



April 15, 2020

Village of Lannon
Tom Gudex, Village President
20399 W. Main St.
PO Box 456
Lannon WI 53046

SUBJECT: Water Project
CFDA NUMBER – 10.760

Water Loan:	\$4,998,000.00
Water Grant:	\$3,493,000.00
Applicant Contribution:	\$ 143,000.00
Connection/Tap Fees	\$ 282,000.00

Dear Mr. Gudex:

This letter establishes conditions which must be understood and agreed to before further consideration will 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, 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. Changes made without obtaining prior Agency approval shall be cause for discontinuing processing of the application.

This letter by itself it not to be considered as loan approval, or representation as to the availability of funds.

All conditions set forth under **Section III – Requirements Prior to Advertising for Bids** must be met no later than October 5th, 2020. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following enclosed forms no later than April 22nd, 2020.

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

The loan and grant will be considered approved on the date Form RD 1940-1, “Request for Obligation of Funds,” is signed by the Agency approval official and mailed to you.

Rural Development • Wisconsin State Office
5417 Clem's Way • Stevens Point, WI 54482
Voice (715) 345-7635 • Fax (855) 731-0161

The conditions are as follows:

SECTION I – PROJECT DETAIL

1. **Loan and Grant amounts:** The docket may be completed on the basis of a loan not to exceed \$4,998,000.00 and grant not to exceed \$3,493,000.
2. **Other Funding Sources and Amounts:** \$143,000 is to be contributed towards the total project cost by the Village of Lannon and Connection/Tap Fees of \$282,000. This contribution shall be considered as the first funds expended costs.

Evidence of the availability of all these funds will be submitted prior to advertising for construction bids or Agency loan and grant closing, whichever occurs first.

Evidence that all these funds have been spent on eligible projects costs will be submitted.

The Agency reserves the right to recalculate funding if the money from other sources is more than what is estimated in the financing plan and if bids are lower than anticipated before the Agency loan and grant are closed. If there are excess Agency loan and grant funds, the excess funds will be grant funds. Grant funds, up to the total amount of the grant, will be reduced before the reduction of any Agency loan funds.

Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. **Project Description:** The project includes constructing 1,471 feet of 6-inch, 7,967 feet of 8-inch, and 6,860 feet of 12-inch water main to extend the water distribution system to areas of private well contamination. Hydrants and distribution system valves will also be installed. In addition to the water main extensions they will acquire and improve an existing well and well facility currently owned and operated by Lannon Estates.

The proposed project adds approximately 175 residential customers and one commercial customer at 55 equivalent residential meters, that are connected to the well and well facility currently owned by Lannon Estates.

The facility will be designed and constructed in accordance with sound engineering practices and must meet the requirements of federal, state, and local agencies and shall be based on the preliminary engineering report approved by the Agency.

The use of funds must be in substantial compliance with the following cost estimate and financing plan. Any revisions in this financing plan must have prior Agency concurrence.

Project Cost	Borrower	RUS Grant	RUS Loan	Total
Legal Services		\$40,000		\$40,000
Land & Rights	\$300,000			\$300,000
Interest			\$80,000	\$80,000
Eng. Inspection		\$55,000		\$55,000
Eng. Design		\$527,150		\$527,150
Eng. Construction Admin		\$467,000		\$467,000
Eng. Pre-Development	\$125,000	\$25,500		\$150,500
Development		\$1,523,000	\$4,918,000	\$6,441,000
Contingencies		\$645,350		\$645,350
Bond counsel		\$10,000		\$10,000
Expansion Program Mgmt.		\$200,000		\$200,000
Total	\$425,000	\$3,493,000	\$4,998,000	\$8,916,000

4. **System Users:** Before advertising for construction bids, you must certify that there will be at least 310 residential users (included 55 Lannon Estates EDUs) and 48 non-residential users on the water system when the project is completed.

If the number of users changes prior to advertising for construction bids, you must provide the Agency with a written plan and budget on how you will obtain the necessary revenue to pay all operating, maintenance, debt service, and reserve requirements of the utility (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is caused to modify the anticipated flows or volumes presented following approval.

Mandatory connections are required for water utility projects. Therefore, a copy of the ordinance verifying mandatory connection is to be submitted before advertising for construction bids.

