed as "Other Insured" so as to receive notifications on all insurance, regardless of security. Insurance types described above are required to be

continued throughout the life of the loan and the actual coverage maintained should be adjusted higher if necessary to protect the Agency's and your interest. See Section VII.

31. Initial Civil Rights Compliance Review – The Agency will conduct an initial civil rights compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E. You are expected to comply with the completion of the review, including the furnishing of any documents, records, or other applicable material.

SECTION V – REQUIREMENTS PRIOR TO CLOSING

32. Interim Financing. Interim financing is being used. Generally, loan closing will occur near the end of construction when interim funds are fully 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.

33. Electronic Payments – Payments will be made 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.

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

- a. **System for Award Management.** You will be required to maintain a Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Renewal can be completed online at: <http://sam.gov>. This registration must be renewed and revalidated every 12 months for as long as there is an active loan, grant, or guaranteed loan with the Agency.

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

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

available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

35. Construction Completion Timeframe – Following the benchmarks established in Section I, Item 4, Project Timeline, all projects should be completed and Agency funds fully disbursed within three years of the date of obligation. If funds are not disbursed within three years of obligation and you have not already done so per Section I, Item 4, you must submit a written request for extension of time to the Agency with adequate justification of the circumstances, including any beyond your control. The request must be submitted at least 90 days prior to the end of the three-year timeframe and include a revised estimated date of completion. The Agency will typically only allow one extension. Subsequent requests for waivers beyond the initial extension or requests that exceed five years from the initial date of obligation will be submitted to the RUS, Water and Environmental Programs for consideration. The Agency retains the right to de-obligate any loan monies, or take other appropriate action, related to unliquidated funds that exceed the timeframes above and are not under an active extension.

36. Resident Inspector(s) – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must provide written concurrence. 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 preconstruction conference.

37. 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.

38. Inspections - The Agency requires a preconstruction conference, pre-final, final, and warranty inspections. 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 outstanding 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.

39. Change Orders – A Change Order must be submitted for all modifications to the approved scope of work, including existing contracts. This includes non-physical modifications such as any time extension requests. Prior written Agency concurrence is required for all Change Orders.

40. Payments – Prior Agency concurrence is required for all invoices and requests for payment 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.

41. Use of Remaining Funds – As stated above, applicant contribution and connection or tap fees will be the first funds expended in the project. Funds remaining after all costs incident to the basic project have been paid or provided will be handled as follows:

- a. Funds remaining after the applicant contribution and connection fees may be considered in direct proportion to the amounts of funding obtained from each source. The use of Agency funding will be limited to eligible loan 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. Under no circumstances is it appropriate to use remaining funds as contributions to a new project outside the scope of the funded project.
- c. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

42. Technical, Managerial and Financial Capacity - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the 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 additional information.

43. Reporting Requirements Related to Expenditure of Funds - An annual audit under 2 CFR 200 is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of your fiscal year end. Both the audit and accompanying management report must be submitted for review.

If an audit is required, you must enter into a written agreement with the auditor and submit a copy of that agreement to the Agency prior to the advertisement of construction 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.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

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

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

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

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, a current rate schedule, and listing of board members with their terms. Financial statements must be prepared on an accrual basis of accounting in accordance with generally accepted accounting principles (GAAP). The annual report will include separate reporting for each water and waste disposal facility, and itemized cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available, at no cost, with preparing financial reports.

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

- a. **Audits** – An 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.

See Section VI for additional information regarding audits.

- 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.

- 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, "Statement of Budget, Income and Equity," or similar format to provide this information. 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 quarterly reports are no longer required.

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. The budget must be signed by the appropriate borrower official. Form RD 442-2, "Statement of Budget, Income and Equity," or similar format may be used. With the submission of the annual budget, you will be required to provide a current rate schedule, a current listing of the Board or Counsel Members, and their terms.

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.

47. 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 can 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.

48. 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.

49. System for Award Management. You will be required to maintain a Unique Entity ID (UEI) and maintain an active registration in the System for Award Management (SAM) database. Further information can be found at paragraph 33 of this letter.

50. Risk and Resiliency Assessment/Emergency Response Plan (RRA/ERP) – The RRA/ERP is further outlined under Section III of this letter. You will be required to submit a certification to the servicing office every five years that the RRA/ERP is current and covers all sites related to the facility. The RRA/ERP documents themselves are not submitted to the Agency. The RRA/ERP must address potential impacts from natural disasters and other emergency events. It should include plans to address impacts of

flash flooding in areas where severe drought or wildfires occur. Technical assistance is available in preparing these documents at no cost to you.

51. Insurance. – Insurance requirements are further outlined in Section IV of this letter. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

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

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications. Title II of the Act applies to facilities operated by State and local public entities which provides services, programs, and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities which accommodate the public.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful

access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, "Improving Access to Services by Persons with Limited English Proficiency" and further affirmed in the USDA Departmental Regulation 4330-005, "Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA."

- f. **Controlled Substances Act** - Even though state law may allow some activities, as a recipient of Federal funding, you are subject to the Controlled Substances Act. Specific questions about the Controlled Substances Act should be directed to the Servicing Official who will contact the Office of General Counsel, as appropriate.

53. Compliance Reviews and Data Collection – 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.

The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter.

If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

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

We look forward to working with you to complete this project. If you have any questions, please contact Sara Pierce at 308-221-3689 or by e-mail at sara.pierce@usda.gov.

Sincerely,

KELLEY

MESSENGER

KELLEY MESSENGER

Digitally signed by KELLEY
MESSENGER
Date: 2024.06.27 15:45:19 -05'00'

Community Programs Director

Attachments

cc: Nate Mustion, City Attorney
via email; njmustion@mbgslaw.com

Michael Rogers, Bond Counsel
via email; mrogers@gilmorebell.com

Chris Miller, Engineer
via email; cmiller@millers-engineers.com

David Blau, Engineer
via email; dblau@millers-engineers.com

Brad Slaughter, Northland Securities
via email; bslaughter@fnni.com

City of McCook
via email;
Lea Ann Doak, City Clerk/Treasurer ldoak@cityofmccook.com
Nate Schneider, City Manager nschneider@cityofmccook.com
Tara Koetter, Assistant City Manager tkoetter@cityofmccook.com
Pat Fawver, Utilities Director pfawver@cityofmccook.com

Sara Pierce, USDA Rural Development, North Platte Office
via email; sara.pierce@usda.gov

Ken Shaw, USDA Rural Development, Nebraska State Office
via email; ken.shaw@usda.gov

FORMS and BULLETINS:

Please return the following attachments within 30 days:
Form RD 1940-1, "Request for Obligation of Funds" – Pages 1 and 2
Form RD 1942-46, "Letter of Intent to Meet Conditions" – Page 2

The following will be sent separately for reference, no action is needed at this time:
RUS Bulletin 1780-7, "Legal Services Agreement" – Item 14
RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)" – Item 6
Form RD 3550-28, "Authorization Agreement for Preauthorized Payments" – Items 32
and 33
SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form" – Item 25

RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance" – Items 11 and 12

RUS Staff Instruction 1780-4

RUS Instruction 1780 – Items 12, 25, and 28

RUS Staff Instruction 1780-4 -Item 43

Acceptable Collateral for 31 CFR Part 202

The following forms will be provided to you as needed when applicable:

Form RD 442-20, "Right-of-Way Easement" – Item 15

Form RD 442-21, "Right-of-Way Certificate" – Item 15

Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way" – Item 15

Form RD 1927-9, "Preliminary Title Opinion" – Item 15

Form RD 1927-10, "Final Title Opinion" – Item 29

CPD/KM/sp/ks

Appendix A
(INSTRUCTIONS TO FIELD)

A. Reporting Total Compensation of Recipient Executives

In the rare instance in which all of the following apply, please contact your POB Specialist for language to include in the LOC:

1. The total Federal funding authorized to date under this award is \$30,000 or more;
2. In the preceding fiscal year, the applicant received—
 - (A) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

B. Subaward and Subrecipients

In the rare instance in which there is a subrecipient in the project, please contact your POB Specialist for language to include in the LOC:

Subrecipient means an entity that:

- i. Receives a subaward from the recipient under this award; and
- ii. Is accountable to the recipient for the use of the Federal funds provided by the subaward.
 - a. Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

Appendix B

Build America, Buy America Evidence Standards

Manufacturers

For each item to which BABAA applies (every item permanently installed on the project, except for aggregate and aggregate binding materials), a manufacturer's certification letter or other document demonstrating compliance is required. It must, at a minimum, identify the item being certified (short written description as well as part number, if applicable) and affirm that the item complies with BABAA. This document must be signed by an authorized company representative.

Architects and Engineers

Compliance with BABAA will be spelled out in agreements for services, construction contracts, and procurement contracts. Generally, the A/E contract should include, as a basic service, obtaining and maintaining all BABAA documentation (particularly manufacturers' certifications) during construction, which shall be transferred to the Owner upon completion of the project. The architect or engineer will need to certify to this action at the project's end.

Resident Project Representative / Resident Inspector

As part of their duties, Resident Project Representative/Resident Inspector should be instructed to verify items delivered to the site and installed are accompanied by documentation of compliance with BABAA. They should photograph items as appropriate. RPR/RI daily logs and photographs will become part of the construction record and can be used as supporting information during audits, providing evidence for items that are buried or otherwise inaccessible.

Contractors

Construction contract(s) must include a requirement to procure and install only items that comply with BABAA or are subject to an approved waiver. Contractors must provide manufacturers' certifications for all BABAA compliant items to the responsible party before a request for reimbursement to the Agency is made. At completion, the contractor will be required to certify that all items used on the contract complied with BABAA and that all manufacturers' certifications were provided.

ATTACHMENTS

AUTHORIZATION AGREEMENT FOR PREAUTHORIZED PAYMENTS

**U.S. Department of Agriculture
Rural Development**

PAPERWORK REDUCTION ACT AND PRIVACY ACT STATEMENT

The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). The information requested on the form is required under various provisions of title 15 U.S.C. 1601, 12 CFR 205 and 31 CFR 202, for the purpose of providing authority to the Department of Treasury to designate financial institutions to collect payments, by electronic means, from your account. The information will be used for identification with the records of the government agency and the financial institution to direct your payments to the point you authorize. No deduction may be made unless a signed authorization form is received. Failure to furnish this information may delay or prevent the collection of these payments through the Automated Clearing House System.

INDIVIDUAL/COMPANY INFORMATION

INDIVIDUAL/ORGANIZATION NAME : (PLEASE PRINT)

City of McCook

STREET ADDRESS:

505 W C Street

BORROWER TELEPHONE NO.

308-345-2022

CITY/STATE:

McCook, NE

ZIP CODE:

69101

BORROWER CASE NUMBER:

32-073-476006273

PROJ #: (AMAS)

FC/LN:

92/03

LOAN TYPE:

1

PAYMENT INTERVAL:

annual

START DATE:

PAYMENT AMOUNT:

\$280,163

SERVICING OFFICE CODE:

32-703

SERVICING OFFICE TELEPHONE NO:

308-221-3689

SERVICING OFFICE CONTACT:

Sara Pierce

I hereby authorize the initiation of a deduction from my account and the financial institution named below to debit such account. I understand I will be notified if the debit amount needs to be adjusted, either to be increased or decreased. I also understand that I have the right to stop automatic payment by notifying my financial institution in writing three days prior to the time my account is charged.

SIGNATURE: _____

DATE: _____

FINANCIAL INSTITUTION INFORMATION

FINANCIAL INSTITUTION NAME:

STREET ADDRESS:

CITY/STATE:

ZIP CODE:

NINE-DIGIT ROUTING TRANSIT NUMBER:

ACCOUNT TITLE:

ACCOUNT NUMBER:

CHECKING

SAVINGS

BANK REPRESENTATIVE SIGNATURE AND TITLE:

AREA CODE:

BANK TELEPHONE #:

DATE:

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 0575-0184. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

REQUEST FOR OBLIGATION OF FUNDS

INSTRUCTIONS-TYPE IN CAPITALIZED ELITE TYPE IN SPACES MARKED () Complete Items 1 through 29 and applicable Items 30 through 34. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 32-073-*****6273		LOAN NUMBER 01	FISCAL YEAR 2024
2. BORROWER NAME City of McCook		3. NUMBER NAME FIELDS 1 (1, 2, or 3 from Item 2)	
		4. STATE NAME Nebraska	
		5. COUNTY NAME Red Willow	
GENERAL BORROWER/LOAN INFORMATION			
6. RACE/ETHNIC CLASSIFICATION 1 - WHITE 2 - BLACK 3 - AI/AN 4 - HISPANIC 5 - A/PI	7. TYPE OF APPLICANT 1 - INDIVIDUAL 2 - PARTNERSHIP 3 - CORPORATION 4 - PUBLIC BODY 5 - ASSOC. OF FARMERS 6 - ORG. OF FARMERS 7 - NONPROFIT-SECULAR 8 - NONPROFIT-FAITH BASED 9 - INDIAN TRIBE 10 - PUBLIC COLLEGE/UNIVERSITY 11 - OTHER		8. COLLATERAL CODE 1 - REAL ESTATE SECURED 2 - REAL ESTATE AND CHATTEL 3 - NOTE ONLY OR CHATTEL ONLY 4 - MACHINERY ONLY 5 - LIVESTOCK ONLY 6 - CROPS ONLY 7 - SECURED BY BONDS 8 - RLF ACCT
9. EMPLOYEE RELATIONSHIP CODE 1 - EMPLOYEE 2 - MEMBER OF FAMILY 3 - CLOSE RELATIVE 4 - ASSOC.	10. SEX CODE 1 - MALE 2 - FEMALE 3 - FAMILY UNIT 4 - ORGAN, MALE OWNED 5 - ORGAN FEMALE OWNED 6 - PUBLIC BODY	11. MARITAL STATUS 1 - MARRIED 2 - SEPARATED 3 - UNMARRIED (INCLUDES WIDOWED/DIVORCED)	12. VETERAN CODE 1 - YES 2 - NO
13. CREDIT REPORT 1 - YES 2 - NO	14. DIRECT PAYMENT 3 (See FMI)	15. TYPE OF PAYMENT 1 - MONTHLY 2 - ANNUALLY 3 - SEMI-ANNUALLY 4 - QUARTERLY	16. FEE INSPECTION 1 - YES 2 - NO
17. COMMUNITY SIZE 1 - 10 000 OR LESS (FOR SFH AND HPG ONLY) 2 - OVER 10,000		18. USE OF FUNDS CODE (See FMI)	
COMPLETE FOR OBLIGATION OF FUNDS			
19. TYPE OF ASSISTANCE 062 (See FMI)	20. PURPOSE CODE 4	21. SOURCE OF FUNDS	22. TYPE OF ACTION 1 - OBLIGATION ONLY 2 - OBLIGATION/CHECK REQUEST 3 - CORRECTION OF OBLIGATION
23. TYPE OF SUBMISSION 1 - INITIAL 2 - SUBSEQUENT	24. AMOUNT OF LOAN 7,497,000.0		25. AMOUNT OF GRANT
26. AMOUNT OF IMMEDIATE ADVANCE	27. DATE OF APPROVAL MO DAY YR 06/27/2024	28. INTEREST RATE 2.125 %	29. REPAYMENT TERMS 40
COMPLETE FOR COMMUNITY PROGRAM AND CERTAIN MULTIPLE-FAMILY HOUSING LOANS			
30. PROFIT TYPE 3 - LIMITED PROFIT 1 - FULL PROFIT 3 - NONPROFIT			
COMPLETE FOR EM LOANS ONLY		COMPLETE FOR CREDIT SALE-ASSUMPTION	
31. DISASTER DESIGNATION NUMBER (See FMI)	32. TYPE OF SALE 1 - CREDIT SALE ONLY 2 - ASSUMPTION ONLY 3 - CREDIT SALE WITH SUBSEQUENT LOAN 4 - ASSUMPTION WITH SUBSEQUENT LOAN		
FINANCE OFFICE USE ONLY		COMPLETE FOR FP LOANS ONLY	
33. OBLIGATION DATE MO DA YR		34. BEGINNING FARMER/RANCHER (See FMI)	

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

Position 2

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

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0570-0062. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

CERTIFICATION APPROVAL

For All Farmers Programs

EM, OL, FO, and SW Loans

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

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

35. COMMENTS AND REQUIREMENTS OF CERTIFYING OFFICIAL
Approval of financial assistance is subject to the Loan Closing Instructions being met as furnished by the State Office and the Regional Attorney, and the terms of the Letter of Conditions dated _____.

