

**SPECIAL MEETING
CITY COMMISSION
CITY OF APALACHICOLA, FLORIDA
TUESDAY, APRIL 16, 2019 – 6:00 PM
APALACHICOLA COMMUNITY CENTER
#1 BAY AVENUE
APALACHICOLA, FLORIDA**

AGENDA

You are welcome to speak or comment on any matter under consideration by the Apalachicola Board of City Commissioners when recognized to do so by the Mayor. Once recognized please rise to the podium, state your name for the record and adhere to the five minute time limit.

- I. Call to Order
 - Invocation (Please rise and remain standing)
 - Pledge of Allegiance

- II. Agenda Adoption

- III. Presentations
 - Welcome and Introductions: Augusta R. West, Executive Director, Apalachicola Community Redevelopment Agency
 - Engineering: Kyle Andree, Project Manager , Inovia Consulting
 - USDA Funding: SheNeena Forbes, Area Specialist, Rural Development, United States Department of Agriculture and Mary Gavin, Technical Assistance Provider, Southeast Rural Community Assistance Project

- IV. Public Comment

- V. Adoption of Resolution 2019-06 and Approving USDA Letter of Conditions
 - Suggested Motion: To Approve Resolution 2019-06 – Loan Resolution, Approve the Letter of Conditions from USDA for a Rural Development Grant in the Amount of \$1,230,730 and a Loan in the Amount of \$474,000 for Water System Improvements, and Authorize the Mayor to Execute the Necessary Documents.

- VI. Adjournment

The public is invited to speak on any agenda topics. Comments should be less than “five” minutes.

Any person who desires to appeal any decision at this meeting will need a record of the proceeding and for this purpose, may need to ensure that a verbatim record of the proceeding is made which includes testimony and evidence upon which the appeal is based. Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office 48 hours in advance of the meeting.

**APALACHICOLA CITY COMMISSION
REQUEST FOR BOARD ACTION
Meeting Date: April 16, 2019**

SUBJECT: USDA Water System Improvements Funding Package

AGENDA INFORMATION:

Agenda Location: Special Meeting
Item Number: V.
Department: Administration
Contact: Augusta West, Executive Director, ACRA
Presenter: Augusta West, Executive Director, ACRA

BRIEF SUMMARY: The USDA funding application is for water system improvements mandated by Florida DEP to correct the Trihalomethane (TTHM) violation in the municipal water supply. The City Commission previously voted to proceed with the technology recommended by Inovia Consulting Group. Staff has worked with USDA to develop a \$1.7 million grant/loan package to fund the project.

RECOMMENDED MOTION AND REQUESTED ACTIONS: To Approve Resolution 2019-06 – Loan Resolution, Approve the Letter of Conditions from USDA for a Rural Development Grant in the amount of \$1,230,730 and a Loan in the Amount of \$474,000 for Water System Improvements, and Authorize the Mayor to Execute the Necessary Documents.

FUNDING SOURCE: USDA

ATTACHMENTS: Project Summary by Inovia Consulting Group; Project Schematic; Resolution 2019-06 Loan Funding Package; and USDA Letter of Conditions

STAFF'S COMMENTS AND RECOMMENDATIONS: The completion of this project is expected to lower TTHMs into the compliance range and to end the Florida DEP Consent Order and its associated fines.

LOAN RESOLUTION
(Public Bodies)A RESOLUTION OF THE City CommissionOF THE Apalachicola, City of

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

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

WHEREAS, it is necessary for the Apalachicola, City of*(Public Body)*

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

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

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

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as _____ of the Apalachicola, City of
 hereby certify that the City Commission _____ of such Association is composed of
 _____ members, of whom , _____ constituting a quorum, were present at a meeting thereof duly called and
 held on the _____ day of _____ ; and that the foregoing resolution was adopted at such meeting
 by the vote shown above, I further certify that as of _____ ,
 the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been
 rescinded or amended in any way.