SECTION II – LOAN TERMS

5. Debt Instrument and Repayment Terms

Mortgage Revenue Bonds: The \$4,998,000 loan will be repaid from user charge revenues of the system. If the system revenues are not sufficient, user rates will be increased to ensure payment of the annual operating and maintenance expenses, annual reserve requirements, and annual principal and interest payments. The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount.

Your loan will be scheduled for repayment over a period of 40 years. Principal will be paid in 40 annual installments on May 1 of each year utilizing the schedule in the bond. Interest accrued on the unpaid principal balance will be paid in 80 semi-annual installments on May 1 and November 1 of each year. 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. The final principal payment will be due within 40 years of the date of closing. The interest rate will be 1.875% unless a lower rate is available on the date of closing. Based on that interest rate the total annual principal and interest installments will be, \$178,800.00 approximately the same as if the payments were equally amortized annual installments, rounded to the next highest \$100. Bond counsel will establish the actual principal repayment schedule and include it as an attachment to the bond.

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

6. **Security: Mortgage Revenue Bond** - The loan will be secured by a Mortgage Revenue Bond in first lien position in the amount of \$4,998,000. The bond will be fully registered as to both principal and interest in the name of the United States of America, Acting through the United States Department of Agriculture.
 - a. Statutory Mortgage Lien by ordinance or resolution upon the water utility system including any additions or improvements to the Village of Lannon Water Utility System. The lien will be perfected by publication of the ordinance or resolution or by recording of the ordinance or resolution in the records of the municipality;
 - b. A claim to the Special Redemption Fund and the revenues pledged to such fund to be used to pay the principal and interest on the bond(s).
 - c. A Debt Payment Reserve Account equal to \$178,800 to be used to pay principal and interest on the bonds if there is a shortfall in the Special Redemption Fund.
7. **Project Completion Timeframe:** This project must be completed, and all funds disbursed within three (3) years of the date of obligation, which is the date the Request for Obligation of Funds (Form RD 1940-1) is signed by the approval official. If funds are not disbursed within three (3) years of obligation, you must submit a written waiver request to the Agency, explaining the extenuating circumstances beyond your control and the revised timeline for project completion and disbursement of all funds. The Agency will issue a written decision regarding your request.
8. **Project Funds:**
 - a. Construction Account – You must establish a separate checking account to be used solely for this project and into which all project funds will be deposited. As the project includes Agency grant funds, this account must also be interest bearing unless the exceptions explained below are met. The account must be covered by the Federal Deposit Insurance Corporation (FDIC) and a pledge of collateral should be obtained if deposits into the project account exceed FDIC limits.

- b. All project expenses will be paid by presenting the partial pay request and/or invoice and check information (number, date, & dollar amount) to the Agency.
- c. You are to track all project expenses along with the Agency. The Agency will reconcile its records with the project account on a monthly basis using the bank statement.
- d. Non-Agency funds: Your applicant contribution will be the first funds expended, followed by the other non-Agency funds. You must provide evidence that these funds have been spent on eligible project costs.
- e. Interim [construction] financing is to be obtained in an amount equal to the total of all proposed long-term project debt. Verification that interim financing is in place is to be submitted to the Agency prior to advertising for bids. If interim financing cannot be obtained, the Agency may make an exception and allow multiple advances of Agency loan funds.
- f. Interim financing loan funds will be expended after all other non-Agency funding sources unless a written agreement is reached with the other funding sources regarding fund disbursement, prior to the start of construction or loan closing, whichever occurs first.
Agency loan funds will be advanced to repay the interim loan when all the interim loan funds have been expended and it is determined that all closing requirements are met.
- g. Agency Grant funds
 - i. Will be the last funds disbursed and are to be deposited in an interest-bearing account unless:
 - a. You receive less than \$120,000 in Federal awards per year.
 - b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$500 per year on Federal cash balances.
 - c. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.
 - d. A foreign government or banking system prohibits or precludes interest-bearing accounts
 - ii. Interest earned in excess of \$500 per year shall be remitted to the Agency.
 - iii. Will be advanced as needed on a monthly basis after Agency loan funds are expended, unless all requirements of RUS Instruction 1780.45(d) are met. If the Agency mistakenly advances grant funds before all Agency loan funds are expended the grant funds will be remitted back to the Agency.
 - iv. All Agency funds will be disbursed via electronic funds transfer (EFT). We will work with you to arrange this at least 30 days before the scheduled closing date. All Agency funds are to be disbursed immediately upon receipt in order to minimize interest accrual on the Federal funds.