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

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

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

Date June 25, 20 24

Linda Taylor, Mayor (Signature of Applicant)

Date _____, 20 _____

(Signature of Co-Applicant)

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

KELLEY MESSSENGER Digitally signed by KELLEY MESSSENGER Date: 2024.06.27 15:50:05 -05'00'

Typed or Printed Name: Kelley Messenger

Date Approved: 06/27/2024

Title: Community Programs Director

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

REQUEST FOR OBLIGATION OF FUNDS

INSTRUCTIONS-TYPE IN CAPITALIZED ELITE TYPE IN SPACES MARKED () Complete Items 1 through 29 and applicable Items 30 through 34. See FMI.			
1. CASE NUMBER ST CO BORROWER ID 32-073-*****6273		LOAN NUMBER	FISCAL YEAR
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		5. COUNTY NAME Red Willow	
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6. RACE/ETHNIC CLASSIFICATION 1 - WHITE 2 - BLACK 3 - AI/AN 4 - HISPANIC 5 - API	7. TYPE OF APPLICANT 1 - INDIVIDUAL 2 - PARTNERSHIP 3 - CORPORATION 4 - PUBLIC BODY 5 - ASSOC. OF FARMERS 6 - ORG. OF FARMERS 7 - NONPROFIT-SECULAR 8 - NONPROFIT-FAITH BASED 9 - INDIAN TRIBE 10 - PUBLIC COLLEGE/UNIVERSITY 11 - OTHER	8. COLLATERAL CODE 1 - REAL ESTATE SECURED 2 - REAL ESTATE AND CHATTEL 3 - NOTE ONLY OR CHATTEL ONLY 4 - MACHINERY ONLY 5 - LIVESTOCK ONLY 6 - CROPS ONLY 7 - SECURED BY BONDS 8 - RLF ACCT	9. EMPLOYEE RELATIONSHIP CODE 1 - EMPLOYEE 2 - MEMBER OF FAMILY 3 - CLOSE RELATIVE 4 - ASSOC.
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14. DIRECT PAYMENT 3 (See FMI)	15. TYPE OF PAYMENT 2 1 - MONTHLY 2 - ANNUALLY 3 - SEMI-ANNUALLY 4 - QUARTERLY	16. FEE INSPECTION 2 1 - YES 2 - NO	
17. COMMUNITY SIZE 1 - 10,000 OR LESS (FOR SFH AND HPG ONLY) 2 - OVER 10,000	18. USE OF FUNDS CODE (See FMI)		
COMPLETE FOR OBLIGATION OF FUNDS			
19. TYPE OF ASSISTANCE 062 (See FMI)	20. PURPOSE CODE 4	21. SOURCE OF FUNDS	22. TYPE OF ACTION 1 - OBLIGATION ONLY 2 - OBLIGATION/CHECK REQUEST 3 - CORRECTION OF OBLIGATION
23. TYPE OF SUBMISSION 1 1 - INITIAL 2 - SUBSEQUENT	24. AMOUNT OF LOAN 7,497,000.0	25. AMOUNT OF GRANT	
26. AMOUNT OF IMMEDIATE ADVANCE	27. DATE OF APPROVAL MO DAY YR	28. INTEREST RATE 2.125 %	29. REPAYMENT TERMS 40
COMPLETE FOR COMMUNITY PROGRAM AND CERTAIN MULTIPLE-FAMILY HOUSING LOANS			
30. PROFIT TYPE 3 1 - FULL PROFIT 2 - LIMITED PROFIT 3 - NONPROFIT			
COMPLETE FOR EM LOANS ONLY		COMPLETE FOR CREDIT SALE-ASSUMPTION	
31. DISASTER DESIGNATION NUMBER (See FMI)	32. TYPE OF SALE 1 - CREDIT SALE ONLY 2 - ASSUMPTION ONLY 3 - CREDIT SALE WITH SUBSEQUENT LOAN 4 - ASSUMPTION WITH SUBSEQUENT LOAN		
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If the decision contained above in this form results in denial, reduction or cancellation of USDA assistance, you may appeal this decision and have a hearing or you may request a review in lieu of a hearing. Please use the form we have included for this purpose.

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Date June 25, 20 24

Linda Taylor, Mayor

(Signature of Applicant)

Date _____, 20 _____

(Signature of Co-Applicant)

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

(Signature of Approving Official)

Typed or Printed Name: Kelley Messenger

Date Approved: _____

Title: Community Programs Director

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

LETTER OF INTENT TO MEET CONDITIONS

Date 6/25/2024

TO: United States Department of Agriculture

Rural Development

(Name of USDA Agency)

1202 S. Cottonwood, Suite 3
North Platte, NE 69101

(USDA Agency Office Address)

We have reviewed and understand the conditions set forth in your letter dated _____. It is our intent to meet all of them not later than loan closing.

City of McCook

(Name of Association)

BY Linda Taylor

Linda Taylor, Mayor

(Title)

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a persons 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 0575-0015 and 0570-0062. 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.

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Utilities Service
RUS BULLETIN 1780-26
Document ID: Rural Development-GD-2023-001

SUBJECT: Guidance for the Use of Engineers Joint Contract Documents Committee (EJCDC) Bidding and Contract Documents on Water and Waste Disposal Projects with Rural Utilities Service Financial Assistance

TO: Rural Development State Directors, Rural Utilities Service Program Directors, and State Engineers

EFFECTIVE DATE: Date of approval

OFFICE OF PRIMARY INTEREST: Engineering Policy Branch, Water and Environmental Programs (WEP), under the Rural Utilities Service (RUS), a part of Rural Development (RD), an Agency within the United States Department of Agriculture (USDA)

INSTRUCTIONS: This Bulletin replaces RUS Bulletin 1780-26, Document ID: Rural Development-GD-2020-000# dated June 16, 2020 and removes references to American Iron and Steel (AIS) and adds the Build America, Buy America requirements.

AVAILABILITY: This Bulletin, as well as any instructions, regulations, or forms referenced in this Bulletin are available at USDA State Offices. The State Office staff is familiar with the use of the documents in their states and can answer specific questions on Agency requirements.

This Bulletin is available on the website: <https://www.rd.usda.gov/publications/regulations-guidelines/bulletins/water-and-environmental>.

PURPOSE: This Bulletin is to be used by RD staff in providing information and guidance to funding applicants/recipients (Owners) and professional consultants in the development of Bidding and Contract Documents that are legally sufficient, ensure appropriate services are provided at a reasonable fee, and expedite the achievement of the applicant's goals. This Bulletin supports compliance with 7 CFR 1780, 2 CFR 200 and the Build America, Buy America Act requirements under Title IX of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, §§ 70901-70953.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

STEVEN
POLACEK

Digitally signed by
STEVEN POLACEK
Date: 2023.05.24
10:31:39 -04'00'

STEVEN POLACEK
Acting Assistant Administrator
Water and Environmental Programs

Date

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EXHIBITS

Exhibit A – GENERAL DOCUMENTS

Attachment 1	Certificate of Owner’s Attorney and Agency Concurrence
Attachment 2	<i>De Minimis</i> List Format
Attachment 3	General (Prime) Contractor’s Certification of Compliance
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Exhibit B – CONSTRUCTION CONTRACT DOCUMENTS (EJCDC C-SERIES)

Attachment 1	Contract Document Checklist
Attachment 2	Engineer’s Development of Advertisement for Bids
Attachment 3	Engineer’s Development of Instructions to Bidders
Attachment 4	Engineer’s Development of Bid Form
Attachment 5	Engineer’s Development of Agreement Between Owner and Contractor
Attachment 6	Engineer’s Development of Supplementary Conditions

Exhibit C – ENGINEERING CONTRACT DOCUMENTS (EJCDC E-SERIES)

Attachment 1	Revisions to EJCDC E-500
Attachment 2	Engineer Agreement Certification

Exhibit D – PROCUREMENT CONTRACT DOCUMENTS (EJCDC P-SERIES)

[Reserved]

Exhibit E – SHORT FORM CONTRACT DOCUMENTS

[Reserved]

Exhibit F – DESIGN-BUILD CONTRACT DOCUMENTS (EJCDC D-SERIES)

[Reserved]

Exhibit G – CONSTRUCTION MANAGER AT RISK CONTRACT DOCUMENTS (EJCDC CMAR-SERIES)

[Reserved]

INDEX

EJCDC
Contract Documents
Water and Environmental Programs

ABBREVIATIONS

AIS – American Iron and Steel
BABAA – Build America, Buy America Act
CFR – Code of Federal Regulations
EJCDC – Engineers Joint Contract Documents Committee
EO – Executive Order
GC – General Conditions of the Construction Contract
IIJA – Infrastructure Investment and Jobs Act
ITB - Instructions to Bidders for Construction Contract
OGC – Office of General Counsel
PL – Public Law
RD – Rural Development
RPR – Resident Project Representative
RUS – Rural Utilities Service
SC – Supplementary Conditions of the Construction Contract
USC – United States Code
USDA – United States Department of Agriculture
WEP – Water and Environmental Programs
WWD – Water and Waste Disposal

DEFINITIONS

Defined terms from EJCDC documents are capitalized in this Bulletin

1 GENERAL

- a Approved documents. The Engineers Joint Contract Documents Committee (EJCDC) developed Contract Documents, some of which are approved by Rural Utilities Service (RUS) for procurement of equipment and/or services by loan and grant recipients, subject to the modifications indicated in this Bulletin being incorporated in these documents. Approved documents are listed in the appropriate sections that follow.
- b Alternative documents. Owners not wishing to use these EJCDC documents may submit the alternative contract document(s) and a written justification of the need for its (their) use. Such documents must be modified to meet all federal and state requirements and must be approved for each project by the RD State Engineer (State Engineer) and reviewed by the United States Department of Agriculture (USDA) Office of General Counsel (OGC). When modified as described in this Bulletin, the EJCDC documents listed above have been determined to meet such requirements and do not require OGC approval.
- c Phase-out of previous editions. Only current EJCDC documents should be used for Water and Waste Disposal (WWD) projects. The most recent previous version of EJCDC documents will continue to be accepted for one year after issuance of the corresponding chapter of this Bulletin. This Bulletin does not retroactively change the status of a document already approved.

2 AVAILABILITY

The EJCDC documents are available online from any of the sponsoring organizations: the National Society of Professional Engineers (www.nspe.org); American Council of Engineering Companies (www.acec.org); and American Society of Civil Engineers (www.asce.org); or directly from EJCDC (www.ejcdc.org). EJCDC documents are proprietary and include a license agreement. State Offices will not distribute EJCDC documents for use as Contract Documents. For training purposes, or to illustrate the appropriate use of the integrated set of documents on RUS financially assisted Water and Waste Disposal (WWD) projects, the State Office may provide water-marked pdf copies of the documents.

3 PURPOSE

The EJCDC has developed Contract Documents that when assembled as described in this Bulletin are acceptable for use on WWD projects funded by RUS. This Bulletin includes a table of all the acceptable documents and instruction for modification and review of these documents. This Bulletin is not intended to make the use of EJCDC documents mandatory. Rather, this Bulletin serves to assist Owners and professional consultants who choose to use EJCDC documents in tailoring certain EJCDC bidding and contract documents for use with WWD projects financed by RUS.

4 HOW TO USE THE BULLETIN

- a Assembly of documents. This Bulletin explains the use of EJCDC standard contract documents, and modifications to make them acceptable for use on WWD projects. In addition to these modifications, EJCDC guidance notes must be followed and should be

deleted once the documents are completed.

- b Revising text. This Bulletin may be used in one of three ways:
 - (1) The Engineer makes all the edits to the purchased EJCDC documents when these documents will be used for RUS funded WWD projects. Changes to EJCDC standard language, whether the changes are as per this Bulletin or by the Owner and its Engineer, are made using bold type additions and single-line strike-out deletions, showing all revisions.
 - (2) Exhibits are inserted in the Bidding and Contract Documents at the appropriate location.
 - (3) The Engineer requests from EJCDC free, editable copies of the certain documents with WEP-required edits already included, upon proof of purchase of EJCDC documents.
- c Guidance notes. Guidance notes in blue boxes in the EJCDC documents shall be implemented as deemed appropriate by Owner and Engineer and deleted prior to finalization of the documents.

5 OWNER RESPONSIBILITY

- a Verify bulletin is current. Before an Owner or their Engineer proceeds with the development of a set of Bidding Documents, they should contact the State Engineer to verify they have the most current information specific to the type of project and state or other jurisdiction where the project is located.
- b Contractual and administrative issues. The Owner is responsible for settling all contractual and administrative issues arising out of procurement as a condition of receiving funding assistance from RUS. These include but are not limited to: source evaluation; protests; disputes; and claims. Matters concerning violations of laws are to be referred to the applicable local, state, or federal authority.
- c Modifications. It is WEP policy that when Owners choose to use the EJCDC documents they do so with minimal modification. However, WEP recognizes each project is unique and that modifications may be necessary to satisfy project requirements or state statutes. If changes must be made to the standard documents and/or the modifications in the attached exhibits to address project-specific issues, they must be made via bold type additions and single-line strike-out deletions showing all revisions. Because the EJCDC documents are fully integrated, when making a modification in one document Owners must ensure that appropriate modifications are made in all affected documents.

6 DESIGN-BID-BUILD CONSTRUCTION CONTRACT DOCUMENTS (EJCDC C-SERIES)

- a Use of EJCDC C-series for WWD projects. The Engineers Joint Contract Documents Committee (EJCDC) developed its Construction Contract Documents (C-series), 2018 edition, for use in traditional design-bid-build projects. This Bulletin consists of exhibits and attachments with modifications that, when combined with the standard

EJCDC documents and appropriate Drawings, Specifications and other documents, create a complete set of acceptable Construction Contract Documents for use on WWD projects. Contract packages must be assembled in accordance with the following notes, requirements of Exhibit A, Attachments 2-6, and Exhibit B, Attachments 2-6, and the table later in this Bulletin. EJCDC provides guidance for use of various clauses throughout the documents; those guidance notes must be followed and should be deleted once the documents are completed.

- b Approved documents. The following EJCDC 2018 edition C-series documents are approved by WEP for procurement of construction services by loan and grant recipients, subject to the modifications indicated in this Bulletin being incorporated in these documents. The documents are listed in the order of their use:
- (1) ADVERTISEMENT FOR BIDS FOR CONSTRUCTION CONTRACT, EJCDC C-111
 - (2) INSTRUCTIONS TO BIDDERS FOR CONSTRUCTION CONTRACT, EJCDC C-200
 - (3) BID FORM FOR CONSTRUCTION CONTRACT, EJCDC C-410
 - (4) BID BOND (PENAL SUM FORM), EJCDC C-430
 - (5) QUALIFICATIONS STATEMENT, EJCDC C-451
 - (6) NOTICE OF AWARD, EJCDC C-510
 - (7) AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE), EJCDC C-520
 - (8) PERFORMANCE BOND, EJCDC C-610
 - (9) PAYMENT BOND, EJCDC C-615
 - (10) STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT, EJCDC NO. C-700
 - (11) SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT, EJCDC C-800
 - (12) NOTICE TO PROCEED, EJCDC C-550
 - (13) APPLICATION FOR PAYMENT, EJCDC C-620
 - (14) WORK CHANGE DIRECTIVE, EJCDC C-940
 - (15) CHANGE ORDER, EJCDC C-941
 - (16) FIELD ORDER, EJCDC C-942

(17) CERTIFICATE OF SUBSTANTIAL COMPLETION, EJCDC C-625

(18) NOTICE OF ACCEPTABILITY OF WORK, EJCDC C-626

- c Previous editions. The current (2018) EJCDC C-series documents should be used for WWD projects. This Bulletin does not retroactively change the status of a document already approved.
- d General Conditions. The EJCDC General Conditions (C-700) should not be modified. Changes to C-700 should only be made via the Supplementary Conditions.
- e EJCDC suggested language. The Instructions to Bidders and Supplementary Conditions must be developed by the Engineer based on EJCDC guidance documents and the instructions and exhibits below. The State Engineer must verify that the instructions and exhibits below were followed prior to any advertisement for bids.
- f EJCDC standard language. The Bid Form and the Agreement Between Owner and Contractor are standard documents from EJCDC but must be modified before use on a RUS funded project. The State Engineer must verify that the instructions and exhibits below were followed prior to advertisement for bidding.
- g Project signs. It is customary that project signs identifying the Owner, Contractor, Engineer, and funding agencies be displayed during project construction. The Engineer should contact the State Engineer for specific requirements and include the sign standard in the contract package.
- h Number of copies of Bidding Documents. One copy of the draft Bidding Documents (defined in EJCDC C-700 Article 1.01), which include but are not limited to those listed in the checklist in Exhibit B, Attachment 1 of this Bulletin, must be submitted to the State Engineer for review and acceptance prior to advertisement for bid. One copy of the as-bid Bidding Documents is to be provided to the State Engineer within five days of the advertisement to bid, and one copy must be provided to the RD Area Specialist prior to issuance of the Notice to Proceed. Addenda shall be submitted to the State Engineer for review and acceptance prior to issuance, with a copy provided to the State Engineer and Area Specialist after issuance. Consult with the State Engineer and Area Specialist for the preferred method of submission (electronic vs. paper).
- i State Engineer Acceptance/Approval/Concurrence Prior to Bid, Award and Construction. All Contract Documents must be accepted by the State Engineer prior to advertisement for bids. The State Engineer must concur with the recommendation to award, and the executed Contract Documents must be concurred with by the State Engineer prior to construction. The Certificate of Owner's Attorney and Agency Concurrence document (Exhibit A, Attachment 1) must be used for this purpose.
- j Assembly of Bidding and Contract Documents. Refer to the checklist in Exhibit B, Attachment 1. Acceptable edits to the EJCDC documents C-111, C-200, C-410, C-520, and C-800, are found in Exhibit B, Attachments 2-5.

7 ENGINEERING CONTRACT DOCUMENTS (EJCDC E-SERIES)

- a Use of EJCDC E-series for WWD projects. The Engineers Joint Contract Documents Committee (EJCDC) developed its Engineering Family Documents (E-series), 2014 edition, for use in traditional design-bid-build projects. This Bulletin consists of an exhibit and attachments with acceptable modifications that, when combined with the standard EJCDC document, create a complete and acceptable Agreement Between Owner & Engineer for Professional Services (Engineer Agreement) for use on WWD projects. The Engineer Agreement must be assembled in accordance with the following notes and requirements of Exhibit C, Attachments 1 and 2. EJCDC provides guidance for use of various clauses throughout the documents; those guidance notes must be followed and should be deleted once the documents are completed.
- b Approved documents. The following EJCDC 2014 edition E-series document is approved by WEP for procurement of engineering services by loan and grant recipients, subject to the modifications indicated in this Bulletin being incorporated in these documents:
 - (1) AGREEMENT BETWEEN OWNER & ENGINEER FOR PROFESSIONAL SERVICES, EJCDC E-500
- c Previous editions. The 2014 EJCDC E-series documents should be used for WWD projects.
- d EJCDC standard language. The Engineer Agreement is a standard document from EJCDC but must be modified before use on each WEP funded project. The State Engineer must verify that the instructions and exhibits below were followed prior to acceptance by the Owner and Engineer.
- e Process. Instructions to modify EJCDC E-500 (2014) prior to use on RUS funded WWD projects are as follows:
 - (1) Engineer must attach the list of “Revisions to the EJCDC E-500 (2014)” (Exhibit C Attachment 1 of this Bulletin) to the Agreement as an addendum or make the specific changes listed using bold-type additions and single-line strike-out deletions.
 - (2) Project-specific requirements may be added to Exhibit J of E-500 (2014).
 - (3) Owner and Engineer must select a payment method from Exhibit C of E-500 (2014) (see below).
 - (4) Owner and Engineer must sign the Agreement on page 19 of EJCDC E-500 and include, complete and sign the RUS Certification Page (Exhibit C Attachment 2 of this Bulletin).
 - (5) Agency must review to ensure changes were made as necessary or revisions were attached and that the certification is attached, completed, and acceptable.
 - (6) Agency completes and signs the RUS Certification page.
- f Seismic acknowledgments. For each applicable structure, borrowers and grant recipients must provide RUS a written acknowledgment from a registered architect or engineer responsible for the design stating that seismic provisions pursuant to 7 CFR 1792 will be used in the design of the structure.