Dated, this _____ day of _____

 Title _____



April 16, 2019

LETTER OF CONDITIONS

Van Johnson, Mayor
City of Apalachicola
1 Avenue E
Apalachicola, Florida 32320

Re: Water and Waste Disposal Loan and Grant Program Application
Water System Improvement Project

Dear Mayor Johnson:

This letter establishes conditions which must be understood and agreed to by the City of Apalachicola (hereinafter referred to as the System or Applicant) before further consideration may be given to the referenced application. The State and Area staff of USDA, Rural Development (RD) will administer the loan and grant on behalf of the Rural Utilities Service (RUS). Any changes in project cost, source of funds, scope of services or any other significant changes in the project or applicant must be reported to and approved by RD, by written amendment to this letter. If significant changes are made without obtaining such approval, RD may discontinue processing the application.

This letter does not constitute loan and grant approval, nor does it ensure that funds are or will be available for the project.

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions", and Form RD 1940-1, "Request for Obligation of Funds" if the applicant desires that further consideration be given to this application.

Within one (1) year of the date of this letter, the Applicant must meet all of the conditions set forth which can be met prior to calling for construction bids. If the Applicant has not done so, RD reserves the right to discontinue the processing of the application.

The application may be completed on the basis of the following:

FUNDING – A Rural Development loan not to exceed **\$474,000.00** and grant not to exceed **\$1,230,730.00**.

The applicant agrees to fully comply with RUS Instruction 1780.

Note: Project funding needs will be re-evaluated after construction bids are received. Obligated loan and grant funds not needed to complete the proposed project will be de-obligated. An amendment to this Letter of Conditions will be issued for any revised project budget and loan and grant fund amounts.

Rural Development • Marianna Area Office
2741 Pennsylvania Avenue, Suite 5, Marianna, FL 32448-4014
Voice (850) 526-2610 • Fax (850) 526-2849
USDA is an equal opportunity provider and employer.

The applicant agrees that any RD loan and grant funds remaining more than 180 days after closing or completion of construction will be de-obligated by RD.

BREAKDOWN OF PROJECT FUNDING:

Rural Development Loan:	\$474,000.00
Rural Development Grant:	<u>\$1,230,730.00</u>
Total Project Cost	\$1,704,730.00

BREAKDOWN OF PROJECT BUDGET – Estimated project costs are as follows:

Development	\$1,368,760.00
Engineering	\$135,990.00
Inspection	\$33,205.00
Contingency	\$136,875.00
Legal & Admin	<u>\$29,900.00</u>
TOTAL	\$1,704,730.00

Any changes in funding sources following obligation of RD funds must be reported to the processing official. You must assure that all project funds are expended only for the eligible items included in the project budget of this letter of conditions or as amended by RD in writing at a later date.

Prior to advertisement for construction bids, you must provide evidence of applicant contributions and approval of any other loans and/or grants. This evidence should include a copy of the loan and/or grant award. An agreement should be reached with all funding sources on how funds are to be disbursed before the start of construction.

System for Awards Management (SAM) - The System as the recipient must maintain the currency of its information in the "System for Awards Management" (previously Central Contractor Registration or CCR) until you submit the final financial report required under this award and all 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 on-line at <https://sam.gov>

The System as the recipient may not make a sub-award to an entity unless the entity has provided its Data Universal Numbering System (DUNS) number to you. Sub-recipients with sub-awards of \$25,000 or more must also have and maintain a current CCR registration.

The Area Office will approve the "Partial Payment Estimate" on EJCDC documents to insure that funds are used for authorized purposes during the construction period. Forms can be located at the following website:

<http://www.usda.gov/RUS/Water/wwforms.htm>
REQUIRED NUMBER OF USERS –

This Letter of Conditions is based upon the Applicant providing evidence or a certification that there will be at least 1340 residential users and 123 commercial users (1,767 Equivalent Dwelling Units) with an EDU being calculated based on 3,663 gallons a month per customer of water usage.