9. Reserve Requirements: Reserves must be properly budgeted to maintain the financial viability and sustainability of the utility. Reserves are important to fund unanticipated emergency maintenance and repairs and assist with debt service should the need arise. Reserves should also be established and maintained for anticipated and expected expenses including but not limited to operation and maintenance, customer deposits, and depreciation of short-lived assets.

- a. You must establish and fund a **Debt Service Reserve** account equal to 10% of the total annual payment until one annual one annual installment, \$178,800 is accumulated. Therefore, \$8,940

is to be deposited semi-annually on May 1 and November 1 of each year. This reserve is a required emergency fund for debt repayment, maintenance, and repairs should the need arise. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account. If funds are withdrawn during the term of the loan, deposits will continue as designated above until the fully funded amount is reached.

- b. You must establish and fund a **Short-Lived Asset Reserve** account to replace short term assets by depositing a sum to be determined annually and included in the annual budget for the utility.

SECTION III - REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. Professional Services may be provided an engineer, attorney, bond counsel, auditor, appraiser, environmental professional, and financial advisor or fiscal agent. Contracts and other forms of agreements pertaining to this project are furnished by the Agency. Agency concurrence is required for each contract and agreement.

The Engineering Joint Contracts Documents Committee (2007 EJCDC) forms must also be used, along with the Exhibits from RUS Bulletin 1780-26.

For contracts and agreements exceeding \$25,000, the provider must execute the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions [Federal Form AD-1048].

11. Environmental Requirements: As outlined in the Environmental Report dated May 17, 2019, the following actions were determined to be necessary in order to minimize adverse environmental impacts of the project and must be met.

- a. You will obtain all required permits for construction of the project.
- b. Mitigation Measures required and enforced by others:
 - i. You will limit work hours to minimize noise and traffic impacts, implement dust control measures, and utilize signage to promote safety during construction.
 - ii. The Wisconsin Department of Natural Resources (WDNR) best management practices will be utilized for erosion and sediment control. Best management practices include structural and non-structural measures, practices, techniques, or devices used to avoid or minimize soil, sediment, or pollutants carried in runoff to waters.
 - iii. If any artifacts or human remains are found on site during construction all construction will cease, and the appropriate authority must be called. Proper clearance must be given before construction resumes.

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.

12. Final Plans, Specifications, Procurement, and Construction Contract Documents

- a. Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) applies a new American Iron and Steel requirement:
 1. No Federal funds made available for this fiscal year for the rural water, waste water, waste disposal, and solid waste management programs authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 et seq.) shall be used for a project for the construction, alteration, maintenance, or repair of a public water or wastewater system unless all of the iron and steel products used in the project are produced in the United States.
 2. The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
 3. The requirement shall not apply in any case or category of cases in which the Secretary of Agriculture (in this section referred to as the “Secretary”) or the designee of the Secretary finds that—
 - i. applying the requirement would be inconsistent with the public interest;
 - ii. iron and steel products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - iii. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
- b. Verification that all applicable permits for the project have been obtained will be submitted to the Agency.
- c. **All plans and specifications must be reviewed and approved by the Agency, in writing.** Specifications should allow for maximum free and open competition. In specifying material (pipe) the owner and their consultant (engineer) will consider all materials normally suitable for the project. The proposed facility must be of modest design, size, and cost. **Procurement activities will not proceed until authorized by the Agency in writing. Failure to do so may result in the loss of Agency financing.**
- d. **Construction procurement shall be by Competitive Sealed Bids**
- e. Construction contract documents used must be the 2007 EJCDC Owner/Contractor Agreements with Attachments E, F, G, and H from RUS Bulletin in 1780-26. Bonded contractors must perform all construction.
- f. Instructions to bidders shall contain a clause for awards, which are subject to concurrence by the Agency and state the owner has a specified number of days, (ordinarily 60 days) in which to accept the bid.
- g. **The Agency must review and concur in the contract documents, in writing, and authorize the advertisement for bids, in writing, before any procurement activities begin. Failure to do so may result in the loss of Agency financing.** Advertisement for bids must be in accordance with appropriate State statutes and must be advertised in at least one trade publication receiving statewide distribution.
- h. The Agency may require another updated cost estimate if a significant amount of time elapses between the original submission and advertising for bids.