- (1) If Drawings and Specifications are required to be submitted to RUS, this acknowledgement shall be on the title page of the Drawings included with the final Drawings and Specifications. This acknowledgement will include the identification and date of the model code or standard that is used in the seismic design of the structure. The Drawings and Specifications must be dated, signed, and sealed by a registered architect or engineer.
- (2) For projects in which Drawings and Specifications are not submitted, this acknowledgement shall be in the form of a statement from the architect or engineer responsible for the building design. The statement shall identify the model code or standard identified that is used in the seismic design of the building or buildings and shall be dated and signed.

g Payment for Services. The standard Exhibit C of E-500 (2014), "Payments to Engineer for Services and Reimbursable Expenses", should be used along with the E-500 (2014) Engineer Agreement, but only the following Compensation Packets are allowed for use with RUS funded projects (other Compensation Packets should not be used):

- (1) Allowed for Basic Services:
Lump Sum (Compensation Packet BC-1)
Standard Hourly Rates (Compensation Packet BC-2)
- (2) Allowed for RPR Services:
Lump Sum (Compensation Packet RPR-1)
Standard Hourly Rates (Compensation Packet RPR-2)
- (3) Allowed for Additional Services:
Standard Hourly Rates (Compensation Packet AS-1)

h Insurance. E-500 (2014) Exhibit G "Insurance" amounts should be established by the Owner based on advice from the Owner's attorney or a risk manager hired by the Owner.

i Limits of Liability. E-500 (2014) Exhibit I, "Limitations of Liability", is permissible to be used on RUS funded projects.

j Number of copies of Engineer Agreement. One copy of the draft Engineer Agreement will be submitted to the State Engineer for review and preliminary concurrence prior to signing by the Owner and Engineer. Four copies of the signed Engineer Agreement are to be provided to the State Engineer for formal concurrence; one copy each will be sent to the Owner, Engineer, and RD Area Specialist. Amendments shall be submitted to the State Engineer for review and preliminary concurrence prior to signing, with four executed copies provided to the State Engineer for formal concurrence; one copy will be sent to the Owner, Engineer, and RD Area Specialist after the State Engineer concurs. Consult with the State Engineer and Area Specialist for the preferred method of submission (electronic vs. paper).

k State Engineer Concurrence. The executed Engineer Agreement will be concurred with by the State Engineer prior to Agency concurrence in any payment of RUS funding for engineering services.

- 1 Assembly of Engineer Agreement. Refer to RUS' acceptable edits to EJCDC E-500 (2014), which are found in Exhibit C, Attachments 1 and 2.

Exhibit A – GENERAL DOCUMENTS

Notes to User: This Attachment contains exhibits applicable to most WWD projects.

CERTIFICATE OF OWNER'S ATTORNEY AND AGENCY CONCURRENCE

Notes to User: This exhibit consists of two certificates, on a single page, to be attached to the Contract and signed upon execution. The first is a certificate to be signed by the Owner's attorney and the second is the concurrence to be signed by the State Engineer. This page is to be inserted after the Agreement between Owner and Contractor for Construction Contract (Stipulated Price) (EJCDC C-520, 2018) in the Construction Contract Documents.

CERTIFICATE OF OWNER'S ATTORNEY

PROJECT NAME:

CONTRACTOR NAME AND CONTRACT NUMBER:

I, the undersigned, _____, the duly authorized and acting legal representative of _____, do hereby certify as follows: I have examined the attached Contract(s) and performance and payment bond(s) and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements is adequate and has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with the terms, conditions, and provisions thereof.

Name

Date

AGENCY CONCURRENCE

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency Representative

Date

Name

DOMESTIC PREFERENCE *DE MINIMIS* LIST FORMAT

Notes to User: This exhibit is an example format for Contractors to use in maintaining a list of items to document the use of the De Minimis waiver of the Domestic Preference requirements. This list or similar is required to be filled out throughout the construction Contract as needed. The State Engineer may periodically ask to review this information. At the Contract completion, this list, along with all Manufacturers' certifications, are to be given to the Engineer for delivery to the Owner. This list is applicable for projects governed by BABAA. USDA-RD State Office can provide guidance if AIS applies to the project instead.

DE MINIMIS COSTING WORKSHEET

Project Name:	_____
Contract Name/# (if more than one)	_____
Contractor (Company Name):	_____
Representative:	_____
Date:	_____
Total Project Costs :	\$ _____
Allowable Total <i>De Minimis</i> Costs (5% of project costs)	\$ _____
Total Cost of all <i>De Minimis</i> Items	\$ _____
Remaining Amount Allowed for Future <i>De Minimis</i> Items	\$ _____

No.	Detailed Description and Manufacturer or Local Source of <i>De Minimis</i> Material	Quantity	Cost Per Item	Total Item Cost
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				

SAMPLE LANGUAGE FOR CONTRACTOR'S
CERTIFICATION OF COMPLIANCE

Notes to User: This exhibit provides sample language that the Contractor can use to certify compliance with the Build America Buy America Act requirements. Note that the language can be modified (for example if the project is subject to AIS the BABAA reference should be replaced with language such as "American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and subsequent annual appropriations for WWD programs"). A certification is to be provided by Contractor to Engineer for delivery to the Owner and Agency at Substantial Completion. The certification should be on letterhead and should be signed and dated by an authorized company representative.

Project Name
Owner / Applicant
Contract Number

I hereby certify, that to the best of my knowledge and belief, all Iron and Steel products, Manufactured Products, and Construction Materials installed for this project by my company and by any and all subcontractors and Manufacturers my company has contracted with for this project comply with the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953 or are the subject of a waiver approved by the Secretary of Agriculture or designee.

SAMPLE LANGUAGE FOR MANUFACTURER'S CERTIFICATION OF COMPLIANCE

Notes to User: This exhibit provides sample language for the Manufacturer's Certification of Compliance with Domestic Preference requirements. Contractor should ensure that Engineer has an approved Manufacturers' Certification prior to any domestic preference item being delivered to the project site. The Manufacturer's Certification should be on letterhead and should indicate the project, specific item being certified, reference which domestic preference requirement is being certified and be signed by an authorized company representative. The Manufacturer's Certification may include multiple domestic preference requirements. It is important for the governing domestic preference requirement (whether AIS, BABAA or other) to be clearly included within the certification.

Date:

Company Name:

Company Address:

Subject: Domestic Preference Requirement Certification for {*Owner's Name and Project Name (City, State)*} Certification for Project (X), Owner's Name, and Contract Number
Sample text:

I hereby certify that the following product(s) and / or material(s) shipped or provided for the subject project are in full compliance with the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

[List common name of items, products and/or materials]

ENGINEER'S CERTIFICATIONS

Notes to User: This exhibit provides sample language for the statements needed for the Engineer of Record's certification; it should be submitted with the bid package to the Agency for concurrence for authorization to bid by Agency. This certification is not intended to be a warranty in any way but rather the designer's professional opinion that to the best of their knowledge the documents comply. This certification does not need to be included in the contract documents. Note that the language can be modified (for example if the project is subject to AIS, the BABAA reference should be replaced with language such as "American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and subsequent annual appropriations for WWD programs.").

The final Drawings and Specifications, construction Contract Documents, Bidding Documents, procurement documents, and any other final design phase deliverables, comply with all applicable federal requirements including the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953, or are the subject of a waiver approved by the Secretary of Agriculture or designee. This includes the following:

- The Engineers Joint Contract Documents Committee (EJCDC) documents have been used, and all acceptable revisions identified in this Bulletin have been made in accordance with the terms of the license agreement, which states in part that the Engineer "will plainly show all changes to the standard EJCDC text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).
- Any building(s) designed for this Project will comply with the requirements of the Architectural Barriers Act (ABA) of 1968, the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, and any federal, state, or local accessibility standards.
- Any building(s) designed for this Project will comply with the Seismic Safety of Federally Assisted New Building Construction requirements of 7 CFR 1792, and any federal, state, or local standards.
- All referenced Products and Construction Materials in the Drawings, Specifications, and Bidding Documents for the Project comply with BABAA.
- All referenced Products and Construction Materials to be referenced in the Addenda, executed Contracts, and Change Orders will comply with BABAA.

Engineer Signature
Engineer Name and Title

Date
Engineering Company Name

Exhibit B - CONSTRUCTION CONTRACT DOCUMENTS (EJCDC C-SERIES)

Notes to User: This Attachment contains exhibits applicable to WWD projects when using EJCDC Construction Contract Documents (C-series).

CONTRACT DOCUMENT CHECKLIST

Notes to User: This exhibit provides a checklist for Owner and Engineer to use to assemble the Bidding Documents for a RUS-funded project. Questions should be directed to the State Engineer.

Contents	Form
Table of Contents	Prepared by Engineer
Advertisement for Bids for Construction Contract	EJCDC C-111 as modified by RUS Bulletin 1780-26 Exhibit B, Attachment 2
Instructions for Bidders for Construction Contract	EJCDC C-200 as modified by RUS Bulletin 1780-26 Exhibit B, Attachment 3
Bid Form for Construction Contract	EJCDC C-410 as modified by RUS Bulletin 1780-26 Exhibit B, Attachment 4
Bid Bond (Penal Sum Form)	EJCDC C-430
Qualifications Statement	EJCDC C-451
Compliance Statement	Form RD 400-6
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions	Form AD-1048
Certification for Contracts, Grants & Loans	RD Instruction 1940-Q Exhibit A-1
Notice of Award	EJCDC C-510 Note: Owner will obtain concurrence of State Engineer prior to issuing award.
Agreement between Owner and Contractor for Construction Contract (Stipulated Price)	EJCDC C-520 as modified by RUS Bulletin 1780-26 Exhibit B, Attachment 5
Performance Bond	EJCDC C-610. Note: the bond will be at least 100% of the bid amount.
Payment Bond	EJCDC C-615. Note: the bond will be at least 100% of the bid amount.
Certificate of Owner's Attorney / Agency Concurrence	RUS Bulletin 1780-26 Exhibit A, Attachment 1
Standard General Conditions of the Construction Contract	EJCDC C-700. Note: modifications to C-700 should be made in C-800, Supplementary Conditions.
Supplementary General Conditions of the Construction Contract	EJCDC C-800 as modified by RUS Bulletin 1780-26 Exhibit B, Attachment 6
Special Conditions	May be added if desired by Engineer
State Wage Rates	State Wage Rates if required by State Law.
Federal Wage Rates	Davis Bacon Wage Rates. Note: only required if other funding source requires
Davis Bacon 29 CFR 5.5	Rural Development version. Note: only required if Federal Wage Rates have been included
Notice to Proceed	EJCDC C-550
Project Sign (Temporary Construction Sign)	Consult State Engineer for current requirements.
Application for Payment	EJCDC C-620
Work Change Directive	EJCDC C-940
Change Order	EJCDC C-941
Field Order	EJCDC C-942
Sample Language for Contractor's Certification of Compliance	RUS Bulletin 1780-26 Exhibit A, Attachment 3
Sample Language for Manufacturer's Certification of Compliance	RUS Bulletin 1780-26 Exhibit A, Attachment 4
Certificate of Substantial Completion	EJCDC C-625
Notice of Acceptability of Work	EJCDC C-626
Drawings and Specifications	Engineer Submittal

NOTES: 1. EJCDC documents are available from EJCDC, the National Society of Professional Engineers, the American Council of Engineering Companies, or the American Society of Civil Engineers. RD offices cannot distribute EJCDC documents.
2. For questions and copies of RD documents please contact State Engineer.

ENGINEER'S DEVELOPMENT OF ADVERTISEMENT FOR BIDS

Notes to User: This exhibit contains language for Engineer to add to the Advertisement for Bids for Construction Contract (EJCDC C-111, 2018) for compliance with Domestic Preference requirements. The Engineer may either make the changes directly in the Advertisement for Bids or insert this exhibit directly behind the Advertisement for Bids. If the project is subject to AIS instead of BABAA replace the BABAA reference with "This project is subject to the American Iron and Steel (AIS) requirements instituted by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and subsequent annual appropriations for WWD programs." and delete references to manufactured products and construction materials. Contact the Rural Development State Office for guidance as needed.

- Add at the end of EJCDC C-111 prior to "This Advertisement is issued by:"

Domestic Preference

This project is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States.

The following waivers apply to this Contract:

BABAA De Minimis, Small Grants, and Minor Components

[add project specific waivers as applicable; If AIS applies instead of BABAA delete the BABAA waiver reference and insert references to the AIS De Minimis and AIS Minor Component waivers].

ENGINEER'S DEVELOPMENT OF INSTRUCTIONS TO BIDDERS

Notes to User: This exhibit contains a list of changes to be made by Engineer to the Instructions to Bidders for Construction Contract (EJCDC C-200, 2018). The Engineer will develop the Instructions to Bidders using EJCDC C-200 (2018) and the instructions provided below. In addition, Engineer will ensure that any applicable state or federal wage rate requirements are added at Article 24. RD does not require the use of Davis Bacon Wage rates in most cases, but other sources of federal funds may. If other funding sources involved in the project require the use of Davis Bacon Wage rates, RD's version of Davis Bacon 29 CFR 5.5 will be added to these construction Contract Documents, as listed in the checklist in Exhibit A. The Engineer may either make the changes below directly to the Instructions to Bidders or insert this exhibit directly behind the Instructions to Bidders. If AIS applies instead of BABAA remove reference to BABAA in 1.01.B and 23.03 and replace it with "American Iron and Steel (AIS) requirements instituted by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 and of 2017 and subsequent annual appropriations for WWD programs." Contact the Rural Development State Office for guidance as needed.

- Article 1.01.B - Add the following:
 - 1.01.B "Domestic Preference – The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.
- Article 3.02 – Delete in its entirety and insert "Deleted".
- Article 8.01 – Add to the end of the paragraph "Bid security must be at least 5% of the Bidder's maximum Bid price."
- Article 9.02 – Delete in its entirety and insert "Deleted".
- Article 10.01 – Delete in its entirety and insert "Deleted".
- Article 10.02 – Insert after the sentence that starts "Each such request...": "Each such request shall include the Manufacturers' Certification for Compliance with Domestic Preference requirements. Refer to the suggested Manufacturer's Certification provided in these construction Contract Documents."
- Article 10.02 – Add to the end of this paragraph: "Substitutes and "or-equal" materials and equipment may be proposed by Contractor in accordance with Paragraphs 7.05 and 7.06 of the General Conditions after the Effective Date of the Contract. Each such request shall include Manufacturer's Certification letter to document compliance with Domestic Preference requirements. Refer to Manufacturer's Certification Letter provided in these Contract Documents."
- Article 11.01 – Delete in its entirety and insert "Deleted".
- Article 11.05 – Add the following:
 - 11.05 – The Contractor shall not award work to Subcontractor(s) in excess of the limits stated in SC 7.07A.

- Article 13.04 – Delete in its entirety and insert “Deleted”.
- Article 13.07 – Delete in its entirety and insert “Deleted”.
- Article 18.05.E – Delete in its entirety and insert “Deleted”.
- Article 18.05.F – Delete in its entirety and insert “Deleted”.
- Add the following, renumbering if Articles 21 and/or 22 are not used:

ARTICLE 23 – FEDERAL REQUIREMENTS

- 23.01 If the contract price is in excess of \$100,000, provisions of the Contract Work Hours and Safety Standards Act at 29 CFR 5.5(b) apply.
- 23.02 Federal requirements at Article 19 of the Supplementary Conditions apply to this Contract.

ENGINEER'S DEVELOPMENT OF BID FORM

Notes to User: This exhibit contains a list of changes to be made by Engineer to the Bid Form for Construction Contract (EJCDC C-410, 2018). The Engineer may either make the changes directly to the Bid Form or insert this exhibit directly behind the Bid Form.

- Article 2.01 Delete the “and” at the end of 2.01.F

Delete the existing text for 2.01.G and add the following text and the referenced attachments to the Bidding Documents:

- G. If Bid amount exceeds \$10,000, signed Compliance Statement (RD 400-6). Refer to specific equal opportunity requirements set forth in the Supplementary Conditions of the Construction Contract (EJCDC C-800);
- H. If Bid amount exceeds \$25,000, signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (AD-1048);
- I. If Bid amount exceeds \$100,000, signed RD Instruction 1940-Q Exhibit A-1, Certification for Contracts, Grants, and Loans.”
- J. [List other documents and edit above as pertinent].

- Article 4 – Delete in its entirety and insert “Deleted”.
- Article 5 – Delete in its entirety and insert “Deleted”.
- Article 6.02 – Delete in its entirety and insert “Deleted”.
- Article 6.03 – Delete in its entirety and insert “Deleted”.
- Article 8.01.A.3 – Delete the period at the end of Article 8.018.A.3 and insert the following language: “, including all Domestic Preference requirements.”

ENGINEER'S DEVELOPMENT OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

Notes to User: This exhibit contains a list of changes to be made by the Engineer to the Agreement between Owner and Contractor for Construction Contract (Stipulated Price) (EJCDC C-520, 2018). The Engineer may either make the changes directly to the Agreement or insert this exhibit directly behind the Agreement.

- Article 4.05.C – Delete in its entirety and insert “Deleted”.
- Article 6.02.A.1.a – Replace “[**number**]” with “95”.
- Article 6.02.A.1.a(1) – Delete in its entirety and insert “Deleted”.
- Article 6.02.A.1.b – Replace “[**number**]” with “95”.
- Article 6.02.B – After “Substantial Completion” insert “of the entire construction to be provided under the construction Contract Documents”.

ENGINEER'S DEVELOPMENT OF SUPPLEMENTARY CONDITIONS

Notes to User: This exhibit contains a list of changes to be made by Engineer to the Supplementary Conditions of the Construction Contract (EJCDC C-800, 2018). The Engineer may also add other project-specific supplementary conditions as required for the Project.

The Supplementary Conditions (SC) document that is developed for a Project is the contractual means by which the Standard General Conditions of the Construction Contract (EJCDC C-700, 2018) are modified and supplemented for the Project. The references in the Supplementary Conditions items below (and in EJCDC C-800 as published) to adding, deleting, amending, or supplementing are referring to the paragraphs of C-700. Thus, the first item below, SC-1.01.A.8, is a contractual provision that adds the stated language ("The Change Order form to be used etc.") to Article 1.01.A.8 of C-700.

The Supplementary Conditions items that follow are mandatory for each specific Project, unless noted otherwise. In most cases they are new (supplemental) SC items; in a few cases, they replace or expand on a Supplementary Condition item that is in EJCDC C-800, as published. Guidance notes should not be included in the Bidding Documents.