Before RD can agree to the project being advertised for construction bids, the Applicant must provide evidence or certification that the total required number of users will be hooked up to the system. You must provide documentation to show those users will actually be connected to the system when the project is complete and that the monthly water usage/fee is projected for each by the engineer is accurate. In the event any large volume users discontinue the service, the Applicant must obtain enough additional revenue (i.e. increase in user rates, sign up of an adequate number of users, reduction in project scope to reduce debt service and O&M, etc.) to make up the projected income that would be lost by not having those users on the system.

Applicants must provide a positive program to encourage connection by all users as soon as service is available. The program will be available for review and concurrence by the Rural Development processing office before loan and grant closing or commencement of construction, whichever occurs first. Such a program should include:

1. An aggressive information program to be carried out during the construction period. The applicant should send written notification to all signed users in advance of the date service will be available, stating the date users will be expected to have their connections completed, and the date user charges will begin.
2. Positive steps to assure that installation services will be available. These may be provided by the contractor installing the system, local plumbing companies or local contractors.
3. Aggressive action to see that all signed users can finance their connections.

ORGANIZATION - The loan and grant docket will include evidence that the applicant is legally organized under State Statutes. Documents concerning the creation and legal existence of your entity are administratively acceptable; however, the documents will be reviewed further by our Office of General Counsel at the time your file is forwarded for closing instructions. Any changes required by our Legal Counsel will be included in the closing instructions. The applicant's attorney is to provide an opinion that the applicant has the authority to carry out the planned method of construction, operation, maintenance, and repayment in connection with the proposed facility.

SECURITY REQUIREMENTS – The loan will be secured by Revenue Bonds in the amount of \$474,000 which will be secured by a priority first parity lien position on all revenues of the City's central water and wastewater systems. The bonds 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, Rural Utilities Service.

The bonds 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. The bonds must be judicially validated and all bond issuance processes completed by a Recognized Bond Counsel firm/attorney.

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

OTHER FUNDING SOURCES - Written evidence is to be furnished prior to advertising for construction bids as to the availability of other funds to be used in the project financing.

INTERIM FINANCING – The applicant will attempt to borrow funds from commercial sources in an amount equal to the USDA loan for the construction period only. If credit from commercial sources cannot be obtained, letters from these sources are to be obtained stating that credit is not available and submitted to the RUS Rural Development Manager. Attached are copies of RUS Bulletins 1780-10 and 1780-10a, for use in informing lenders of the RUS commitment can be obtained at: <http://www.usda.gov/rus/water/regs-bulletins.htm>

RUS cannot issue a commitment letter to a lender for interim financing until the following are completed:

1. Plans, specifications, contract documents and permits are accepted and approved.
2. Construction bids are received and are within the funds available.
3. RUS Regional Attorney's closing instructions can be complied with.
4. Bonds are validated.

Provided interim financing is used, construction will not begin until construction bids are obtained and the necessary processing and legal work has been completed to the point where the RUS loan could be closed. The Rural Development Manager will approve Form RD 1924-18, "Partial Pay Estimate", to ensure that funds are used for authorized purposes during the construction period. Forms can be located at the following web site;
<http://www.usda.gov/rus/water/wwforms.htm>

If interim financing is used, although a commitment has been made by the Government, only those funds advanced to pay for construction and other authorized and legally eligible expenses incurred by the applicant will be deemed by the Government to be interim commercial indebtedness and retired by RUS with permanent instruments. RUS must be sure that the construction loan is properly administered and that when the RUS loan is closed, there is no doubt that RUS is fully secured. The following will be required at loan closing:

1. An affidavit by the general contractor that he has been paid-in-full in accordance with the terms of the contract, and that he has paid all sub-contractors, material men, and laborers with respect to the construction of the project. (It may be that he will have to get his final payment at the bond closing, from bond proceeds, and perhaps make some disbursements at that time to subcontractors and suppliers).
2. A certificate by the consulting engineer that the system has been constructed in accordance with applicable law and according to the plans and specifications approved by the Government.