- i. **Cost Overruns** must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding, or other means prior to consideration by the Agency for subsequent funding. Such requests will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at the time of funding approval or where the scope of the original purpose changes will compete for funds with all other applications on hand as of that date.
- j. Immediately after the public bid opening, you must provide the Agency with the bid tabulation, and your engineer's evaluation of bids and recommendations for contract awards.
- k. **The Notice of Award may be issued when the Agency concurs in all the following:**
 - i. **The engineer's recommendation.**
 - ii. **Loan closing instructions can be met.**
 - iii. **Adequate funds are available to pay for the total project costs.**
 - iv. **Interim financing is in place.**
 - v. **All administrative conditions of approval have been satisfied.**
- l. **The construction contracts may be executed when the docket is substantially complete, closing instructions are prepared, and the Agency provides written permission. Failure to do so may result in the loss of Agency funding.**

13. Property Rights: Prior to requesting closing instructions, you must provide evidence of title in the proposed project area only of the utility that is satisfactory to the Agency. This will include clear title to property owned or being purchased for the utility as well as adequate, continuous, and valid rights-of-way easements in the project area only.

- a. **Right-of-Way Map** – A map clearly showing the location of all lands and rights-of-way for the entire utility is to be prepared and submitted by your engineer. The map must designate public and private lands and rights and the appropriate legal ownership thereof. All major structure sites for the entire utility must be noted.
- b. **Right-of-Way Easement [Form RD 442-20]** – This form or similar document may be used to obtain any necessary easements for the proposed project area only.
- c. **Right-of-Way Certificate [Form RD 442-21]** – This form will be executed as certification that all right-of-way requirements have been obtained in the proposed project area only.
- d. **Opinion of Counsel Relative to Rights-of-Way [Form RD 442-22]** – Your attorney is to provide a certification and legal opinion on this form addressing rights-of-way, easements, and title for the proposed project area only. There may not be any exceptions.

14. Title Insurance Policy:

- a. **Commitment for Title Insurance Policy** must be obtained for all major, existing real property structures related to the utility, now owned and to be acquired for this project. Prior to requesting closing instructions, your municipal attorney is to issue an opinion regarding all exceptions or requirements identified in the commitment for title insurance policy that identifies which ones must be removed, waived, or complied with. The approval 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. The policy

should name the United States of America, acting through the United States Department of Agriculture, as the proposed insured.

- b. **Title Insurance Policy** - All exceptions or requirements identified in the commitment for title insurance policy must be removed, waived, or complied with prior to closing. The policy should name the United States of America, acting through the United States Department of Agriculture, as the insured and is to be provided immediately after loan closing.

OR

Title Opinions

- a. **Preliminary Title Opinions [Form RD 1927-9]** must be obtained for all major, existing real property structures related to the utility, now owned and to be acquired for this project. Prior to requesting closing instructions, your municipal attorney is to issue an opinion regarding all exceptions or requirements identified in the commitment for title insurance policy that identifies which ones must be removed, waived, or complied with prior to closing. The approval 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.
- b. **Final Title Opinion [Form RD 1927-10]** – On the day of closing, your attorney must furnish a separate final title opinion on the same sites. All exceptions or requirements identified in the Preliminary Title Opinion must be removed, waived, or complied with prior to closing.

- 15. Water Utility Ordinance and Amendments** outlining the conditions of service and use, are to be adopted. The ordinance must include an effective collection policy for accounts not paid in full within a specified number of days after the date of billing, including appropriate late fees, specified timeframes for disconnection of service, and reconnection fees.

A *draft* of the Water System Ordinance and Amendments must be submitted for Agency review and concurrence, before closing instructions may be issued. Mandatory connections are required for water utility projects. Therefore, the ordinance must require mandatory connection. An executed copy, including the new user rates and fees, must be submitted prior to closing.

- 16. Proposed Operating Budget [Form RD 442-7]** – The utility must be operated on a self-sustaining basis. Therefore, you must prepare a *proposed, annual, initial, operating budget* based on a typical year after completion of the construction phase. The budget must project adequate revenues to pay the projected utility operating and maintenance expenses, debt service (including the proposed Agency loan), debt service reserve fund deposits, and short-lived asset depreciation fund deposits. A copy of the completed budget is to be submitted to the Agency prior to closing.