The Engineer (in cooperation with the Owner) should follow the guidance of EJCDC C-800, as published, to develop Project-specific supplementary conditions; as the published guidance indicates, some of the published SC items are mandatory or require additional Project-specific input, such as insurance coverage limits. Other SC items in C-800 as published are optional but, in many cases, will be useful for the specific Project.

If the project requires compliance with American Iron and Steel instead of Build America Buy America Act, then SC-1.01.A.52 should remove the BABAA reference and define Domestic Preference as "The American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 of 2017 and subsequent annual appropriations for WWD programs.". Also, in such cases the BABAA specific waivers listed in SC 19.14 should be removed and replaced with applicable AIS waivers (De Minimis and Small Components). Contract the Rural Development State Office for guidance as needed.

ARTICLE 1 – Delete the sentence "No suggested Supplementary Conditions in this Article."

SC-1.01.A.8 – Add the following at the end of the Paragraph:

The Change Order form to be used on this Project is EJCDC C-941 (2018). Agency approval is required before Change Orders are effective.

SC-1.01.A.30 – Add the following at the end of the Paragraph:

For the purposes of Rural Development, this term is synonymous with the term "applicant" as defined in 7 CFR 1780.7 (a) (1), (2) and (3) and is an entity receiving financial assistance from the federal programs.

SC-1.01.A.50 – Add the following at the end of the Paragraph:

The Work Change Directive form to be used on this Project is EJCDC C-940 (2018). Agency approval is required before a Work Change Directive is issued.

- SC-1.01.A.51 – Add the following new paragraph immediately after Paragraph 1.01.A.50:

51. Agency - The Project is financed in whole or in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 USC Section 1921 et seq.). The Rural Utilities Service programs are administered through the USDA Rural Development offices; therefore, the Agency for these documents is USDA Rural Development.

- SC-1.01.A.52 – Add the following new paragraph with the title “Domestic Preference Definitions” immediately after Paragraph 1.01.A.51:

52.a *Build America, Buy America Act (BABAA)* - Requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953-58 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.

52.b *Construction Materials* - Those articles, materials, or supplies — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that are or consist primarily of: non-ferrous metals, plastic and polymer- based products, glass, lumber or drywall.

52.c *Contractor’s Certification* - Documentation submitted by the Contractor upon Substantial Completion of the Contract that all iron and steel, manufactured products, and construction materials are produced in the United States.

52.d *De Minimis* - Materials and products that represent a small portion of an infrastructure project, specifically no more than 5% of the project costs up to a maximum of \$1,000,000,

52.e *Domestic Preference* - The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

52.f *Engineer’s Certification* - Documentation submitted by the Engineer that Drawings, Specifications, and Bidding Documents comply with Domestic Preference requirements.

52.g *Manufactured Product* – Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the product.

52.h *Manufacturer’s Certification* - Documentation provided by the Manufacturer stating that Domestic Preference requirements have been satisfied for all provided items. If items are purchased via a Supplier, distributor, vendor, etc. from the Manufacturer directly, then the Supplier, distributor, vendor, etc. will be responsible for obtaining and providing these certifications to the parties purchasing the products.

52.i *Minor Components* - Components *within* an iron and/or steel product otherwise compliant with the Domestic Preference requirements. This waiver, typically used by Manufacturers, allows use of non-domestically produced miscellaneous Minor Components comprising up to five percent of the total material cost of an otherwise domestically produced iron and steel product. However, unless a separate waiver for a product has been approved, all other iron and steel components in said product must still meet the Domestic Preference requirements. This waiver does not exempt the whole product from the Domestic Preference requirements only Minor Components within said product and the iron or steel components of the product must be produced domestically.

52.j *Primarily Iron or Steel* - A product is made of greater than 50 percent iron or Steel on a materials cost basis.

- SC-2.02.A – Delete [number] and insert in its place “five.”
- SC-4.01.A – Delete the last sentence of paragraph.
- SC-4.05.C.5 – Paragraph is mandatory for WWD projects.
- SC-4.05.C.5.a – Add the following at the end of this paragraph:

Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered abnormal weather conditions. Requests for time extensions due to abnormal weather conditions will be submitted to the Engineer within five days of the end of the abnormal weather condition event. It is the responsibility of the Contractor to provide the information listed in SC 4.05.C.5.b.

- SC-6.01 – Disregard EJCDC Guidance Notes – Performance and Payment Bonds, Note 1. Performance and Payment Bonds are required for WWD projects.
- SC-6.01 – EJCDC Guidance Notes – “Other Bonds,” Warranty Bond, Note 1. RD does not require a Warranty Bond, and RD will not accept a Warranty Bond in place of a Performance and Payment Bond. The decision to include a Warranty Bond is made by the Owner and their counsel. Please refer to EJCDC for guidance.
- SC-7.04.D – Add the following new paragraph immediately after Paragraph 7.04.C:

D. All products must meet Domestic Preference requirements.
- SC-7.04.E – Add the following new paragraph immediately after Paragraph 7.04.D:

E. For projects utilizing a *De Minimis* waiver, Contractor shall maintain an itemized list of non-domestically produced components and ensure that the cost is less than 5% of total project cost for project up to a maximum of \$1,000,000.
- SC-7.05.A – Amend the third sentence of paragraph by striking out the following words:

Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item is permitted,

- SC-7.05.A.1.a.3 – Amend the last sentence of Paragraph a.3 by striking out “and;” and adding a period at the end of Paragraph a.3.

- SC-7.05.A.1.a.4 – Delete paragraph in its entirety and insert “Deleted.”

- SC-7.05.B – Add the following at the end of paragraph:

Contractor shall include a Manufacturer’s Certification or waiver for compliance with Domestic Preference requirements and supporting data, as applicable. Refer to Sample Language for Manufacturer’s Certification provided in these Contract Documents.

- SC-7.06.A.3.a.2 – Remove “and” from the end of paragraph.

- SC-7.06.A.3.a.3 – Add “; and” to the end of paragraph.

- SC-7.06.A.3.a.4 – Add the following new paragraph immediately after Paragraph 7.06.A.3.a.3:

4. Comply with Domestic Preference requirements by providing Manufacturer’s Certification or waiver , as applicable. Refer to Sample Language for Manufacturers’ Certification provided in these Contract Documents.

- SC-7.07.A – Amend by adding the following to the end of the paragraph:

The total amount of work subcontracted by the Contractor shall not exceed fifty percent of the Contract price without prior approval from the Owner, Engineer and Agency.

- SC-7.07.B – Delete paragraph in its entirety and insert ”Deleted”.

- SC-7.07.E – Delete the second sentence of paragraph and insert the following in its place:

Owner may not require that Contractor use a specific replacement.

- SC-7.12.A Amend paragraph by adding the following after “written interpretations and clarifications,”:

Manufacturers’ Certifications,

- SC-7.16.A.1.c – Amend paragraph by deleting the last period and adding:

, including Manufacturer’s Certification, or waiver for any item in the submittal subject to Domestic Preference requirements. Refer to the Sample Language for Manufacturers’ Certification provided in these Contract Documents.

- SC-7.16.C.9 – Add new paragraph immediately after Paragraph 7.16.C.8:

9. Engineer's review and approval of a Shop Drawing or Sample shall include review of Manufacturers' Certifications and any waivers in order to document compliance with Domestic Preference requirements, as applicable.

- SC-7.17.F – Add new paragraph immediately after Paragraph 7.17.E:

F. Contractor shall certify upon Substantial Completion that all Work and Materials have complied with Domestic Preference requirements. Contractor shall provide Certification to Owner and Engineer. Refer to the Sample Language for Contractor's Certification provided in these Contract Documents.

- ARTICLE 11 – Delete the sentence “No suggested Supplementary Conditions in this Article.”

- SC-11.02.C – Add new paragraph immediately after Paragraph 11.02.B:

C. The Engineer or Owner shall contact the Agency for concurrence on each Change Order prior to issuance. All Contract Change Orders must be concurred on (signed) by Agency before they are effective.

- SC-11.03.A.2 - Add new Paragraph 11.03.A.2 immediately after Paragraph 11.03.A, which shall be renamed Paragraph 11.03.A.1:

2. The Engineer or Owner shall contact the Agency for concurrence on each Work Change Directive prior to issuance. Once authorized by Owner, a copy of each Work Change Directive shall be provided by Engineer to the Agency.

- SC-11.05.B – Add the following at the end of this paragraph:

For Owner-authorized changes in the Work, the Contractor will provide the Manufacturer's Certification, or waiver, for materials subject to Domestic Preference requirements except when sole-source is specified, in which case the Engineer will provide the Manufacturer's Certification, or waiver.

- SC-11.09.B.2.c – Add new paragraph immediately after Paragraph 11.09.B.2.b:

c. For change orders involving materials subject to Domestic Preference requirements, Contractor shall include a Manufacturer's Certification or waiver, as applicable. Refer to the Sample Language for Manufacturer's Certification provided in these Contract Documents.

- SC-13.02.C – Delete paragraph in its entirety and insert “Deleted”.

- SC 13.03.E – Delete paragraph in its entirety and replace with SC 13.03.E as shown in the EJCDC C-800 Supplementary Conditions.

- ARTICLE 14 – Delete the sentence “No suggested Supplementary Conditions in this Article.”

- SC-14.03.G – Add new paragraph immediately after Paragraph 14.03.F:

G. Installation of materials that are non-compliant with Domestic Preference requirements shall be considered defective work. Contractor should ensure that Engineer has an approved Manufacturer's Certification, or waiver, prior to any domestic preference compliant item being delivered to the project site.

- SC-15.01.B.4 – Add the following language at the end of paragraph:

No payments will be made that would deplete the retainage, place in escrow any funds that are required for retainage or invest the retainage for the benefit of the Contractor.

- SC-15.01.B.5 – Add new paragraph immediately after Paragraph 15.01.B.4:

5. The Application for Payment form to be used on this Project is EJCDC® C-620. The Agency must approve all Applications for Payment before payment is made.

- SC-15.01.B.6 – Add new paragraph immediately after Paragraph 15.01.B.5:

6. By submitting an Application for Payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials are compliant with Domestic Preference requirements. Manufacturer's Certification for material(s) satisfy these requirements. Refer to the Sample Language for Manufacturer's Certification provided in these Contract Documents.

- SC-15.01.C.2.d – Add the following new paragraph immediately after Paragraph 15.01.C.2.c:

d. The materials presented for payment in an Application for Payment comply with Domestic Preference requirements.

- SC-15.01.D.1 – Delete paragraph in its entirety and insert the following in its place:

The Application for Payment with Engineer's recommendations will be presented to the Owner and Agency for consideration. If both the Owner and Agency find the Application for Payment acceptable, the recommended amount less any reduction under the provisions of Paragraph 15.01.E will become due twenty (20) days after the Application for Payment is presented to the Owner, and the Owner will make payment to the Contractor.

- SC-15.02.A – Amend paragraph by striking out the following text: "7 days after".

- SC-15.03.A – Modify by adding the following after the last sentence:

Contractor shall also submit the Contractor's Certification of Compliance certifying that to the best of the Contractor's knowledge and belief all Iron and Steel products, Manufactured Products, and Construction Materials proposed in the Shop Drawings, Change Orders, and Partial Payment Estimates, and those installed for the Project, comply with Domestic Preference requirements.

- SC-18.11 – Add new paragraph immediately after Paragraph 18.10:

18.11 *Tribal Sovereignty*

- A. No provision of this Agreement will be construed by any of the signatories as abridging or debilitating any sovereign powers of the *[insert name of Tribe]* Tribe; affecting the trust-beneficiary relationship between the Secretary of the Interior, Tribe, and Indian landowner(s); or interfering with the government-to-government relationship between the United States and the Tribe.

- SC-19 – Add the following new Article 19 immediately after Article 18:

Article 19 - FEDERAL REQUIREMENTS

19.01 *Agency Not a Party*

- A. This Contract is expected to be funded in part with funds provided by Agency. Neither Agency, nor any of its departments, entities, or employees, is a party to this Contract.

19.02 *Contract Approval*

- A. Owner and Contractor will furnish Owner's attorney such evidence as required so that Owner's attorney can complete and execute the "Certificate of Owner's Attorney" before Owner submits the executed Contract Documents to Agency for approval. Refer to Certificate of Owner's Attorney and Agency Concurrence provided in these Contract Documents.
- B. Agency concurrence is required on both the Bid and the Contract before the Contract is effective.

19.03 *Conflict of Interest*

- A. Contractor may not knowingly contract with a Supplier or Manufacturer if the individual or entity who prepared the Drawings and Specifications has a corporate or financial affiliation with the Supplier or Manufacturer. Owner's officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest or other interest in or a tangible personal benefit from the Contractor. Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.

19.04 *Gratuities*

- A. If Owner finds after a notice and hearing that Contractor, or any of Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.
- B. In the event this Contract is terminated as provided in paragraph 19.04.A, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as

determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.

19.05 *Small, Minority and Women's Businesses*

- A. If Contractor intends to let any subcontracts for a portion of the work, Contractor will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps will include:
1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

19.06 *Anti-Kickback*

- A. Contractor shall comply with the Copeland Anti-Kickback Act (40 USC 3145) as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States"). The Act provides that Contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. Owner shall report all suspected or reported violations to Agency.

19.07 *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended*

- A. Contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

19.08 *Equal Employment Opportunity*

- A. The Contract is considered a federally assisted construction contract. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339),

as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

19.09 *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*

- A. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification (RD Instruction 1940-Q Exhibit A-1). The Contractor certifies to the Owner and every subcontractor certifies to the Contractor that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining the Contract if it is covered by 31 U.S.C. 1352. The Contractor and every subcontractor must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

19.10 Environmental Requirements

- A. When constructing a Project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental conditions:
1. Wetlands – When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.
 2. Floodplains – When disposing of excess, spoil, or other Construction Materials on public or private property, Contractor shall not fill in or otherwise convert 100-year floodplain areas (Standard Flood Hazard Area) delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, e.g., alluvial soils on NRCS Soil Survey Maps.
 3. Historic Preservation - Applicants shall ensure that Contractors maintain a copy of the following inadvertent discovery plan onsite for review:
 - a. If during the course of any ground disturbance related to any Project, any post review discovery, including but not limited to, any artifacts, foundations, or other indications of past human occupation of the area are uncovered, shall be protected by complying with 36 CFR § 800.13(b)(3) and (c) and shall include the following:
 - i. All Work, including vehicular traffic, shall immediately stop within a 50 ft. radius around the area of discovery. The Contractor shall ensure barriers are established to protect the area of discovery and notify the Engineer to contact the appropriate RD personnel. The Engineer shall engage a Secretary of the Interior (SOI) qualified professional archeologist to quickly assess the nature and scope of the discovery; implement interim measures to protect the discovery from looting and vandalism; and establish broader barriers if further historic and/or precontact properties, can reasonably be expected to occur.
 - ii. The RD personnel shall notify the appropriate RD environmental staff member,

the Federal Preservation Officer (FPO), and State Historic Preservation Office (SHPO) immediately. Indian tribe(s) or Native Hawaiian Organization (NHOs) that have an interest in the area of discovery shall be contacted immediately. The SHPO may require additional tribes or NHOs who may have an interest in the area of discovery also be contacted. The notification shall include an assessment of the discovery provided by the SOI qualified professional archeologist.

- iii. When the discovery contains burial sites or human remains, the Contractor shall immediately notify the appropriate RD personnel who will contact the RD environmental staff member, FPO, and the SHPO. The relevant law enforcement authorities shall be immediately contacted by onsite personnel to reduce delay times, in accordance with tribal, state, or local laws including 36 CFR Part 800.13; 43 CFR Part 10, Subpart B; and the Advisory Council on Historic Preservation's Policy Statement Regarding treatment of Burial Sites, Human Remains, or Funerary Objects (February 23, 2007).
 - iv. When the discovery contains burial sites or human remains, all construction activities, including vehicular traffic shall stop within a 100 ft. radius of the discovery and barriers shall be established. The evaluation of human remains shall be conducted at the site of discovery by a SOI qualified professional. Remains that have been removed from their primary context and where that context may be in question may be retained in a secure location, pending further decisions on treatment and disposition. RD may expand this radius based on the SOI professional's assessment of the discovery and establish broader barriers if further subsurface burial sites, or human remains can reasonably be expected to occur. RD, in consultation with the SHPO and interested tribes or NHOs, shall develop a plan for the treatment of native human remains.
 - v. Work may continue in other areas of the undertaking where no historic properties, burial sites, or human remains are present. If the inadvertent discovery appears to be a consequence of illegal activity such as looting, the onsite personnel shall contact the appropriate legal authorities immediately if the landowner has not already done so.
 - vi. Work may not resume in the area of the discovery until a notice to proceed has been issued by RD. RD shall not issue the notice to proceed until it has determined that the appropriate local protocols and consulting parties have been consulted.
 - vii. Inadvertent discoveries on federal and tribal land shall follow the processes required by the federal or tribal entity.
4. Endangered Species – Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service.

5. Mitigation Measures – The following environmental mitigation measures are required on this Project: *[Insert mitigation measures from the Letter of Conditions here]*.

19.11 *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)*

- A. Where applicable, for contracts awarded by the Owner in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the Contractor will compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic will be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

19.12 *Debarment and Suspension (Executive Orders 12549 and 12689)*

- A. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

19.13 *Procurement of recovered materials*

- A. The Contractor will comply with 2 CFR Part 200.322, “Procurement of recovered materials.”

19.14 *Domestic Preference*

- A. Build America, Buy America Act (BABAA). All Iron and Steel Products, Manufactured Products, and Construction Materials used in this project must comply with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953. Aggregates such as stone, sand, or gravel do not apply to BABAA.
- B. The following waivers apply to this Contract:
1. BABAA *De Minimis, Small Grants and Minor Components*
 2. *[add project specific waivers as applicable]*.

Exhibit C – ENGINEERING CONTRACT DOCUMENTS (EJCDC E-SERIES)

Note to User: This Attachment contains exhibits applicable to most WWD projects. If the project requires compliance with American Iron and Steel instead of Build America Buy America Act, the Domestic Preference definition in Article 7.01.A should be adjusted by replacing the BABAA reference with “The American Iron and Steel (AIS) requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 of 2017 and subsequent annual appropriations for WWD program.”