3. A statement from the attorney that he has been paid to date in accordance with his agreement.

An unqualified opinion from bond counsel will be required. It will be the responsibility of the applicant and their commercial lender to be certain that bond counsel employed will issue an unqualified opinion. Bond counsel will be required to furnish evidence the interim financing has been paid-in-full.

RUS REPAYMENT SCHEDULE - The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing. Should the interest rate be reduced, the payment will be recalculated to the lower amount.

The loan repayment term is 40 years. Payments will be equal annual amortized installments, beginning one year after loan closing. For planning purposes, use a 2.50% interest rate and an amortization factor of 39.84, which provides for an annual payment of \$18,885 for the \$474,000 proposed loan.

Prior to construction or loan closing, whichever occurs first, the applicant will execute Form RD 1910-11 "Application Certification Federal Collection Policies for Consumer or Commercial Debts".

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

TITLE TO THE PROPERTY

Prior to advertising for construction bids the Applicant will provide evidence of title satisfactory to RD for all of the real property and assets which will be necessary for the operation of the water system and that will be purchased or improved with the loan and grant funding.

LOAN RESOLUTION - Prior to advertising the project for construction bids, the applicant's Board will execute RUS Bulletin 1780-27, Loan Resolution (with loan and grant section completed).

GRANT AGREEMENT - Attached is a copy of RUS Bulletin 1780-12, "Water and Waste System Grant Agreement", for review. The applicant will be required to execute a completed form at the time of loan and grant closing. All sites being improved and all non-expendable equipment being purchased must be described on the grant agreement.

Any grant funds not disbursed immediately upon receipt must be deposited in an interest bearing account. Interest earned on grant funds in excess of \$250 per year will be remitted to the RUS annually as required in 7CFR 3019.

For projects receiving loan and grant assistance, current regulations require that the applicant will provide a drug free workplace. Form AD-1049, Certification Regarding Drug Free Work Place Requirements, must be completed prior to receiving the RD Loan and grant.

LAND RIGHTS - Prior to advertising for construction bids or requesting closing instructions, whichever is earlier, the Applicant must provide evidence of title satisfactory to RD, for all property necessary for system operation upon project completion. This will include marketable title to the property owned or being purchased for the facility; and adequate continuous and valid rights-of-way and easements, subject only to any exceptions approved in writing by RD.

A third party independent appraisal is to be provided for any real estate or any other types of acquired properties which are purchased for use as part of the proposed project for which RD funds are to be utilized. Funds provided by RD can only be utilized to the extent of the purchase price or appraised value, whichever is the lowest.

BUSINESS OPERATIONS –The facility must be operated in accordance with applicable Florida State Statutes and regulations. Prior to commencement of construction, the applicant will furnish a detailed written plan for the financial and functional operation of the system. If any functions or services are to be provided by contract(s) with third parties, prior approval of the contract by the RD is required. A certified plant operator must be employed.

METERING DEVICES – Water facilities financed by RD will have metering devices for each connection. Prior to loan and grant closing or start of construction, whichever occurs first, the applicant will provide USDA, Rural Development, a certification that all water users have a metering device.

RESERVES – Reserves must be properly budgeted to maintain the financial viability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs, and assist with debt service should the need arise. Reserves can also be established and maintained for the anticipated and expected expenses including but not limited to operation and maintenance, customer deposits, and asset management for short lived assets.

Provisions for the accumulation of necessary reserves over a reasonable period of time will be included in the loan and grant documents. For planning purposes, the applicant must fund a short-lived asset reserve account in the amount of \$1,890 each year.

INCOME AVAILABLE – The Applicant must maintain a rate schedule for the water system that provides adequate income to meet the minimum requirements for operation and maintenance, debt service, and reserves.

OPERATION AND MAINTENANCE EXPENSES - O&M expenses must be properly budgeted to assure the financial viability of any operation. For planning purposes, we have utilized O&M expenses based on the information provided in the Preliminary Engineering Report which should be representative of a typical year. It is expected that O&M will change over each successive year and user rates will need to be adjusted appropriately.