- 17. Conflict of Interest Policy:** Transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest must be disclosed in writing signed and dated by an official representative. A negative disclosure is required if no conflicts are anticipated.

SECTION IV- REQUIREMENTS PRIOR TO ISSUANCE OF NOTICE TO PROCEED AND THE START OF CONSTRUCTION

18. Vulnerability Assessment (VA) and Emergency Response Plan (ERP) for an Existing

Water Utility: Congress enacted the Public Health Security and Bioterrorism Preparedness Response Act of 2002 which amended the Safe Drinking Water Act requiring utility systems to assess vulnerability to a terrorist attack and develop an emergency plan for response to such an attack. All RD financed water and wastewater utilities must have a VA and ERP in place.

Prior to advertising for bids, certification that the VA and ERP are completed must be submitted.

Technical assistance providers from the Wisconsin Rural Water Association (WRWA) are available to provide on-site assistance if desired.

- 19.** Immediately after the public bid opening, you must provide the Agency with the bid tabulation, and your engineer's evaluation of bids and recommendations for contract awards.
- 20. Cost Overruns** must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding, or other means prior to consideration by the Agency for subsequent funding. Such requests will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at the time of funding approval or where the scope of the original purpose changes will compete for funds with all other applications on hand as of that date.
- 21. Excess Funds:** If bids are lower than anticipated, excess funds must be deobligated prior to start of construction except the approval official may modify the project in cases where the original P.E.R. for the project included items that were not bid or were bid as an alternate. Amendments to the P.E.R., E.R., and this letter may be needed to add any work not included in the original project scope. Excess funds do not include contingency funds as described in this letter. If there are excess Agency loan and grant funds, the excess funds will be grant funds. Grant funds, up to the total amount of the grant, will be reduced before the reduction of any Agency loan funds.
- 22. The Notice of Award may be issued when the Agency concurs in all the following:**
- a. The engineer's recommendation.
 - b. Loan closing instructions can be met.
 - c. Adequate funds are available to pay for the total project costs.
 - d. Interim financing is in place.
 - e. All administrative conditions of approval have been satisfied.
- 23. The construction contracts may be executed when the docket is substantially complete, closing instructions are prepared, and the Agency provides written permission. Failure to do so may result in the loss of Agency funding.**

Your attorney is to review the proposed construction contracts and will certify that the executed contract documents, including performance and payment bonds are adequate and that the persons executing these documents have been properly authorized to do. The Agency must also concur in the construction contracts.

- 24. Construction Inspection:** Full-time resident inspection services are required and are to be provided by the consulting engineer unless you request an exception in writing and the Agency concurs with the request. The resume of the resident inspector will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector must attend the pre-construction conference. The resident inspector will keep a record of the construction progress in the form of inspection reports.
- 25. A preconstruction conference** will be held prior to the issuance of the Notice to Proceed. The consulting engineer will organize the meeting, track attendance, and take notes on the Record of Preconstruction Conference [Form RD 1924-16] or similar format. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties. A copy of the notes and attendance record will be provided to Agency.
- 26. Compliance Reviews and Data Collection:** The Agency conducted an initial compliance review of the municipality and its operations 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 for the water service 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. A sample format is attached. The Agency will utilize this data as part of the required compliance review.

SECTION V – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

- 27. Vulnerability Assessment (VA) and Emergency Response Plan (ERP):** Congress enacted the Public Health Security and Bioterrorism Preparedness Response Act of 2002 which amended the Safe Drinking Water Act requiring utility systems to assess vulnerability to a terrorist attack and develop an emergency plan for response to such an attack. All RD financed water and wastewater utilities must have a VA and ERP in place.

Prior to the start of operations, you must provide certification that the ERP is completed. Certification that the VA is complete must be submitted within in one year of the start of operations.

Technical assistance providers from the Wisconsin Rural Water Association (WRWA) are available to provide on-site assistance if desired.

28. Environmental Requirements: As outlined in the Environmental Report dated May 17, 2019, the following actions were determined to be necessary in order to minimize adverse environmental impacts of the project and must be met.