REVISIONS TO EJCDC E-500 (2014)

Modifications to the Main Body of the Agreement

- Article 4.01.A – Insert the following text after the first sentence:

Invoices will include a breakdown of services provided.

- Article 5.01.A – Add the following:

Opinions of Probable Cost and any revisions thereof should reflect compliance with Domestic Preference requirements.

- Article 5.03.A – Add the following:

Opinions of Total Project Costs and any revisions thereof should reflect compliance with Domestic Preference requirements.

- Article 6.04.B – Delete “shall” and insert in its place “may”.

- Article 7.01.A.25 – Delete “, as an Additional Service”.

- Article 7.01.A – Add the following:

38. Agency – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.

39. Build America, Buy America Act (BABAA) – Requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.

40. Contractor’s Certification - Documentation submitted by the Contractor upon Substantial Completion of the Contract that all iron and steel, manufactured products, and construction materials are installed were produced in the United States.

41. Construction Materials - Those articles, materials, or supplies — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that are or consists primarily of: non-ferrous metals, plastic and polymer- based products, glass, lumber or drywall.

42. Domestic Preference – The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.

43. Manufactured Product – Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the product.

44. Manufacturer's Certification - Documentation provided by the Manufacturer stating that Domestic Preference requirements have been satisfied for all provided items.

- Article 8.05 – Add the following:

8.05 Federal Requirements

A. Agency Concurrence. Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

B. Audit and Access to Records. Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

C. Restrictions on Lobbying. Engineer and each Consultant shall comply with "Restrictions on Lobbying" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.

D. Suspension and Debarment. Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

Modifications to Exhibit A of the Agreement

- Article A1.01.A.1.b - Replace with:

In addition, Engineer must identify, study, and evaluate multiple potential alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree with Agency concurrence that only one feasible solution exists. The number of alternative solutions should be appropriate to the specific project as concurred in by the Agency.

- Article A1.01.A.1.c. – Delete.

- Article A1.01.A.8 – Insert the following at the end of the paragraph:

The Report mentioned in paragraph 1.01.A.8 of Exhibit A to the Agreement is the Preliminary Engineering Report as defined in RUS Bulletin 1780-2. This document must meet customary professional standards as required by 7 CFR 1780.55. The Report must be concurred in by the Agency.

- Article A1.01.A.10 – Modify by inserting “and approved by the Agency” after “When mutually agreed”.

- Article A1.01.A.14 – Add the following immediately after paragraph:

Provide an Environmental Report as defined in 7 CFR 1970. The Environmental Report must be concurred in by the Agency.

- Article A1.01.A.16 – Delete the entire paragraph and insert the following:

Revise the Report and any other Study and Report Phase deliverables in response to Owner’s and Agency’s comments, as appropriate, and furnish three (3) written copies and one (1) electronic copy of the revised Report and any other Study and Report Phase deliverables to the Owner within *[fill in with # of days]* days of receipt of Owner’s and Agency’s comments.

- Article A1.02.A – Modify by inserting “and concurrence by Agency” after the words “acceptance by Owner”.

- Article A1.02.A.2 – Modify by inserting “and Agency” after “authorized by Owner”.

- Article A1.02.A.8 – Add the following to the end of paragraph:

Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.

- Article A1.03.A.9 – Add the following immediately after paragraph:

The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.

- Article A1.03.A.10 – Modify by adding the “and Agency” after the word “counsel”.

- Article A1.03.A.12 – Insert the following:

Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency. ”

- Article A.1.03.A.13 – Add paragraph:

Services required to determine and certify that to the best of the Engineer’s knowledge and belief all Iron and Steel Products, Manufactured Products, and Construction Material referenced in engineering analysis, the Plans, Specifications, and Bidding Documents requiring design revisions comply with all federal requirements including Domestic Preference requirements.

- Article A1.03.B – Modify by deleting the period at the end of the paragraph and adding: “and all final design phase deliverables have been accepted by Owner”.

- Article A1.04.A.2 – Add the following to the end of paragraph:

Obtain Agency concurrence on any Addenda that modify the Bidding Documents. Obtain prior concurrence where possible.

- Article A1.04.A.6.a – Replace with the following:

a. The Engineer shall evaluate and determine the acceptability of “or equals” and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved “or equals” and substitutes. Review of substitutes and “or equals” shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

- Article A1.04.A.6.b – Insert the following:

b. Services required to determine and certify that to the best of the Engineer’s knowledge and belief all iron and steel products, Manufactured Products, and Construction Materials referenced in Bid Addenda requiring design revisions are compliant with Domestic Preference requirements or are the subject of an approved waiver.

- Article A1.04.A.9 – Add the following sentence immediately after paragraph:

Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.

- Article A.1.04.A.10 – Add the following:

Provide copies of Manufacturers’ Certifications or copies of waivers, if applicable, to the Bidders on any products specified as sole-source in the Plans, Specifications and Bidding Documents. Manufacturers’ Certifications and waivers are to be included in the Bidding Documents and must be kept in the Engineer’s project file and on-site during construction.

- Article A.1.04.A.11 – Add the following:

Provide copies of Manufacturers' Certifications, and any waivers, to the Contractor on any products specified as sole-source in the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers' Certifications and waivers are to be included in the Bidding Documents and must be kept in the Engineer's project file and on-site during construction."

- Article A1.05.A.4 - Insert "and chair" after "Participate in" regarding the preconstruction conference.
- Article A1.05.A.6 – Delete "If requested by Owner to do so" and capitalize "maintain".
- Article A1.05.A.9.c – Insert the following:

The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.

- Article A.1.05.A.17 – Add the following prior to the first sentence:

Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with Domestic Preference requirements. Any iron and steel products, Manufactured Products, and Construction Materials included in any submittal by the General Contractor, must include a Manufacturers' Certification letter, or waiver, to verify Domestic Preference requirements . Copies of said documentation must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to be sole-source, the Engineer must furnish the Manufacturer's Certification, or waiver, to the Contractor for said item.

- Article A1.05.A.18 – Add the following at the end of paragraph:

Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications, or waiver, provided by the Contractor to verify the product(s) meet Domestic Preference requirements. Manufacturers' Certifications and waivers must be kept in the Engineer's project file and on-site during construction.

- Article A.1.05.A.19.d – Add the following:

As part of the approval process for payment applications, Engineer confirms that Manufacturers' Certifications, or waivers, meeting Domestic Preference requirements have been received for all items requested for payment. By recommending for payment, Engineer certifies that they have reviewed the documentation for items included in the payment application and determined it is adequate for compliance with domestic preference requirements. Engineer must keep Manufacturers' Certifications and waivers in the project file and on-site during construction.

- Article A.1.05.A.20 – Add the following to the end of the paragraph: Review Change Proposals to ensure compliance with Domestic Preference requirements.

- Article A1.05.A.22 – Modify by deleting the following:

Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

And insert in its place:

Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings and furnish such Record Drawings to Owner.

- Article A1.05.A.24.a – Insert the following:
 - a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.
- Article A.1.05.A.25.a – Insert the following:
 - a. Obtain the Contractors' Certification letter and copies of Manufacturers' Certifications and waivers from the Contractor for all products used in the project. Upon Substantial Completion, provide copies of Contractors' and Manufacturers' Certifications to the Owner and Agency.
- Article A2.01.A.1 – Insert "not including preparation of the Environmental Report defined under Basic Services." after "preparation or review of environmental assessments and impact statements".
- Article A2.01.A.4 – Delete the period at the end of the paragraph, and insert ", but only if the Owner's request is made after completion of the Study and Report Phase."
- Article A2.01.A.17 – Delete paragraph and insert "Deleted".
- Article A2.02.A.2 – Delete paragraph and insert with the following:

Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the construction Contract.

Modifications to Exhibit B of the Agreement

- Article B.2.02 – Add the following:

B.2.02 Owners are ultimately responsible for compliance with Domestic Preference requirements and will be responsible for the following:

 - A. Sign loan resolutions, grant agreements and letters of intent to meet conditions which include Domestic Preference language, accepting Domestic Preference requirements in those documents and in the letter of conditions.
 - B. Sign agreements for engineering services, construction contracts, and all other appropriate and necessary documents which include domestic preference language.

- C. Acknowledge responsibility for compliance with Domestic Preference requirements by signing change orders (EJCDC C-941), work change directives (EJCDC C-940), field orders (C-942) and partial payment applications (EJCDC C-620).
- D. Obtain the certification letters and waivers from the Contractor and Engineer upon Substantial Completion of the project and maintain this documentation for the life of the loan.
- E. If the project is seeking a waiver of Domestic Preference requirements, provide any requested information to assist the Agency in processing the waiver request.
- F. Where the Owner directly procures products,
 - 1. Include Domestic Preference clauses in the procurement contracts;
 - 2. Obtain Manufacturers' Certifications and any waivers; and
 - 3. Provide copies to Engineer, Contractor.

Modifications to Exhibit C of the Agreement

- Compensation Packet BC-1 – Modify paragraph C2.01.A.2 by adding “and Agency” after “approved in writing by the Owner”.
- Compensation Packet BC-1 – Modify paragraph C2.01.B.8 by inserting “, with concurrence of the Owner and Agency” after “the compensation amount for Engineer’s services shall be appropriately adjusted”.
- Compensation Packet BC-2 – Modify paragraph C2.01.A.5 by inserting “and Agency” after “approved in writing by Owner”.
- Compensation Packet BC-2 – Modify paragraph C2.01.A.8 by inserting the following text at the end of the paragraph, “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Packet BC-2 – Modify paragraph C2.03.C.2 by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”
- Compensation Packet RPR-1 – Modify C2.04.A.3 by adding the following at the end of the paragraph “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Packet RPR-2 – Modify C2.04.A.2 by adding the following text to the end of the paragraph.

If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, “Standard Hourly Rates Schedule”, the Standard Hourly Rate for RPR services is \$ _____ per hour.

- Compensation Packet RPR-2 – Modify 2.04.B.4 by inserting the following at the end of the paragraph: “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Guide RPR-2 – Modify 2.04.C.3.B by inserting “and Agency” after Owner in “Engineer shall give Owner written notice thereof.”

- Compensation Packet RPR-2 – Modify C2.04.C.4 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.
- Compensation Packet AS-1 – Modify C2.05.B.4 by inserting the following text at the end of the paragraph: “Changes will not be effective unless and until concurred in by the Owner and Agency.”
- Compensation Packet AS-1 - Modify C2.05.C.3 by deleting “at cost” and inserting “at no cost” at the end of the paragraph.

Modifications to Exhibit D of the Agreement

- Article D1.01.A – Add the following to the end of the paragraph: “Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.”
- Article D.1.01.C.11.g – Add the following after D.1.01.C.11.f:
 - g. Maintain all Manufacturers’ Certifications and waivers in the project file and on-site during construction to ensure compliance with Domestic Preference requirements, as applicable.
- Article D1.01.C.12.b – Delete paragraph and insert “Deleted”.

Modifications to Exhibit F of the Agreement

- Article F5.02.D – Add the following to the end of the paragraph:

Engineer’s determinations on types and quality of materials, equipment, and component systems to be included in the Drawings and Specifications are subject to approval by Agency in accordance with requirements of 7 CFR 1780, including open and free competition, and Domestic Preference requirements.

ENGINEER AGREEMENT CERTIFICATION

PROJECT NAME: _____

The Engineer and Owner hereby concur in the Funding Agency acceptable revisions to E-500 identified in RUS Bulletin 1780-26. In addition, Engineer certifies to the following:

All modifications to E-500 have been made in accordance the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJCDC Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services	\$ _____
Resident Project Observation	\$ _____
Additional Services	\$ _____
TOTAL:	\$ _____

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

Engineer Date

Name and Title

Owner Date

Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

Agency Representative Date

Name and Title

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Development – Rural Utilities Service

STAFF INSTRUCTION 1780-7

SUBJECT: 2021 Poverty Guidelines

TO: State Directors, Rural Development and Community Program Directors

EFFECTIVE DATE: Date of approval.

OFFICE OF PRIMARY INTEREST: Assistant Administrator, Water and Environmental Programs.

INSTRUCTIONS: File behind RUS Instruction 1780. This staff instructions supersedes and rescinds RUS Bulletin 1780-29, Annual Update of the Poverty Guidelines, effective February 1, 2020.

AVAILABILITY: This staff instruction is available on
https://usdagcc.sharepoint.com/sites/rd_rus_wep/SitePages/Home.aspx.

PURPOSE: This staff instruction provides field offices with the revised poverty guidelines.

**SCOTT
BARRINGER**

Digitally signed by SCOTT
BARRINGER
Date: 2021.03.24 15:57:05
-04'00'

Scott A. Barringer
Acting Assistant Administrator
Water and Environmental Programs

Date

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INDEX:

Water and Environmental Program
Poverty Rates

ABBREVIATIONS

CFR – Code of Federal Regulations
CPAP - Commercial Programs Application Processing system
HHS – Health and Human Services
RUS – Rural Utilities Service
USDA – United States Department of Agriculture

DEFINITION

Poverty Line - means the level of income for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

1 PURPOSE

This staff instruction provides field offices with the revised poverty guidelines.

2 POVERTY LINE RATES

The poverty line referred to in 7 CFR 1780.3(a) (RUS Instruction 1780) is \$26,500 per year for all States, Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau except Alaska and Hawaii. The applicable poverty line is \$33,130 for Alaska and \$30,480 for Hawaii. These levels were established by the Department of Health and Human Services and published in the Federal Register February 1, 2021.

3 INSTRUCTIONS FOR USE OF POVERTY LINE RATES

A. The poverty line figure is to be inserted in the agency's CPAP system, in Underwriting, USDA (Max Loan Amount), HHS Poverty Guidelines field.

B. The poverty line figure is used in the following three crucial areas of programmatic eligibility and priority for funding:

i. To determine the maximum grant level the applicant qualifies for. Per 7 CFR 1780.10(c)(1), in order to qualify for the agency's maximum grant of 75 percent, the median household income of the service area has to be below the higher of the poverty line or 80 percent of the state nonmetropolitan median income and the project is necessary to alleviate a health or sanitary problem;

ii. To determine the interest rate the applicant qualifies for. Per 7 CFR 1780.13(b)(2), to qualify for the agency's lowest poverty interest rate the median household income of the service area has to be below the higher of the poverty line, or 80 percent of the Statewide nonmetropolitan median household income; and

iii. The poverty line is used when ranking eligible applications for consideration for limited funds. Per 7 CFR 1780.17(c)(1) and (3), applicants receive median household priority points if the median household income of the population to be served by the proposed project is less than the poverty line if the poverty line is less than 80 percent of the statewide nonmetropolitan median household income.

ACCEPTABLE COLLATERAL FOR 31 CFR PART 202
(Depositories and Financial Agents of the Federal Government)

Effective: June 3, 2019

CATEGORY 1: Obligations issued and fully insured or guaranteed by the United States Government or a United States Government agency. (Also, see Category 4 for insured or guaranteed educational loans.)

Department of the Treasury – www.treasurydirect.gov

- Bills
- Notes
- Bonds
- Inflation-Indexed Notes
- Inflation-Indexed Bonds
- Floating Rate Notes

- Treasury STRIPS
- STRIPS - Physical Corpus
- STRIPS - Physical Coupons
- STRIPS - Book-Entry Coupons
- Zero Coupon - Callable Corpus
- Zero Coupon - Non-Callable Corpus
- Inflation-Indexed Note Corpus
- Inflation-Indexed Bond Corpus
- Inflation-Indexed Interest Component

Department of Agriculture – www.usda.gov

- Commodity Credit Corporation
 - Export Credit Guaranteed Obligations
- Farm Service Agency (FSA) – www.fsa.usda.gov
 - Insured Notes
- Rural Business-Cooperative Service (RBS) – www.rurdev.usda.gov/rbs
 - Guaranteed Business and Industry Loans
- Rural Housing Service (RHS) – www.rurdev.usda.gov/rhs
 - Certificates of Beneficial Ownership (CBO)
- Rural Utilities Service (RUS) – <https://www.rd.usda.gov/about-rd/agencies/rural-utilities-service>
 - Guaranteed Loans

Department of Commerce – www.commerce.gov

- National Oceanographic and Atmospheric Administration – www.noaa.gov
 - Guaranteed Fishing Vessel Loans

Department of Health and Human Services – www.hhs.gov

- Loan Guarantee Program for Health Center Networks or Plans
- Loan Guarantee Program for Health Center Facilities
- Loan Guarantees for Medical Facilities

Department of Housing and Urban Development – www.hud.gov

- Federal Housing Administration (FHA) – https://www.hud.gov/federal_housing_administration
 - Debentures
- Ginnie Mae (Government National Mortgage Association) – www.ginniemae.gov
- All securities guaranteed under:*
 - GNMA I Mortgage-Backed Securities Program

GNMA II Mortgage-Backed Securities Program
GNMA Multiclass Program
Platinum Securities
REMICs
Callable Class Securities
Stripped Mortgage-Backed Securities (SMBS) Program

Public Housing Agency
Public Housing Agency Bonds
(Issued under Section 11 of U.S. Housing Act of 1937 for Public Housing Program)
Section 108 Guaranteed Loan Program – <https://www.hud.gov/hudprograms/section108>
Section 108 Government Guaranteed Notes
Section 108 Government Guaranteed Participation Certificates

Department of Transportation – www.dot.gov

Federal Highway Administration- www.fhwa.dot.gov

Secured Loans, Loan Guarantees, and Lines of Credit issued under the
Transportation Infrastructure Finance and Innovation Act of 1998, Section
1501 et. seq. of Public Law 105-178 (23 U.S.C. 181 et. seq.)