PROPOSED OPERATING BUDGET AND USER RATE ANALYSIS – The Applicant will be required to submit a copy of its proposed annual operating budget and rate analysis to RD, which supports the sustainability of the water system, prior to this Agency giving the Applicant written authorization to proceed with the bidding phase.

The operating budget should be based on a typical year cash flow, subject to completion of this project, in the first full year of operation.

The rate analysis will be required to show the number of users, their average consumption based on a twelve month consecutive average, and rate structure to support the necessary revenue to make the operating budget cash flow. In the event that rates are not adequate for a positive cash flow, funds must be made available from other Applicant revenue sources in an amount sufficient to do so. Form RD 442-7, "Operating Budget" or similar form may be utilized for this purpose.

INSURANCE REQUIREMENTS – Prior to loan and grant closing or start of construction, whichever occurs first, you must acquire the types of insurance and bond coverage shown below. The use of deductibles may be allowed providing you have the financial resources to cover potential claims requiring payment of the deductible. RD 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 the responsibility and not that of RD to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained.

- a. General Liability Insurance – Include vehicular coverage.
- b. Workers' Compensation – In accordance with appropriate State laws.
- c. Position Fidelity Bond(s) – All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. You should have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The minimum coverage acceptable to RD will be for each position to be bonded for an amount at least equal to one annual installment on your existing loan(s). The coverage may be increased during construction of this project based on the anticipated monthly advances. The amount of coverage should be discussed and approved by RD.
- d. National Flood Insurance – If the project involves acquisition or construction in designated special flood or mudslide prone areas, you must purchase a flood insurance policy at the time of loan and grant 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. 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.

OBTAINING AND APPROVAL OF PROFESSIONAL SERVICES - All contracts for services of consultants, attorneys, engineers and auditors are subject to prior review and approval by RD. All such contracts shall contain provisions that they are not effective until approved by RD. Specifically, the Engineering Services Agreements and Legal Services Agreement must be approved by RD prior to project implementation. **An Agreement for Engineering Services with the selected project engineer must be provided for RD review and concurrence prior to the project proceeding to the design phase.**

ENGINEERING & CONSTRUCTION REQUIREMENTS: Rural Development Instruction 1780 Subpart C and EJCDC Contract Documents – Funding Agency Edition (2014) and RUS Bulletin 1780-26 will be utilized by the applicant and engineer for all construction. The Applicant's engineer will be responsible for obtaining these documents.

Construction will not begin until construction bids are obtained and the necessary processing and legal work has been completed to the point where the RD loan and grant can be closed.

A preconstruction conference will be held after bid opening at a convenient time to be scheduled by RD. In attendance will be the designated representatives of the Applicant, consulting engineer, resident inspector, contractor's representatives, and RD personnel.

DEBARMENT, SUSPENSION: A certification must be provided to RD on Form AD-1047 "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions". This must be understood and complied with, including compliance with the requirement that "lower tier" transactions must also be supplemented with submittal of Form AD-1048 "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", by the lower tier party to you.

Lower tier transactions are those you engage in with contractors, sureties, engineers, auditors, insurance companies and attorneys.

RESIDENT INSPECTION – Full-time inspection is required unless waived or modified by RD in writing prior to advertisement for bids. This service is to be provided by the consulting engineer or other arrangements as approved by RD. Prior to the pre-construction conference, a resume of qualifications of the resident inspector(s) will be submitted to the owner and RD for review and approval.

The owner will provide a letter of acceptance for all proposed inspectors to the engineer and RD. The resident inspector(s) must attend the pre-construction conference.