- a. You will obtain all required permits for construction of the project.
- b. Mitigation Measures required and enforced by others:
 - i. You will limit work hours to minimize noise and traffic impacts, implement dust control measures, and utilize signage to promote safety during construction.
 - ii. The Wisconsin Department of Natural Resources (WDNR) best management practices will be utilized for erosion and sediment control. Best management practices include structural and non-structural measures, practices, techniques, or devices used to avoid or minimize soil, sediment, or pollutants carried in runoff to waters.
 - iii. If any artifacts or human remains are found on site during construction all construction will cease, and the appropriate authority must be called. Proper clearance must be given before construction resumes.

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.

29. Change Order: Prior Agency concurrence is required for all Change Orders.

30. Payments: Prior Agency concurrence is required for all project invoices and partial payment estimates before project 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.

31. Inspections: The Agency requires pre-final and final inspections, a substantial completion certificate, and a warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and resolve any warranty issues. The Agency will conduct a physical inspection and records management system inspection 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 VIII of this letter.

32. Use of Remaining Funds After Project Completion: Remaining funds may be considered in direct proportion to the amounts obtained from each source, except the applicant contribution, and handled as follows:

Remaining funds may be used for eligible purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.

Since Agency grant funds are the last funds to be expended, if there are any funds not needed to complete the project, the first funds not needed will be Agency grant funds.

Grant funds not expended for authorized purposes will be cancelled (de-obligated) within ninety [90] days of final completion of project. Prior to actual cancellation, you and your attorney will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.

If it is determined before loan closing, that there are RUS loan funds that will not be needed to complete the project, these funds will be de-obligated prior to loan closing, in order to adjust the loan amount and payments.

If it is determined after loan closing that there are RUS loan funds not needed to complete the project, these funds will be applied as an extra payment on the Agency loan unless other disposition is required by the bond ordinance, resolution, or State statute. This action will not reduce the payment amounts.

33. Reporting Requirements Related to Expenditure of Funds During Construction:

- a. **Financial Audit**—An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. Expenditures of interim financing are considered Federal expenditures. The total Federal funds expended from all sources determines Federal financial assistance expended.

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.

- 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. The Statement of Budget, Income and Equity [Form RD 442-2], and Balance Sheet [Form RD442-3] or similar formats may be completed and submitted. The financial statements must be signed by the appropriate officials and submitted within 60 days of your fiscal year end.

- 34. System for Award Management (SAM):** The SAM registration must remain active, with current information, at all times during which you have an application under consideration by an agency or have an active Federal award. Registration renewal and revalidation must be completed every twelve (12) months for as long as there are Agency funds to be expended and may be done on-line at: <http://sam.gov>.

- 35.** The Agency is to be notified within 30 days of you 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.

SECTION VI – LOAN AND GRANT CLOSING REQUIREMENTS

- 36. Closing Instructions:** The Agency and USDA Office of General Counsel, Milwaukee, WI, will issue closing instructions which must be obtained prior to advertising for bids. By acceptance of these conditions, it is agreed that your officials, your engineer and your attorney will provide and sign all evidence, forms, documents, and agreements necessary to complete the docket and to close the **loan and grant**.
- 37. Loan Resolution:** [RUS Bulletin 1780-27]: A draft is enclosed for your review. The governing board must adopt the resolution at a meeting prior to loan closing. The Village President must then certify the resolution at loan closing.
- Graduation (Item 2) - By accepting this loan, you are agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Agency. Your ability to refinance will be assessed every other year beginning five years after loan closing. If the Agency determines you are able to obtain a loan for such purposes from other sources at reasonable rates and terms, you will be requested to refinance.
- 38. Water System Grant Agreement:** [RUS Bulletin 1780-12]: A draft is enclosed for your review. This document will be executed at the time of grant closing. All sites being improved, and all non-expendable equipment being purchased with grant funds must be described in the grant agreement.
- 39. Preauthorized Debit For RUS Payments:** You are required to enter in to an “Authorization Agreement for Preauthorized Payments” (PAD) for all new and existing Agency indebtedness prior to loan closing. This agreement authorizes the Agency to electronically debit funds from the account on the payment dates.
- 40. Insurance and Bonding Requirement:** Insurance coverage will be submitted to the Agency for review and concurrence prior closing.

The use of deductibles may be allowed provided 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/or 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.