Federal Railroad Administration – www.fra.dot.gov

Railroad Loans and Loan Guarantees issued under Title V of the Railroad Revitalization
and Regulatory Reform Act of 1976

Maritime Administration – www.marad.dot.gov

Title XI Ship & Shipyard Guaranteed Obligations

Department of Veterans Affairs- www.va.gov

VA-Backed Mortgages
Collateralized Mortgage Obligations (CMO)
Real Estate Mortgage Investment Conduits (REMIC)

Export-Import Bank – www.exim.gov

All Export-Import Bank Guaranteed Loans

Federal Deposit Insurance Corporation – www.fdic.gov

FDIC Structured Sale Guaranteed Notes

National Credit Union Administration – www.ncua.gov

NCUA Guaranteed Notes

Overseas Private Investment Corporation – www.opic.gov

Guaranteed Notes
Guaranteed Certificates of Participation

Small Business Administration (SBA) – www.sba.gov

*Development Company Loan Program under Title V of the Small Business Investment Act of 1958,
as amended:*

Development Company Participation Certificates

*Small Business Investment Company (SBIC) Program under Title III of the Small Business
Investment Act:*

SBIC Debenture Trust Certificates

SBIC Participating Security Trust Certificates

*Loans Made by Lenders under Section 7(a) of the Small Business Act of 1953, as amended. Must
represent interests in the guaranteed portions of Section 7(a) SBA guaranteed loans:*

Guaranteed Interest Certificates

Guaranteed Loan Pool Certificates

Secondary Market Guarantee Program for 504 First Mortgage Loan Pools under Section
503 of the American Recovery and Reinvestment Act of 2009

First Mortgage Loan Pool Certificates

U.S. Agency for International Development (USAID) – www.usaid.gov

Notes and Bonds guaranteed under:

Worldwide Housing Guarantee Program (22 U.S.C. §§ 2181-82)

Israel Guarantee Program (22 U.S.C. 2186)

Emergency Wartime Supplemental Appropriations Act of 2003 Guaranteed Notes Program
(Title I of Pub. Law 108-11) (Israel or Egypt)

CATEGORY 2: -- Obligations of United States Government-Sponsored Enterprises
(GSEs) and Government-Sponsored Corporations (GSCs) that under
specific statute may be accepted as security for public funds.

Farm Credit System (FCS) - www.fca.gov

Federal Farm Credit Funding Corporation - www.farmcredit-ffcb.com/

Federal Farm Credit Banks Consolidated Systemwide Discount Notes

Federal Farm Credit Banks Consolidated Systemwide Bonds

Optional Principal Redemption Bonds

Stripped Components

Federal Agricultural Mortgage Corporation (Farmer Mac) - www.farmermac.com

Discount Notes

Medium-Term Notes

Bonds

Agricultural Mortgage-Backed Securities

Stripped Components

Federal Home Loan Bank System - www.fhfb-of.com

Discount Notes

Consolidated Bonds

Fixed-Rate Bonds

Variable-Rate Bonds

Step-Rate Bonds

Conversion Bonds

Zero Coupon Bonds

Indexed Bonds

Range Bonds

Global Debt Program {U.S. Dollar-denominated only}

Stripped Components

Federal Home Loan Mortgage Corporation (Freddie Mac) - www.freddiemac.com

Reference Bills Program

Reference Notes Program

Subordinated Debt

Discount Notes

Medium-Term Notes

Stripped Components

Callable Corpus Components

Interest Components

Mortgage-Backed Securities:

Uniform Mortgage-Backed Securities (UMBS) [See note below]

Participation Certificates (PCs)

Including Giant PCs, ARM PCs, Multifamily PCs, and Gold PCs

Real Estate Mortgage Investment Conduits (REMIC)

Including Reference REMICs

Multi-Family K Certificates (Limited to issuances that are guaranteed by senior class)

Stripped Components

Federal National Mortgage Association (Fannie Mae) - www.fanniemae.com

- Benchmark Bills
- Benchmark Notes (Including Callable and Non-Callable Benchmark Notes)
- Benchmark Bonds
- Discount Notes
- Global Debt Facility Debt Securities {U.S. Dollar-denominated only}
- Medium-Term Notes
- Debentures
- Subordinated Debt (including Capital Debentures)
- General Unsecured Fannie Mae Debt Obligations
- Stripped Components

Mortgage-Backed Securities:

- Uniform Mortgage-Backed Securities (UMBS) [See note below]
- Guaranteed Mortgage-Backed Securities (MBS)
- Guaranteed REMIC Securities
- Guaranteed Grantor Trust Pass-Through Securities
- FASITs (Financial Asset Securitization Investment Trust)
- Stripped Components

NOTE: On June 3, 2019, Fannie Mae and Freddie Mac began issuing Uniform Mortgage-Backed Securities (UMBS) in place of TBA-eligible mortgage-backed securities. UMBS are issued through the Fannie Mae and Freddie Mac joint venture, Common Securitization Solutions, using the Common Securitization Platform.

Financing Corporation (FICO) - (<https://www.fdic.gov/deposit/insurance/risk/assesrte.html>)

- Bonds
- Stripped Components

Resolution Funding Corporation (REFCORP)

- Bonds
- Stripped Components

Student Loan Marketing Association (SLMA) [See note below]:

NOTE: On December 29, 2004, the Student Loan Marketing Association (commonly known as Sallie Mae or SLMA), a government-sponsored enterprise (GSE), was dissolved. Its remaining debt of approximately \$1.9 billion par amount as of December 29, 2004 was transferred to a trust and maintains the attributes accorded SLMA debt prior to SLMA's dissolution. Pursuant to the 1996 SLMA Reorganization Act, the "Sallie Mae" trademark has been assigned to SLM Corporation, subject to certain restrictions on its use on debt obligations by SLM Corporation and its subsidiaries. SLM Corporation and its subsidiaries are not sponsored by, or agencies of, the United States, and their debt is not GSE debt and should not be confused with SLMA debt. The acceptance of SLM Corporation debt is subject to the criteria under Category 7 of this list and is valued accordingly.

Tennessee Valley Authority (TVA) - www.tva.gov

- Power Bonds
- Discount Notes
- Global Offering Series {U.S. Dollar-denominated only}
- Stripped Components

CATEGORY 3: -- Obligations issued or fully guaranteed by international development banks. (These obligations are only acceptable if denominated in U.S. Dollars.)

World Bank Group – www.worldbank.org

- International Bank for Reconstruction and Development (IBRD or World Bank) – www.worldbank.org/ibrd

- Notes

Discount Notes
Bonds
World Bank securities offered under the following programs:
COLTS (Continuously Offered Longer-Term Securities)
GMTN (Global Multi-Currency Notes)
GDIF (Global Debt Issuance Facility)
MLT (Medium Long-Term Notes)
CBF (Central Bank Facility)
GSTN (Global Short Term Notes)
Stripped Components

International Finance Corporation (IFC) – www.ifc.org
Notes
Discount Notes
Global Medium Term Notes
Bonds

African Development Bank – www.afdb.org
Notes
Bonds
Commercial Paper
Stripped Components

Asian Development Bank – www.adb.org
Notes
Bonds
Stripped Components

Inter-American Development Bank (IADB) – www.iadb.org
Notes
Discount Notes
Bonds
Stripped Components

CATEGORY 4: -- Insured student loans or notes representing educational loans insured or guaranteed under a program authorized under Title IV of the Higher Education Act of 1965, as amended, or Title VII of the Public Health Service Act, as amended. (*Note: Securities issued by the Student Loan Marketing Association are referenced in Category 2.*)

Department of Education- www.ed.gov
William D. Ford Direct Loan (DL) Program
- Authorizes four types of loans: Subsidized Stafford Loans and Unsubsidized Stafford Loans, which are made to student borrowers; PLUS loans, which are made to parents and graduate students; and Consolidation Loans.
- Repayment of the loans is guaranteed by the U.S. Department of Education. Loans, however, are serviced by guarantee agencies known as the Title IV Additional Servicers (TIVAS).

Department of Health and Human Services - www.hhs.gov
Health Education Assistance Loan (HEAL) Program

CATEGORY 5: -- General Obligations issued by states of the United States and Puerto Rico that are not in default as to payments on principal or interest and that may be purchased by banks as investment securities under the limitations established by appropriate federal bank regulatory agencies.

(Acceptable if the obligations are “investment grade” as that term is defined in 12 CFR part 1, whereby the risk of default by an obligor is low and the pledgor has assessed the credit risk of the obligations in accordance with the due diligence requirements provided in the Office of the Comptroller of the Currency’s [Supervisory Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment.](#))

CATEGORY 6: -- Obligations of counties, cities, or other United States governmental authorities or instrumentalities that are not in default as to payments on principal or interest and that may be purchased by banks as investment securities under the limitations established by appropriate federal bank regulatory agencies.

(Acceptable if the obligations are “investment grade” as that term is defined in 12 CFR part 1, whereby the risk of default by an obligor is low and the pledgor has assessed the credit risk of the obligations in accordance with the due diligence requirements provided in the Office of the Comptroller of the Currency’s [Supervisory Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment.](#))

Acceptable collateral includes:

- Bond Anticipation Notes (BAN)
- Tax Warrants & Tax Anticipation Notes (TAN)
- Revenue Bonds and Revenue Anticipation Notes (RAN)
- Municipal (including State) Revenue Bonds and Anticipation Notes

CATEGORY 7: -- Obligations of domestic corporations that may be purchased by banks as investment securities under the limitations established by appropriate federal bank regulatory agencies.

(Acceptable if the obligations are “investment grade” as that term is defined in 12 CFR part 1, whereby the risk of default by an obligor is low and the pledgor has assessed the credit risk of the obligations in accordance with the due diligence requirements provided in the Office of the Comptroller of the Currency’s [Supervisory Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment.](#))

-- CMOs and REMICs backed by Government Agency Guaranty Mortgages, Government Agency Mortgage Certificates and Conventional Mortgages are acceptable provided they are “investment grade” as that term is defined in 12 CFR part 1, except that the risk of default by an obligor is very low and the pledgor has assessed the credit risk of the obligations in accordance with the due diligence requirements provided in the Office of the Comptroller of the Currency’s [Supervisory Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment.](#)

-- Non-Agency Residential Mortgage Backed Securities (RMBS) are acceptable provided they are “investment grade” as that term is defined in 12 CFR part 1, except that the risk of default by an obligor is very low and the pledgor has assessed the credit risk of the obligations in accordance with the due diligence requirements provided in the Office of the Comptroller of the Currency’s [Supervisory Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment.](#)

CATEGORY 8: -- Commercial paper and bankers' acceptances are acceptable provided they are "investment grade" as that term is defined in 12 CFR part 1, except that the risk of default by an obligor is very low and the pledgor has assessed the credit risk of the obligations in accordance with the due diligence requirements provided in the Office of the Comptroller of the Currency's [Supervisory Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment](#). Qualifying industrial revenue bonds are acceptable after they are approved by the Federal Reserve System at the direction of Treasury.

Commercial Paper

Bankers' Acceptances

Industrial Revenue Bonds (IRBs)

IRBs are issued by states or local governments, but the obligor is usually the underlying corporate entity.

Security must be:

- Marketable, i.e., not contain any provision limiting its assignability or transferability; and
- Approved by the Federal Reserve System after a credit analysis.

CATEGORY 9: -- Qualifying publicly issued asset-backed securities that are "investment grade" as that term is defined in 12 CFR part 1, except that the risk of default by an obligor is very low and the pledgor has assessed the credit risk of the asset-backed securities in accordance with the due diligence requirements provided in the Office of the Comptroller of the Currency's [Supervisory Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment](#).

Acceptable asset-backed securities may be backed only by the following asset sectors:

- Auto Loans
- Credit Card Receivables
- Equipment Leases
- Home Equity Loans
- Student Loans

CATEGORY 10: -- Qualifying publicly-issued and privately-issued U.S. residential covered bonds that are "investment grade" as that term is defined in 12 CFR part 1, except that the risk of default by an obligor is very low and the pledgor has assessed the credit risk of the covered bonds in accordance with the due diligence requirements provided in the Office of the Comptroller of the Currency's [Supervisory Guidance on Due Diligence Requirements in Determining Whether Securities are Eligible for Investment](#).

Acceptable covered bond securities must be:

- Backed by performing 1-4 family residential mortgages;
- Domestically issued;
- U.S. dollar denominated; and
- Marketable (i.e., not containing any provision limiting their assignability or transferability.)

NOTES:

TRANSFERABILITY:

All pledged collateral must be transferable and owned by the depository free and clear of all liens, charges, and claims.

INSTRUMENTS CURRENTLY NOT ACCEPTABLE AS COLLATERAL:

- ** Common and Preferred Stock
- ** Consumer Paper or Consumer Notes
- ** Foreign Currency-Denominated Securities
- ** Mutual Funds
- ** Commercial, Agricultural, or Construction Loans
- ** Securities and instruments are not acceptable if they are issued by the pledging institution, an affiliate of the pledging institution, or otherwise correlated with the financial condition of the pledging institution.
- ** Obligations of foreign countries (i.e., Sovereign Debt)
- ** Collateralized Bond Obligations (CBOs), Collateralized Loan Obligations (CLOs), and Collateralized Mortgage-Backed Securities (CMBS) except as otherwise noted
- ** Real Estate Mortgage Notes
- ** Securities for which market prices are not available

VALUATION:

For current applied margins, please refer to the TreasuryDirect website (www.treasurydirect.gov).

FEDWIRE CODES:

This list is organized by categories of issuers and acceptable securities for the 31 CFR Part 202 program. For a complete listing of all related Fedwire codes, see the Federal Reserve's "[Fedwire Securities Service Guide](#)."

Information and guidance contained in this listing are subject to change. This document may not be an exhaustive listing of all securities, including U.S. agency securities that are eligible for Treasury collateral purposes. All modifications or updates will be distributed periodically and posted to the TreasuryDirect website (www.treasurydirect.gov) or contact the Federal Reserve's Treasury Support Center at 1-888-568-7343 (Select Option 2 for Collateral Monitoring).

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(2) If a loan is made in accordance with this part for part of the local contribution, all of the requirements of this part apply.

§§1780.50 - 1780.52 [Reserved]

Subpart C - Planning, Designing, Bidding, Contracting, Constructing and Inspections
Subpart C - Planning, Designing, Bidding, Contracting, Constructing and Inspections
Subpart C - Planning, Designing, Bidding, Contracting, Constructing and Inspections

§1780.53 General.

This subpart is specifically designed for use by owners including the professional or technical consultants or agents who provide assistance and services such as engineering, environmental, inspection, financial, legal or other services related to planning, designing, bidding, contracting, and constructing water and waste disposal facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this subpart, an owner is defined as an applicant, borrower, or grantee.

§1780.54 Technical services.

Owners are responsible for providing the engineering, architect and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's "in house" engineer or architect or through contract, subject to Agency concurrence. Engineers and architects must be licensed in the State where the facility is to be constructed.

§1780.55 Preliminary engineering reports and Environmental Reports.

Preliminary engineering reports (PERs) must conform to customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. Environmental Reports must meet the policies and intent of the National Environmental Policy Act and RUS procedures. Guidelines for preparing Environmental Reports are available in RUS Bulletin 1794A-602. **[Revision 2, 06/04/99]**

§1780.56 [Reserved]

§1780.57 Design policies.

Facilities financed by the Agency will be designed and constructed in accordance with sound engineering practices, and must meet the requirements of Federal, State and local agencies.

(a) Environmental review. Facilities financed by the Agency must undergo an environmental impact analysis in accordance with the National Environmental Policy Act and RUS procedures. Facility planning and design must not only be responsive to the owner's needs but must consider the environmental consequences of the proposed project. Facility design shall incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review. **[Revision 1, 12/11/98]**

Revision 2

(b) Architectural barriers. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed must be developed in compliance with the Architectural Barriers Act of 1968 (42 U.S.C 4151 et seq.) as implemented by 41 CFR 101-19.6, section 504 of the Rehabilitation Act of 1973 (42 U.S.C. 1471 et seq.) as implemented by 7 CFR parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990.

(c) Energy/environment. Facility design should consider cost effective energy-efficient and environmentally-sound products and services.

(d) Fire protection. Water facilities should have sufficient capacity to provide reasonable fire protection to the extent practicable.

(e) Growth capacity. Facilities should have sufficient capacity to provide for reasonable growth to the extent practicable.

(f) Water conservation. Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(g) Conformity with state drinking water standards. No funds shall be made available under this part for a water system unless the Agency determines that the water system will make significant progress toward meeting the standards established under title XIV of the Public Health Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300f et seq.).

(h) Conformity with federal and state water pollution control standards. No funds shall be made available under this part for a water treatment discharge or waste disposal system unless the Agency determines that the effluent from the system conforms with applicable Federal and State water pollution control standards.

(i) Combined sewers. New combined sanitary and storm water sewer facilities will not be financed by the Agency. Extensions to existing combined systems can only be financed when separate systems are impractical.

(j) Dam safety. Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, must comply with the provisions for dam safety as set forth in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041-001-00187-5, Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(k) Pipe. All pipe used shall meet current American Society for Testing Materials (ASTM) or American Water Works Association (AWWA) standards.

(l) Water system testing. For new water systems or extensions to existing water systems, leakage shall not exceed limits set by either ASTM or AWWA whichever is the more stringent.

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(m) Metering devices. Water facilities financed by the Agency will have metering devices for each connection. An exception to this requirement may be granted by the State program official when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental considerations would not be adversely affected by not installing such devices. Sanitary sewer projects should incorporate water system metering devices whenever practicable.

(n) Economical service. The facility's design must provide the most economical service practicable.

(o) Seismic safety. All new structures, fully or partially enclosed, used or intended for sheltering persons or property will be designed with appropriate seismic safety provisions in compliance with the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), and Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR 1990 Comp., p. 269). Designs of components essential for system operation and substantial rehabilitation of structures that are used for sheltering persons or property should incorporate seismic safety provisions to the extent practicable. RUS implementing regulations for seismic safety are in 7 CFR part 1972, subpart C. **[Added, revision 2, 06/04/99]**

§§1780.58 - 1780.60 [Reserved]

§1780.61 Construction contracts.

Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(a) Standard construction contract documents. If the construction contract documents utilized are not in the format previously approved by the Agency, OGC's review of the construction contract documents will be obtained prior to their use.

(b) Contract review and concurrence. The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these documents have been properly authorized to do so. The contract documents, engineer's recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they have been concurred in by the Agency. The State program official or designee is responsible for concurring in construction contracts with the legal advice and guidance of the OGC when necessary.

§1780.62 Utility purchase contracts.

Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and concurred in by the Agency. To the extent practical, the Agency review and concurrence of such contracts should take place prior to their execution by the owner. OGC advice and guidance may be requested. Form RD 442-30, "Water Purchase Contract," may be used when appropriate. If the Agency loan will be repaid from system revenues, the contract will be pledged to the Agency as part of the security for the loan. Such contracts will:

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- (a) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages.
- (b) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.
- (c) Specify the initial rates and provide a type of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.
- (d) Cover period of time which is at least equal to the repayment period of the loan. State program officials may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:
 - (1) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or
 - (2) The contract contains adequate provisions for renewal; or
 - (3) A determination is made that in the event the contract is terminated, there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.
- (e) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless the Agency determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.
- (f) Provide for a pledge of the contract to the Agency as part of the security for the loan.
- (g) Not contain provisions for:
 - (1) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.
 - (2) Options for the future sale or transfer. This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.
- (h) If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and concurred in provided adequate evidence is furnished to enable the Agency to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and:

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- (1) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or
- (2) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or
- (3) Concurrence in the proposed contract is obtained from the National Office.