PERMITS - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids

CONTRACT DOCUMENTS, FINAL PLANS AND SPECIFICATIONS –

- a. The contract documents should consist of the EJCDC Construction Contract Documents as indicated in RUS Bulletin 1780-26 or other approved form of agreement.
- b. The contract documents, final plans, and specifications must comply with RUS Instruction 1780, Subpart C – Planning, Designing, Bidding, Contracting, Construction and Inspections and be submitted to RD for approval prior to advertisement for bids.
- c. The use of any procurement method other than competitive bidding must be requested in writing and approved by RD.
- d. RD requires a pre-construction conference, pre-final, final, and warranty inspection.
- e. RD requires prior Agency concurrence of all Change Orders, Invoices, and Payment Estimates.
- f. RD will monitor construction through routine inspections and review of monthly payment estimates, change orders, and inspector's daily records to protect the interest of the Agency. RD requires prior Agency concurrence of all Change Orders, Invoices, and Payment Estimates.

BID AUTHORIZATION - Once all the conditions outlined in this letter have been met and closing instructions obtained, RD may authorize you to advertise the project for construction bids. Such

advertisement must be in accordance with appropriate State Statutes. A Notice of Award will not be issued until RD concurs with the engineer's recommendations.

Immediately after bid opening you must provide RD with (a) bid tabulation, and (b) your engineer's evaluation of bids and recommendations for contract awards. If RD agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the administrative conditions of loan and grant approval have been satisfied, closing instructions will be issued to you setting forth any further requirements that must be met before the loan and grant can be closed, then a Notice of Award may be issued.

Obligated loan and grant funds not needed to complete the proposed project will be de-obligated prior to construction. Any reductions will be applied to grant funds first.

When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan and grant closing will be scheduled.

COST OVERRUNS – Cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, and use of bid alternatives, re-bidding or other means prior to consideration by RD for subsequent funding. Such requests will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan and 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.

RESTRICTIONS ON LOBBYING- In order to comply with Section 319 of Public Law 101-121, which prohibits applicants and recipients of Federal contracts, grants and loans from using Federal appropriated funds for lobbying the Federal Government in connection with the award of a specific contract, grant or loan; the Applicant and all contractors and subcontractors must:

- a. Execute Certification for Contracts, Grants, and Loans, Florida RUS Bulletin 1780-26.
- b. Complete Standard Form LLL, "Disclosure of Lobbying Activities", if they have made, or agreed to make payment, using funds other than Federal appropriated funds, to influence or attempt to influence a decision in connection with the contract.

The Certification (and, if appropriate, the Disclosure) must be completed at the time an application or bid proposal is submitted requesting a grant exceeding \$100,000.00.

ENVIRONMENTAL REQUIREMENTS – The project as proposed has been evaluated to be consistent with all applicable environmental requirements. If the project or any project element deviates from or is modified from the original approved project, additional environmental review may be required. Best management practices for the stabilization and containment of sediments will be utilized throughout construction. Proper procedures for compliance with all federal, state, and local permitting requirements will be followed, and any required authorizations will be obtained prior to project commencement.

If prehistoric artifacts such as pottery or ceramics, stone tools or metal implements, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlements are encountered at any time within the project site area, the project should cease all activities involving subsurface disturbance in the immediate vicinity of the discoveries. The permittee, or other designee, should contact the Florida Dept. of State,

Division of Historical Resources, Compliance and Review Section at (850)245-6333 or (800) 847-7278, as well as, the funding agency office. Project activities should not resume without verbal and/or written authorization from Division of Historical Resources. In the event unmarked human remains are encountered, all work must stop immediately, and the proper authorities notified in accordance with Section 872.05, Florida Statute.”

RECORDS AND AUDIT REQUIREMENTS - The Applicant will be required to keep accounts and records on the operation of the facility separate and apart from other records. **Separate financial records must be kept for the water system.** We suggest the Applicant and auditing firm develop a set of records for this particular purpose unless adequate records are already in use. The person responsible for maintaining such records of accounts will be selected prior to loan and grant closing.

It is imperative that the Applicant establish and maintain adequate business management practices through a system of records, reports, and audits which will assist the governing body in making effective decisions and thus help to insure a successful operation.