As long as the Agency loan is outstanding, you must acquire the following types of insurance and bond coverage:

- a. **General Liability** is to include vehicular coverage.
- b. **Real Property** – Prior to the acceptance of the facility from the contractor you must obtain real property insurance (fire and extended coverage) 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.
- c. **Workers’ Compensation** in accordance with appropriate State laws.

- d. **Position Fidelity Schedule Bond** [Form RD 440-24] will be used unless you submit a written opinion acceptable to RD that you have insurance providing the coverage at least equal to that required in the Position Fidelity Schedule Bond. All positions occupied by persons entrusted with the receipt and/or disbursement of funds including persons working under a contract or management agreement, must be bonded. During construction, each position should be bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. After construction is complete, the minimum coverage acceptable to RD will be for each position to be bonded for an amount at least equal to one annual installment, which is \$178,800. The Agency will be identified in the fidelity bond for receipt of notices.

41. Legal Organization: Prior to loan closing, an Agency approved Bond Counsel must provide unqualified opinions concerning the following:

- a. The Village of Lannon has authority to issue the bonds for the purpose in question and has followed proper procedures in doing so;
- b. The bonds are valid and binding obligation of the Village of Lannon according to their terms; and,
- c. The interest paid on the bonds will or will not be excludable from gross income for Federal and State income tax purposes (subject to certain limitations which may be expressed in the opinion).
- d. Bond anticipation notes (if applicable) and final bond issue.

In addition, your municipal Attorney must provide an unqualified opinion that the Village of Lannon is legally organized to construct and operate the utility.

42. Certified Operator: Evidence must be provided that your water utility has or will have, as defined by applicable State or Federal requirements, a certified operator available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

43. Prepayment and Extra Payments: Prepayments of scheduled installments, or any portion thereof, may be made at any time with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments:

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.

44. Operational Utility and Financial Inspections: With your participation and cooperation, the Agency will inspect the utility and conduct a review of your operations and records, management system, and conflict of interest policy approximately every three years as long as the loan is

outstanding. Certification that the VA and ERP have been reviewed and are current will also be requested.

45. Financial Reporting Requirements: An annual financial report is to be submitted at the end of each fiscal year. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP), and must include at a minimum a balance sheet, income and expense statement, and current rate schedule. The water and sewerage utility financial records are to be separate. An annual report will be submitted for each utility financed by the Agency and is to itemize cash accounts by type (debt service, short-lived assets, etc.). The annual report will be certified by the appropriate official.

All records, books and supporting material are to be retained for three years after the issuance of the annual report.

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

- a. **Audits** – An annual audit under the Single Audit Act is required if you expend \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of your fiscal year end.

- 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. The Statement of Budget, Income and Equity [Form RD 442-2], and Balance Sheet [Form RD442-3] or similar formats may be completed and submitted. The financial statements must be signed by the appropriate officials and submitted within 60 days of your fiscal year end.
- c. **Quarterly Reports** – The Statement of Budget, Income and Equity [Form RD 442-2] or similar format, will be completed and submitted to the Agency within 30 days of the end of each calendar quarter.
- d. **Annual Budget and Projected Cash Flow** –The Statement of Budget, Income and Equity [Form RD 442-2] or similar format, proposed rate schedule, and list of the current Board members and terms, will be submitted before adoption by the governing board and approximately seventy-five (75) days prior to the beginning of each fiscal year.

46. Technical, Managerial and Financial Capacity: It is required that members of the Village Board possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. We recommend that members receive training

within one year of appointment or election to the governing board, and all governing members receive a refresher training on a routine basis. The content and amount of training is to be tailored to the needs of the governing board members and the utility system.

Technical assistance providers from the Wisconsin Rural Water Association (WRWA) are Available to provide on-site assistance if desired.

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

- a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.
- b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.
- c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.
- d. **Age Discrimination Act of 1975** – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005, “Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA.”

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

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

Technical assistance is available at no cost to help you throughout the application process, construction phase, and term of the loan. If you have questions about this assistance, please contact our office for information.

Information and regulations referenced in this letter may be found at our website: www.rd.usda.gov.

If you have any questions, please contact Eric Berg at 920-266-4679 or by email at eric.berg@usda.gov

Sincerely,

NATHAN L. BILLINGHURST
Community Programs Director

NLB/epb

Cc: Community Programs Specialist
Attorney
Bond Counsel
Engineer

Enclosures