§1780.63 Sewage treatment and bulk water sales contracts.

Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to the Agency concurrence. Section 1780.62 should be used as a guide to prepare such contracts.

§§1780.64 - 1780.66 [Reserved]

§1780.67 Performing construction.

Owners are encouraged to accomplish construction through contracts with qualified contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by §1780.76. Inspection services may be provided by individuals as approved by the State staff engineer. Payments for construction will be handled under §1780.76(e).

§1780.68 Owner's contractual responsibility.

This part does not relieve the owner of any responsibilities under its contract. The owner is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, or Federal authority.

§1780.69 [Reserved]

§1780.70 Owner's procurement regulations.

Owner's procurement requirements must comply with the following standards:

- (a) Code of conduct. Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Agency funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by Agency funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(1) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(2) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(b) Maximum open and free competition. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying materials, the owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency shall consider fully any recommendation made by the owner concerning the technical design and choice of materials to be used for a facility. If the Agency determines that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, the Agency shall provide such owner with a comprehensive justification for such a determination. The justification will be documented in writing.

(c) Owner's review. Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(d) Solicitation of offers, whether by competitive sealed bid or competitive negotiation, shall:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific feature of the name brands which must be met by the offeror shall be clearly stated; and

(2) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) Affirmative steps should be taken to assure that small, minority, and women businesses are utilized when possible as sources of supplies, equipment, construction and services.

(f) Contract pricing. Cost plus a percentage of cost method of contracting shall not be used.

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(g) Unacceptable bidders. The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

- (1) An engineer as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;
- (2) Any firm or corporation in which the owner's engineer is an officer, employee, or holds or controls a substantial interest;
- (3) The governing body's officers, employees, or agents;
- (4) Any member of the immediate family or partners in the entities referred to in paragraphs (g)(1), (g)(2) or (g)(3) of this section; or
- (5) An organization which employs, or is about to employ, any person in the entities referred to in paragraphs (g)(1), (g)(2) or (g)(3), (g)(4) of this section.

(h) Contract award. Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred by any Agency of the United States Government.

§1780.71 [Reserved]

§1780.72 Procurement methods.

Procurement shall be made by one of the following methods: Small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(a) Small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$100,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be requested from at least three qualified sources.

(b) Competitive sealed bids. In competitive sealed bids (formal advertising), an invitation for sealed bids is publicly advertised and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

- (1) The invitation for bids shall be publicly advertised at a sufficient time prior to the date set for opening of bids. The invitation shall comply with the requirements in §1780.70(d). Bids shall be solicited from an adequate number of qualified sources;
- (2) All bids shall be opened publicly at the time and place stated in the invitation for bids;
- (3) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest; and
- (4) Any or all bids may be rejected by the owner when it is in its best interest.

(c) Competitive negotiation. In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

- (1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the Procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable;
- (2) The Request for Proposal shall identify all significant evaluation factors and their relative importance;
- (3) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award; and
- (4) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner. Unsuccessful offerors should be promptly notified.

(d) Noncompetitive negotiation. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase or competitive sealed bids. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

- (1) The item is available only from a single source; or
- (2) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or
- (3) After solicitation of a number of sources, competition is determined inadequate; or
- (4) No acceptable bids have been received after formal advertising; or
- (5) The procurement is for professional services; or
- (6) The aggregate amount does not exceed \$100,000.

§1780.73 [Reserved]

§1780.74 Contracts awarded prior to applications.

Owners awarding construction or other procurement contracts prior to filing an application, must provide evidence that is satisfactory to the Agency that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(a) Modifications. The contract shall be modified to conform with the provisions of this part. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (c) of this section.

(b) Consultant's certification. Provide a certification by an engineer, licensed in the State where the facility is constructed, that any construction performed complies fully with the plans and specifications.

(c) Owner's certification. Provide a certification by the owner that the contractor has complied with applicable statutory and executive requirements related to Agency financing for construction already performed.

§1780.75 Contract provisions.

In addition to provisions required for a valid and legally binding contract, any recipient of Agency funds shall include the following contract provisions in all contracts.

(a) Remedies. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should be included in all contracts for construction.

(b) Termination. All contracts exceeding \$10,000, shall contain suitable provisions for termination by the owner including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Surety. In all contracts for construction or facility improvements exceeding \$100,000, the owner shall require bonds or cash deposit in escrow assuring performance and payment each in the amount of 100 percent of the contract cost. The surety will be in the form of performance bonds and payment bonds. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form RD 1924-10, "Release by Claimants," and Form RD 1924-9, "Certificate of Contractor's Release," may be used for this purpose. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and the surety must be listed as having a license to do business in the State where the facility is located.

(d) Equal employment opportunity. All contracts awarded in excess of \$10,000 by owners shall contain a provision requiring compliance with Executive Order 11246 (3 CFR, 1966 Comp., p. 339), entitled, "Equal Employment Opportunity," as amended by Executive Order 11375 (3 CFR, 1968 Comp., p. 321, and as supplemented by Department of Labor regulations 41 CFR chapter 60.

(e) Anti-kickback. All contracts for construction shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report suspected or reported violations to the Agency.

(f) Records. All negotiated contracts (except those of \$10,000 or less) awarded by owners shall include a provision to the effect that the owner, the Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan or grant program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for 3 years after making final payment and all other pending matters are closed.

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(g) State Energy Conservation Plan. Contracts shall incorporate mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(h) Change orders. The construction contract shall require that all contract change orders be concurred in by the Agency.

(i) Agency concurrence. All contracts must contain a provision that they shall not be effective unless and until the State program official or designee concurs in writing.

(j) Retainage. All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 5 percent of an approved partial payment estimate until the project is substantially complete and accepted by the owner, consulting engineer and Agency. The contract must provide that additional amounts may be retained if the job is not proceeding satisfactorily.

(k) Other compliance requirements. Contracts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 (3 CFR, 1974 Comp., p. 209), and Environmental Protection Agency (EPA) regulations 40 CFR Part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the Agency and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 4 CFR 15.4 (c) as set forth in RUS Bulletin 1780-14.

§1780.76 Contract administration.

Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(a) Preconstruction conference. Prior to beginning construction, the owner will schedule a preconstruction conference where the consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, and other interested parties. The conference will thoroughly cover applicable items included in Form RD 1924-16, "Record of Preconstruction Conference," and the discussions and agreements will be documented.

(b) Monitoring reports. The owner is required to monitor construction and provide a report to the Agency giving a full explanation under the following circumstances:

- (1) Reasons why approved construction schedules were not met;
- (2) Analysis and explanation of cost overruns and how payment is to be made for the same; and
- (3) If events occur which have a significant impact upon the project.

(c) Inspection. Full-time resident inspection is required for all construction unless a written exception is made by the Agency upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting engineer. Prior to the preconstruction conference, the consulting engineer will submit a resume of qualifications of the resident inspector to the owner and to the Agency for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project engineer for comments and the Agency for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the technical supervision of the project engineer and the role and responsibilities will be defined in writing.

(d) Inspector's daily diary. The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports. The daily entries shall be made available to the Agency personnel and will be reviewed during project inspections. The original complete set will be furnished to the owner upon completion of construction. RUS Bulletin 1780-18 is available from the Agency for preparing daily inspection reports or the reports can be provided in other formats approved by the State staff engineer.

(e) Payment for Construction. Form RD 1924-18, "Partial Payment Estimate," or other similar form may be used for construction payments. If Form 1924-18 is not used, prior concurrence by the State staff engineer must be obtained.

(1) Payment of contract retainage will not be made until such retainage is due and payable under the terms of the contract.

(2) Invoices for the payment of construction costs must be approved by the owner, project engineer and concurred in by the Agency.

(3) The review and acceptance of project costs, including construction payment estimates by the Agency shall not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(f) Prefinal inspections. A prefinal inspection will be made by the owner, resident inspector, project engineer, contractor, representatives of other agencies involved, and Agency representative (preferably the State staff engineer or designee). The inspection results will be recorded by the project engineer and a copy provided to all interested parties.

(g) Final inspection. A final inspection will be made by the Agency before final payment is made.

(h) Changes in development plans.

(1) Changes in development plans shall be reviewed and approved by the Agency provided:

- (i) Funds are available to cover any additional costs; and
- (ii) The change is for an authorized loan or grant purpose; and
- (iii) It will not adversely affect the soundness of the facility operation or the Agency's security; and
- (iv) The change is within the scope of the contract,

(2) Changes will be recorded on Form RD 1924-7, "Contract Change Order," or other similar form if approved by the State program official or designee. Regardless of the form, change orders must be approved by the State program official or designee.

(3) Changes should be accomplished only after Agency approval and shall be authorized only by means of contract change order. The change order will include items such as:

- (i) Any changes in labor and material;
- (ii) Changes in facility design;
- (iii) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule; and
- (iv) Any increase or decrease in the time to complete the project.

(4) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

§§1780.77 - 1780.79 [Reserved]

Subpart D - Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants

§1780.80 General.

This subpart includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, referred to as bonds in this subpart) and other necessary loan documents.

§1780.81 Policies related to use of bond counsel.

The applicant is responsible for preparation of bonds and bond transcript documents. The applicant will obtain the services and opinion of recognized bond counsel experienced in municipal financing with respect to the validity of a bond issue, except for issues of \$100,000 or less. With prior approval of the approval official, the applicant may elect not to use bond counsel. Such issues will be closed in accordance with the following:

- (a) The applicant must recognize and accept the fact that application processing may require additional legal and administrative time;
- (b) It must be established that not using bond counsel will produce significant savings in total legal costs;
- (c) The local attorney must be able and experienced in handling this type of legal work;
- (d) The applicant must understand that it will likely have to obtain an opinion from bond counsel at its expense should the Agency require refinancing of the debt;
- (e) Bonds will be prepared in accordance with this regulation and conform as closely as possible to the preferred methods of preparation stated in §1780.94; and
- (f) Closing instructions must be issued by OGC.

§1780.82 [Reserved]

§1780.83 Bond transcript documents

Any questions relating to Agency requirements should be discussed with Agency representatives. Bond counsel or local counsel, as appropriate, must furnish at least two complete sets of the following to the applicant, who will furnish one complete set to the Agency:

- (a) Copies of all organizational documents;
- (b) Copies of general incumbency certificate;
- (c) Certified copies of minutes or excerpts from all meetings of the governing body at which action was taken in connection with the authorizing and issuing of the bonds;
- (d) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding a favorable bond election, if one is necessary;
- (e) Certified copies of the resolutions, ordinances, or other documents such as the bond authorizing resolutions or ordinances and any resolution establishing rates and regulating use of facility, if such documents are not included in the minutes furnished;
- (f) Copies of the official Notice of Sale and the affidavit of publication of the Notice of Sale when State statute requires a public sale;
- (g) Specimen bond, with any attached coupons;
- (h) Attorney's no-litigation certificate;
- (i) Certified copies of resolutions or other documents pertaining to the bond award;
- (j) Any additional or supporting documents required by bond counsel;
- (k) For loans involving multiple advances of Agency loan funds, a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered at or before the time of the first advance of funds. It will state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan, subject only to changes occurring during the advance of funds, such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates;
- (l) Final unqualified approving opinion of bond counsel, (and preliminary approving opinion, if required) or local counsel if no bond counsel is involved, including an opinion as to whether interest on bonds will be exempt from Federal and State income taxes. With approval of the State program official, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinion to contain language referring to the last sentence of Section 306 (a)(1) or to Section 309A (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)(1) or 1929a (h)).

§§1780.84 and 1780.86 [Reserved]

§1780.87 Permanent instruments for Agency loans.

Agency loans will be evidenced by an instrument determined legally sufficient and in accordance with the following order of preference:

(a) First preference - Form RD 440-22, "Promissory Note". Refer to paragraph (b) of this section for methods of various frequency payment calculations.

(b) Second preference - single instruments with amortized installments. A single instrument providing for amortized installments which follows Form RD 440-22 as closely as possible. The full amount of the loan must show on the face of the instrument, and there must be provisions for entering the date and amount of each advance on the reverse or an attachment. When principal payments are deferred, the instrument will show that "interest only" is due on interest-only installment dates, rather than specific dollar amounts. The payment period including the "interest only" installment cannot exceed 40 years, the useful life of the facility, or State statute limitations, whichever occurs first. The amortized installment, computed as follows, will be shown as due on installment dates thereafter.

(1) Monthly payments. Multiply by twelve the number of years between the due date of the last interest-only installment and the final installment to determine the number of monthly payments. When there are no interest-only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the loan amount by the amortization factor and round to the next higher dollar.

(2) Semiannual payments. Multiply by two the number of years between the due date of the last interest-only installment and the due date of the final installment to determine the correct number of semiannual periods. When there are no interest-only installments, multiply by two the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor.

(3) Annual payments. Subtract the due date of the last interest-only installment from the due date of the final installment to determine the number of annual payments. When there are no interest-only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor and round to the next higher dollar.

(c) Third preference - single instruments with installments of principal plus interest. If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the principal balance. For bonds with semiannual interest and annual principal, the interest is calculated by multiplying the principal balance times the interest rate and dividing this figure by two. Principal installments are to be scheduled so that total combined interest and principal payments closely approximate amortized payments.

(1) The repayment terms concerning interest only installments described in paragraph (b) of this section apply.

(2) The instrument shall contain in substance provisions indicating:

(i) Principal maturities and due dates;

(ii) Regular payments shall be applied first to interest due through the next principal and interest installment due date and then to principal due in chronological order stipulated in the bond; and

(iii) Payments on delinquent accounts will be applied in the following sequence:

(A) billed delinquent interest;

(B) past due interest installments;

(C) past due principal installments;

(D) interest installment due; and

(E) principal installment due.

(d) Fourth preference - serial bonds with installments of principal plus interest. If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be numbered consecutively and delivered in chronological order. Such bonds will conform to the minimum requirements of §1780.94. Provisions for application of payments will be the same as those set forth in paragraph (c)(2)(ii) of this section.

(e) Coupon bonds. Coupon bonds will not be used unless required by State statute. Such bonds will conform to the minimum requirements of §1780.94.

§1780.88 [Reserved]

§1780.89 Multiple advances of Agency funds using permanent instruments.

Where interim financing from commercial sources is not used, Agency loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods.

**CITY MANAGER'S REPORT
NOVEMBER 18, 2024 MCCOOK CITY COUNCIL MEETING**

ITEM NO. **3.A.** Update regarding the sports complex project.

BACKGROUND:

Staff would like to keep this item as a place keeper on the McCook City Council agendas while we work through the planning and construction process for the ballpark.

APPROVALS:



Nathan A. Schneider, City Manager

November 11, 2024



Lea Ann Doak, City Clerk

November 11, 2024

**CITY MANAGER'S REPORT
NOVEMBER 18, 2024 MCCOOK CITY COUNCIL MEETING**

3.B.

ITEM NO. ___ Approve Ordinance No. 2024 - 3094 on first reading, amending the City of McCook Code or Ordinances by revising Dangerous Dog 90.33; revising Confiscation Dangerous Dog 90.36; and revising Rabies Ordinance 90.45.

BACKGROUND:

Discussions between the McCook Humane Society, the McCook City Attorney, and McCook staff have been held regarding amending a number of regulations contained within Chapter 90: Animals of the McCook Code of Ordinances. First, discussions were held to amend the dangerous dog criteria to include animals that require veterinary care, not just domestic animals that have been killed without provocation. Second, discussions were held to amend the confiscation of dangerous dog section to include a provision that authorizes the City of McCook to euthanize a dangerous dog when it is too dangerous to handle and board. Third, discussions were held regarding the City's need to euthanize and test a dog for rabies when it is not wearing an immunization tag and we cannot otherwise ascertain whether the dog has received its immunization shot.

Through a joint effort between the McCook Humane Society and the City of McCook, proposed ordinance modifications of these three items have been prepared for the City Council's consideration.

APPROVALS:



Nathan A. Schneider, City Manager

November 12, 2024



Lea Ann Doak, City Clerk

November 12, 2024



Kevin Hodgson, Chief of Police

November 12, 2024

ORDINANCE NO. 2024-3094

AN ORDINANCE OF THE CITY OF MCCOOK, NEBRASKA AMENDING THE CITY OF MCCOOK CODE OF ORDINANCES CHAPTER 90, ENTITLED "ANIMALS"; SECTION 90.33 - DANGEROUS DOGS AND/OR HYBRID ANIMALS PROHIBITED; SECTION 90.36 - DANGEROUS DOGS AND/OR HYBRID ANIMALS; CONFISCATION, WHEN; COSTS; AND SECTION 90.45 - IMPOUNDMENT OF ANIMALS WITHOUT IMMUNIZATION TAGS; DISPOSITION OF IMPOUNDED ANIMALS; TO PROVIDE THAT THIS ORDINANCE SHALL BE MADE A PART OF THE CITY OF MCCOOK CODE OF ORDINANCES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR THE EFFECTIVE DATE AND PUBLICATION THEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCCOOK, NEBRASKA:

Section 1. The City of McCook Code of Ordinances, Chapter 90, Section 90.33 - Dangerous Dogs and/or Hybrid Animals Prohibited; Terms, Defined, is hereby amended to read as follows:

**§ 90.33 DANGEROUS DOGS AND/OR HYBRID ANIMALS PROHIBITED;
TERMS, DEFINED.**

(A) It shall be unlawful for anyone within the city limits to own, keep or harbor a dangerous dog and/or hybrid animal.

(B) It shall be unlawful for anyone within the city limits to own, keep or harbor a potentially dangerous dog and/or hybrid animal.

(C) For purposes of this section, the following definitions shall apply:

DANGEROUS DOG AND/OR HYBRID ANIMAL.

(a) A dog and/or hybrid animal that, according to the records of the Police Department:

1. Has killed a human being;
2. Has inflicted injury on a human being resulting in a puncture wound and/or an injury that requires medical treatment;
3. Has killed or injured a domestic animal without provocation, and the injured animal requires veterinary care; or
4. Has been previously determined to be a potentially dangerous dog by a court order, the owner has received notice of such determination, and the dog and/or hybrid animal inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or

threatens the safety of humans or domestic animals.