RD will be furnished financial reports as outlined in RUS Staff Instruction 1780.4. A copy of this instruction is attached along with copies of our forms to be used for periodic and annual reports. **Quarterly financial reports will be required during the first year after loan and grant closing, and thereafter as determined necessary by RD.**

Prior to loan and grant closing the applicant will enter into a contract with a qualified auditor to conduct the annual audit in accordance with generally accepted government auditing standards (GAGAS). In addition, the audits are also to be performed in accordance with various Office of Management and Budget (OMB) circulars and RUS requirements.

DISBURSEMENT OF RD FUNDS – Any applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining RD project funds will be considered to be RD grant funds and refunded to RD.

The RD funds will be advanced as they are needed in the amount(s) necessary to cover the RD proportionate share of any disbursements required of your entity, over 30-day periods. Funds will be disbursed by electronic transfer of funds.

You must establish a separate account, to be known and hereafter referred to as the Construction Account, with a participating 31 CFR Part 202 collateral depositories, federal agency, or Federal Reserve Bank acting as a fiscal agent in the United States. All project funds will be deposited into this account. The account shall be used solely for the purpose of paying authorized costs of the project as outlined in the project budget. Once the funds are deposited into the Construction Account, they become your responsibility.

Financial institutions or depositories accepting deposits of public funds and providing other financial agency services to the Federal Government are required to pledge adequate, acceptable securities as collateral. General requirements for designating depositories and regulations governing the pledging of collateral are identified in 31 CFR Part 202 (“Depositories and Financial Agents of the Federal Government”). Treasury’s current acceptability and valuation requirements are identified in 31 CFR Part 380 (“Collateral Acceptability and Valuation”) and specific eligibility

and valuation guidance is provided in Treasury's procedural instructions and on Treasury's Bureau of the Public Debt website at www.publicdebt.treas.gov.

All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the Construction Account at any one time.

CLOSING INSTRUCTIONS – The applicant will not be authorized to advertise for construction bids until the Regional Attorney has been furnished all the documents required and has issued closing instructions. The Applicant's attorney will carry out the Regional Attorney's closing instructions and will certify that the loan and grant has been closed in accordance with the Regional Attorney's closing instructions.

VULNERABILITY ASSESSMENT (VA) AND EMERGENCY RESPONSE PLAN (ERP)

Congress enacted the Public Health Security and Bioterrorism Preparedness Response Act of 2002, Public Law 107-188 (Bioterrorism Act). The Bioterrorism Act amended the Safe Drinking Water (SDWA) to require all medium and large sized community water systems (serving populations greater than 3,300) to assess vulnerability to terrorist attack and develop emergency plans for response to such an attack. Medium and large community water systems are being monitored by the U.S. EPA for completion of VA's and ERP's.

Rural Development requires all financed water and wastewater systems to have a vulnerability assessment (VA) and an emergency response plan (ERP) in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operations. A certification that a VA is complete must be submitted within one year of the start of operations. All other borrowers must provide a certification that a VA and ERP are completed prior to bid authorization.

You will also be required to provide a certification that the VA and ERP are complete and are current every three years after the start of operations. RD does not need or want a copy of the VA or ERP. The requested certification will be sufficient to meet our needs. Technical assistance providers are available to provide onsite assistance if desired.

Civil Rights & Equal Opportunity - You should be aware of and will be required to comply with other federal statute requirements including but not limited to:

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 RD financial assistance

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 subpart E of part 1901 of this title, 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.

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

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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.

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.

RD financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. The applicant must agree to comply with the requirement of Form RD 400-1 "Equal Opportunity Agreement" and Form RD 400-4 "Assurance Agreement ". These agreements must be approved by the governing body and executed before loan and grant approval.

Public Meeting - The System must advertise, hold and document to RD's satisfaction a public information meeting regarding the project and funding prior to loan and grant approval in accordance with RUS Instruction 1780 ss 1780.19.

Should the Applicant decide to accept the RD financing subject to the above conditions, RD will proceed to take the necessary steps to approve the loan and grant.