(b) 1. A dog and/or hybrid animal shall not be defined as a dangerous dog and/or hybrid animal under division (a)2. of this section, if the individual was tormenting, abusing, or assaulting the dog and/or hybrid animal at the time of the injury or has, in the past, tormented, abused, or assaulted the dog and/or hybrid animal.

2. A dog and/or hybrid animal shall not be defined as a dangerous dog and/or hybrid animal under division (a)4. of this section, if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass as defined by Nebraska statute, was committing any other tort upon the property of the owner of the dog and/or hybrid animal, was tormenting, abusing, or assaulting the dog and/or hybrid animal, or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog and/or hybrid animal, or was committing or attempting to commit a crime.

3. A dog and/or hybrid animal shall not be defined as a dangerous dog and/or hybrid animal under division (B) of this section if the dog and/or hybrid animal is a police animal as defined by Nebraska statute.

DOMESTIC ANIMAL. A cat, a dog, or livestock. Livestock includes buffalo, deer, antelope, fowl, and any other animal in any zoo, wildlife park, refuge, wildlife area, or nature center intended to be on exhibit.

MEDICAL TREATMENT. Treatment administered by a physician or other licensed health care professional that results in sutures or surgery or treatment for one or more broken bones;

OWNER. Any person, firm, corporation, organization, political subdivision, or department possessing, harboring, keeping, or having control or custody of a dog and/or hybrid animal.

POTENTIALLY DANGEROUS DOG AND/OR HYBRID ANIMAL.

(a) Any dog and/or hybrid animal that when unprovoked:

1. Inflicts an injury on a human being that is not a puncture wound and does not require medical treatment;

2. Injures a domestic animal; or

3. Chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack; or

(b) Any specific dog and/or hybrid animal with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals.

(Neb. RS 54-617) (Ord. 2009-2826, passed 8-17-2009; Ord. 2020-2999, passed 3-16-2020; Ord. 2020-3009, passed 6-15-2020; Ord. 2021-3017, passed 6-21-2021) Penalty, see § 90.99

Section 2. The City of McCook Code of Ordinances, Chapter 90, Section 90.36 - Dangerous Dogs and/or Hybrid Animals; Confiscation, When; Costs, is hereby amended to read as follows:

§ 90.36 DANGEROUS DOGS AND/OR HYBRID ANIMALS; CONFISCATION, WHEN; COSTS.

(A) Any dangerous dog and/or hybrid animal may be immediately confiscated by the Police Department if the owner is in violation of §§ 90.33 to 90.37. The owner shall be responsible for the reasonable costs incurred by the Police Department and the animal shelter for the care of a dangerous dog and/or hybrid animal confiscated by the Police Department or for the destruction of any dangerous dog and/or hybrid animal if the action by the Police Department is pursuant to law and if the owner violated §§ 90.33 to 90.37.

(B) If the dangerous dog and/or hybrid animal is deemed too dangerous to safely control and board, a determination made in good faith by either the Police Department or the animal shelter, the animal may be humanely euthanized without being boarded. The owner shall still be responsible for any costs associated with this action, including the costs of euthanasia and any related legal or operational expenses.

(Neb. RS 54-620)
(Ord. 2020-2999, passed 3-16-2020)

Section 3. The City of McCook Code of Ordinances, Chapter 90, Section 90.45 - Impoundment of Animals Without Immunization Tags; Disposition of Impounded Animals, is hereby amended to read as follows:

§ 90.45 IMPOUNDMENT OF ANIMALS WITHOUT IMMUNIZATION TAGS; DISPOSITION OF IMPOUNDED ANIMALS.

(A) It shall be the duty of the City Manager or his or her authorized representative, in a humane manner, to capture and remove to the animal shelter any animal so owned, kept, or harbored that is running at large without the immunization tag provided for in § 90.40 affixed to its collar or harness.

(B) No animal so taken shall be killed until after five days of public notice have elapsed after its impounding, or until such officer, after consulting the registration records, concludes that the animal has not been immunized or that immunization has become ineffective by lapse of time and until such officer has notified the person owning, keeping, or harboring such animal, if his or her identity is known to him or her, to have the animal immunized forthwith. Any person owning, keeping, or harboring such animal may reclaim such animal

within the five-day period of impoundment. All animals unclaimed after such five-day impoundment shall be destroyed and buried.

(C) If such an animal has bitten a person and does not have an immunization tag, the animal may immediately be humanely euthanized and sent for rabies testing, as required to ensure public safety. The City Manager or his or her authorized representative must make reasonable efforts to locate the owner or ascertain whether the animal has been immunized before proceeding with euthanasia and testing.

Statutory reference:

Similar state law provisions, see Neb. RS 71-4401 through 71-4412

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication in pamphlet form or posting as required by law.

PASSED AND APPROVED THIS _____ DAY OF _____, 2024.

Linda Taylor, Ex-Officio Mayor
and President of the Council

ATTEST:

Lea Ann Doak, City Clerk-Treasurer

From: njmustion mbgslaw.com <njmustion@mbgslaw.com>
Sent: Thursday, October 24, 2024 2:44 PM
To: 'LorieLynn Prestes'; Nate Schneider; tkoetter@cityofmccook.com; Kevin Hodgson; 'Lea Ann Doak'
Cc: gail mbgslaw.com
Subject: Dangerous Dog and Rabid Dog Ordinance Proposals
Attachments: Revised Dangerous Dog 90.33.docx; Revised Confiscation Dangerous Dog 90.36.docx; Revised Rabies Ordinance 90.45.docx

All,

Please find attached ***rough drafts*** of the ordinances that I have drafted based upon the conversation we had with Lorie. I have just amended current ordinances to address the issues that were raised.

I revised 90.33 Dangerous Dogs. Specifically, 90.33(C)(a)(3) to include injuring an animal that requires veterinary care. Currently the ordinance says kill only.

I revised 90.36 Confiscation of Dangerous Dogs. Specifically, I added 90.36(B). If the dangerous dog being confiscated is too dangerous to handle and board it can be immediately euthanized.

I revised 90.45 Impoundment of Animals Without Immunization Tags. Specifically, I added 90.45(C). If a dog is not wearing an immunization tag and we can't otherwise ascertain whether the dog has been immunized, if the dog has bitten a person, the dog can be killed and sent in for testing.

Lorie, if there are other issues that I haven't addressed with these, please let me know and I can attempt to draft/revise other ordinances.

Everyone please review these ordinances closely and let me know if there are any changes you want made.

Thanks,

Nathaniel J. Mustion, Esq.
Mousel, Brooks, Schneider, Mustion & Shifflet, PC, LLO
101 W. C St.
McCook, NE 69001
(308) 345-1600 (office)
(308) 345-1602 (facsimile)
njmustion@mbgslaw.com

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WordPerfect Document Compare Summary

Original document: G:\CityClrk\Clerk\Ordinances\mccook-ne-1 (2).docx

Revised document: G:\CityClrk\Clerk\Ordinances\Revised Dangerous Dog 90.33.docx

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§ 90.33 DANGEROUS DOGS AND/OR HYBRID ANIMALS PROHIBITED; TERMS, DEFINED.

(A) It shall be unlawful for anyone within the city limits to own, keep or harbor a dangerous dog and/or hybrid animal.

(B) It shall be unlawful for anyone within the city limits to own, keep or harbor a potentially dangerous dog and/or hybrid animal.

(C) For purposes of this section, the following definitions shall apply:

DANGEROUS DOG AND/OR HYBRID ANIMAL.

(a) A dog and/or hybrid animal that, according to the records of the Police Department:

1. Has killed a human being;
2. Has inflicted injury on a human being resulting in a puncture wound and/or an injury that requires medical treatment;
3. Has killed or injured a domestic animal without provocation, and the injured animal requires veterinary care; or
4. Has been previously determined to be a potentially dangerous dog by a court order, the owner has received notice of such determination, and the dog and/or hybrid animal inflicts an injury on a human being that does not require medical treatment, injures a domestic animal, or threatens the safety of humans or domestic animals.

(b) 1. A dog and/or hybrid animal shall not be defined as a dangerous dog and/or hybrid animal under division (a)2. of this section, if the individual was tormenting, abusing, or assaulting the dog and/or hybrid animal at the time of the injury or has, in the past, tormented, abused, or assaulted the dog and/or hybrid animal.

2. A dog and/or hybrid animal shall not be defined as a dangerous dog and/or hybrid animal under division (a)4. of this section, if the injury, damage, or threat was sustained by an individual who, at the time, was committing a willful trespass as defined by Nebraska statute, was committing any other tort upon the property of the owner of the dog and/or hybrid animal, was tormenting, abusing, or assaulting the dog and/or hybrid animal, or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog and/or hybrid animal, or was committing or attempting to commit a crime.

3. A dog and/or hybrid animal shall not be defined as a dangerous dog and/or hybrid animal under division (B) of this section if the dog and/or hybrid animal is a police animal as defined by Nebraska statute.

DOMESTIC ANIMAL. A cat, a dog, or livestock. Livestock includes buffalo, deer, antelope, fowl, and any other animal in any zoo, wildlife park, refuge, wildlife area, or nature center intended to be on exhibit.

MEDICAL TREATMENT. Treatment administered by a physician or other licensed health care professional that results in sutures or surgery or treatment for one or more broken bones;

OWNER. Any person, firm, corporation, organization, political subdivision, or department possessing, harboring, keeping, or having control or custody of a dog and/or hybrid animal.

POTENTIALLY DANGEROUS DOG AND/OR HYBRID ANIMAL.

(a) Any dog and/or hybrid animal that when unprovoked:

1. Inflicts an injury on a human being that is not a puncture wound and does not require medical treatment;

2. Injures a domestic animal; or

3. Chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack; or

(b) Any specific dog and/or hybrid animal with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals.

(Neb. RS 54-617) (Ord. 2009-2826, passed 8-17-2009; Ord. 2020-2999, passed 3-16-2020; Ord. 2020-3009, passed 6-15-2020; Ord. 2021-3017, passed 6-21-2021) Penalty, see § 90.99

WordPerfect Document Compare Summary

Original document: G:\CityClrk\Clerk\Ordinances\mccook-ne-2.docx

Revised document: G:\CityClrk\Clerk\Ordinances\Revised Confiscation Dangerous Dog
90.36.docx

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Insertions are shown with the following attributes and color:

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The document was marked with 3 Deletions, 6 Insertions, 0 Moves.

§ 90.36 DANGEROUS DOGS AND/OR HYBRID ANIMALS; CONFISCATION, WHEN; COSTS.

–(A) Any dangerous dog and/or hybrid animal may be immediately confiscated by the Police Department if the owner is in violation of §§ 90.33 to 90.37. The owner shall be responsible for the reasonable costs incurred by the Police Department and the animal shelter for the care of a dangerous dog and/or hybrid

animal confiscated by the Police Department or for the destruction of any dangerous dog and/or hybrid animal if the action by the Police Department is pursuant to law and if the owner violated §§ 90.33 to 90.37.

(B) If the dangerous dog and/or hybrid animal is deemed too dangerous to safely control and board, a determination made in good faith by either the Police Department or the animal shelter, the animal may be humanely euthanized without being boarded. The owner shall still be responsible for any costs associated with this action, including the costs of euthanasia and any related legal or operational expenses.

(Neb. RS 54-620)

–(Ord. 2020-2999, passed 3-16-2020)

WordPerfect Document Compare Summary

Original document: G:\CityClrk\Clerk\Ordinances\mccook-ne-3 (1).docx

Revised document:

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D9PRA\Revised Rabies Ordinance 90.45.docx

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**§ 90.45 IMPOUNDMENT OF ANIMALS WITHOUT IMMUNIZATION TAGS-;
DISPOSITION OF IMPOUNDED ANIMALS.-**

—(A)— It shall be the duty of the City Manager or his or her authorized representative, in a humane manner, to capture and remove to the animal shelter; any animal so owned, kept, or harbored, ~~from~~ that is running at large without the immunization tag provided for in § 90.40 affixed to its collar or harness.

—(B)— No animal so taken shall be killed until after five days ~~after~~of public notice have elapsed after its impounding, or until such officer, after consulting the registration records, concludes that the animal has not been immunized or that immunization has become ineffective by lapse of time and until such officer has notified the person owning, keeping, or harboring such animal, if his or her identity is known to him or her, to have the animal immunized forthwith. Any person owning, keeping, or harboring such animal may reclaim such animal within the five-day period of impoundment. All animals unclaimed after such five-day impoundment, shall be destroyed and buried.

~~(Ord. 2009-2830, passed 10-5-2009)~~ C) If such an animal has bitten a person and does not have an immunization tag, the animal may immediately be humanely euthanized and sent for rabies testing, as required to ensure public safety. The City Manager or his or her authorized representative must make reasonable efforts to locate the owner or ascertain whether the animal has been immunized before proceeding with euthanasia and testing.

Statutory reference:

—~~Similar~~ Similar state law provisions, see Neb. RS 71-4401 through 71-4412

**CITY MANAGER'S REPORT
NOVEMBER 18, 2024 MCCOOK COMMUNITY DEVELOPMENT AGENCY MEETING**

ITEM NO. 5.C. Receive and file a Promissory Note from the McCook Economic Development Corporation.

BACKGROUND:

The MEDC has borrowed \$240,341.37 from the McCook LB 840 fund to pay down an existing line of credit it has with MNB Bank for the North Pointe Phase II housing project. The line of credit had a higher than desired interest rate attached to it, making the pay down a good option for the MEDC. The line of credit is guaranteed by the TIF and the TIF time period is 15 years. The intent of the MEDC is to pay off the remaining balance on the MNB Bank line of credit and then pay back the LB 840 fund from the remaining TIF increment and future sales of the North Pointe lots. The LB 840 fund will be replenished after the obligation to MNB Bank is repaid.

In order to secure its debt to the LB 840 fund, the MEDC executed a Promissory Note in the amount of \$240,341.37.

APPROVALS:



November 11, 2024

Nathan A. Schneider, City Manager



November 11, 2024

Lea Ann Doak, City Clerk



November 11, 2024

Tera Koetter, Assistant City Manager

PROMISSORY NOTE

\$240,341.37

Effective Date: July 16, 2024

PROMISE TO PAY: For value received, the receipt and sufficiency of which is hereby acknowledged, McCook Economic Development Corporation, a Nebraska nonprofit corporation (“**Borrower**”), with an address of 402 Norris Avenue, Suite 301, McCook, NE 69001, promises to pay to the order of City of McCook, Nebraska, a municipal corporation (“**Lender**”), with an address of 505 West C Street, McCook, NE 69001, the principal sum of Two Hundred Forty Thousand Three Hundred Forty One and 37/100 Dollars (\$240,341.37), on the terms and conditions herein.

INTEREST RATE: The principal sum due hereunder shall not accrue interest unless and until there is an event of default, as defined herein, in which case it shall accrue on the then outstanding principal balance at the Default Rate until all amounts owed hereunder are paid in full.

PAYMENT: Until this Note is repaid in full or the Maturity Date, Borrower shall make payments in the amount of: (1) the net Tax Increment Financing (TIF) Revenues generated by the North Pointe Redevelopment Project-Phase II (“Project”), pursuant to the Redevelopment Agreement dated as of _____, 2023, and (2) the proceeds of any lot sales in the Project from Borrower to any other party. The net TIF payments described in subsection (1) above shall mean any TIF proceeds remaining after satisfying debt service and obligations under the secured promissory note from Borrower to MNB Bank dated _____ and the related loan documents (“MNB Loan”), which MNB Loan financed the majority of land improvements for the Project. Payments on this Note will first cover any outstanding interest and then unpaid principal.

TERM: Any outstanding and unpaid principal and interest hereunder that has not been paid shall be forgiven at the end of the fifteen (15) year tax increment period for the last phase of the Project (the “Maturity Date”).

PREPAYMENT: This Note may be prepaid in part or in full on or before maturity without any charge or penalty to Borrower.

RIGHTS OF LENDER ON DEFAULT: If Borrower defaults in making any payment when due hereunder, Lender will be entitled, but is not required to, without notice, declare the entire unpaid balance hereunder to be immediately due and payable, whereupon that portion of the principal balance which may from time to time remain unpaid shall bear interest at a rate of twelve percent (12%) per annum or, if less, the maximum legal rate permitted by law, until all amounts due hereunder are paid in full and Lender shall, without limitation, be entitled to immediate payment of such amount, together with the interest accrued thereon, and all other amounts due hereunder. The foregoing right of acceleration is in addition to and not in limitation or derogation of any other right or remedy available to Lender hereunder, or otherwise at law or in equity, all of which shall remain available to Lender and be exercisable by Lender concurrently or independently.

MODIFICATION AND WAIVER: The modification or waiver of any of Borrower’s obligations or Lender’s rights under this Note must be evidenced by a writing signed by

Lender. Lender may perform any of Borrower's obligations or delay or fail to exercise any of its rights without causing a waiver of those obligations or rights. A waiver on one occasion will not constitute a waiver on any other occasion.

SEVERABILITY: If any provision of this Note is invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

ASSIGNMENT: Borrower agrees not to assign any of Borrower's rights, remedies or obligations described in this Note without the prior written consent of Lender, which consent may be withheld by Lender in its sole discretion. Borrower agrees that Lender is entitled to assign some or all of its rights and remedies described in this Note without notice to or the prior consent of Borrower.

NOTICE: Any notice or other communication to be provided to Borrower or Lender under this Note shall be in writing and sent to such address as the parties may designate in writing from time to time.

APPLICABLE LAW: This Note shall be governed by and construed in accordance with the laws of the State of Nebraska. Borrower consents to the jurisdiction and venue of any state or federal court located in Nebraska.

MISCELLANEOUS: Borrower and Lender agree that time is of the essence. Borrower agrees to make all payments to Lender at any address designated in writing by Lender and in lawful United States currency. Borrower and any person who endorses this Note waives presentment, demand for payment, notice of dishonor and protest and further waives any right to require Lender to proceed against anyone else before proceeding against Borrower or said person. This Note shall be binding upon the successors and assigns of Borrower and Lender. This Note represents the complete and integrated understanding between Borrower and Lender regarding the subject matter hereof.

CREDIT AGREEMENT: A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT AGAINST ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.

[Signature on Following Page]

Dated this 16th day of July, 2024.

“BORROWER”

MCCOOK ECONOMIC DEVELOPMENT CORPORATION, a Nebraska nonprofit corporation

By: 
Name: Chris Bruntz
Title: President