Sincerely,

LORIA PHILLIPS Digitally signed by LORIA PHILLIPS
Date: 20190412 10:54:52 -0500

LORIA C. PHILLIPS
Area Director

Enclosures

cc: Community Programs Director

All Forms and Regulations referenced herein can be obtained at the following web sites:

Regulations: <http://www.usda.gov/rus/water/regs.htm>

Forms: <http://www.usda.gov/rus/water/wwforms.htm>



MEMORANDUM

DATE: April 16, 2019
TO: City of Apalachicola
FROM: Jim Waddell, P.E.
Kyle Andree, P.E.
RE: Water System Improvements – FDEP Consent Order

The following report is offered relating to the history and status of the improvements being proposed by Inovia on behalf of the City of Apalachicola.

- The City of Apalachicola is currently under consent order with FDEP for violations of the Disinfection Byproducts (DBP) rule for the water from the treatment plant on Chapman Road.
 - March 28, 2012 - Original Consent Order Issued
 - July 30, 2013 - Amended Consent Order Issued
 - Currently accruing \$100 per day in penalties
 - Additional penalties may be enforced if compliance is not met.
- Inovia was retained as the engineer for the City of Apalachicola to obtain the following:
 - Permits for the design of improvements to comply with the consent order
 - Help secure funding, and
 - Provide construction administration during implementation

Water Quality Issue

- The Water Quality Study performed indicates high concentrations of natural organic matter (NOM) in the raw water.
 - Organic matter combined with chlorine produces Trihalomethanes (TTHM)
 - Which is a Disinfection Byproduct

Solution Determination

- First, Inovia evaluated multiple Alternate Disinfection Strategies (non-chlorine).
 - All alternatives considered have historically shown not to provide effective solutions to the current issues.
- Second, Inovia has reviewed multiple Alternatives for Removal of the NOM found in the raw water.
 - Analysis included
 - Effectiveness of system
 - Direct capital costs, and
 - Operational and Maintenance costs
 - Recommended solution meets all the categories analyzed.
 - Additionally, it is an EPA Best Available Technology

Recommended Solution

- Granular Activated Carbon (GAC)
 - Included as Best Available Technology by EPA
 - Very effective
 - The Accelerated Column Test (ACT) performed by Calgon has confirmed the effectiveness.
 - Regeneration of GAC can be provided by a private company (Calgon or approved equal)
 - System is easy to operate and maintain
 - Periodic backwashing
 - Most cost-effective solution considered
 - Direct Capital Cost
 - Replacement of media costs
 - Proposed system is designed to handle future growth and expansion of the water treatment plant.
 - Provides for redundancy as well.

Additional System Improvements

- Research of existing treatment plants with GAC technology in the state of Florida.
 - Inovia visited three treatment plants using the same GAC treatment technology proposed for Apalachicola
 - All three required a pre-treatment technology prior to the GAC filters to be economical
 - Pretreatment reduces the load on the GAC material
 - Extends the required GAC replacement time and reduces the yearly operational cost
- An electromedia filter was chosen (Filtronics or approved equal)
 - Best option from operations and maintenance standpoint
 - Periodic backwashing is required
 - Filter will also remove other contaminants
 - Iron, manganese, and Hydrogen sulfide
- Bench scale testing will be provided by Filtronics (or approved equal) prior to installation to fine tune the proposed system.
 - Testing and installation will occur simultaneous with construction of other improvements.

Benefits of proposed Improvements

- Sustainable system for regulatory compliant drinking water for all customers.
 - Compliance with FDEP consent order.
- Easy to operate and maintain
- Color and odor will be reduced.
 - Removal of Iron and Hydrogen sulfide from raw water.
- Reduces chlorine demand of current system.

Project Implementation

1. Bench scale testing (ACT) complete
2. FDEP permitting complete for proposed solution – Issued on June 3, 2015
3. Funding is being completed for a Rural Development Grant
4. Construction Bidding will be ready after funding is administered.
5. Construction duration is approximately 6 months after award of contract.

