

## I. Introduction

The purpose of this bulletin is to modify and supplement the information found in RUS Bulletin 1780-26. It is intended that when an engineer follows these bulletins in the preparation of the contract document section of the specification book, the result will be acceptable to Rural Development in Virginia. When there is a conflict between this bulletin and RUS Bulletin 1780-26, this bulletin will prevail.

This bulletin consists of the following sections:

- I. Introduction
- II. List of Contract Documents
- III. Additional Supplementary Conditions
- IV. Final Payment Requirements
- V. Project Sign

Note that the project sign is to be placed either in the plans or specifications at the engineer's discretion. The project sign is required for all Rural Development contracts in excess of \$100,000.

## II. List of Contract Documents for Rural Development Water and Wastewater Projects (EJCDC)

- Advertisement for Bids (RUS Bulletin 1780-26, Attachment 4)
- Instructions to Bidders (RUS Bulletin 1780-26, Attachment 5)
- Bid (RUS Bulletin 1780-26, Attachment 7)
- Bid Bond (EJCDC No. 1910-28-C, 1996)
- Notice of Award (EJCDC No. 1910-22, 1996)
- Agreement (EJCDC No. 1910-8-A-1-FA, 1997)
- Performance Bond (EJCDC No. 1910-28-A, 1996)
- Payment Bond (EJCDC No. 1910-28-B, 1996)
- General Conditions (EJCDC No. 1910-8-FA, 1997)
- Supplementary Conditions (Developed by Engineer with guidance from RUS Bulletin 1780-26, Attachment 6, supplemented with Virginia RUS Bulletin 1780-1)
- Notice to Proceed (EJCDC No. 1910-23, 1996)
- Certification for Contracts, Grants and Loans (RD Instruction 1940-Q, Exhibit A-1)
- Notice to Prospective Subcontractors of Requirements for Certifications of Non-Segregated Facilities
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (Form AD-1048)
- Compliance Statement (Form RD 400-6, Revised 2-98)
- Partial Payment Estimate (Virginia RUS Bulletin 1780-3)
- Change Order (Form RD 1924-7)
- Work Change Directive (1910-8-F, 1996)
- Project Sign (Virginia RUS Bulletin 1780-1, Attachment 1)

## III. Additional Supplementary Conditions

SC-1.01.A.4. Add the following language to the end of paragraph 1.01.A.4:

The Application for Payment form to be used on this Project is Virginia RUS Bulletin 1780-3.

SC-1.01.A.10 Add the following language to the end of paragraph 1.01.A.10:

The Change Order form to be used on this Project is Form RD 1924-7.

SC -12.04. Add the following new paragraph immediately after paragraph 12.04.A:

When establishing the contract time, an allowance will be made for four (4) calendar days of work lost per month due to inclement weather conditions. The Contractor, at the time of each periodic pay request, shall submit to the Engineer and Owner for approval a list of all working days lost due to either inclement weather or site conditions caused by inclement weather for the period. Accompanying his list should be a summary of the specific conditions which caused the loss. This request will be reviewed by the Engineer in light of observations made by the Engineer and resident inspector. Approval of the periodic payment estimate by the Engineer, Owner, and Agency will also include approval of the weather delay request. After substantial completion, and not until then, a change order must be executed if a time extension for weather related delays is requested by the Contractor. The time extension must be based solely on the time requested within the periodic payment estimates. Subtracted from this time will be the four (4) days per month allowance assumed in the contract. There cannot be a decrease in contract length if the allowance for inclement weather exceeds the actual number of days lost due to inclement weather. To convert working days into calendar days, multiply the working days by seven (7) and divide by the number of working days in a typical work week.

SC -18.06. Add the following new paragraph immediately after paragraph 18.06.A.

The goals and timetables for minority and female participation, expressed in percentage terms for the CONTRACTOR'S aggregate work force in each trade on all construction work in the covered area are \_\_\_\_\_ for minorities and 6.9% for women.

#### IV. Final Payment Requirements

Listed are the necessary documents required before final payment is made to contractors and/or design consultants on projects financed in whole or in part by Rural Development. Some of the items may not be applicable on each project or in all contracts of the same project. When more than one contractor is on the same project, most of the following items will be submitted for each.

1. Final change order shall be updated and reflect the changes to correlate with the as-built drawings.
2. For projects where performance and payment bonds are in effect, a "Consent of Surety as to Final Payment" is needed. When surety bonds are not provided, contractors will furnish the owner required evidence of payment in full for all materials, labor and any other items procured under the contract. Form RD 1924-10, "Release by Claimants," and/or Form RD 1924-9, "Certificate of Contractor's Release," may be used for this purpose.
3. A statement of acceptance from VDOT stating that satisfactory repairs were made to the roadways which were disturbed during the construction period and that all expenses associated with VDOT inspections have been paid in full.
4. A statement signed by the Design Consultant stating that the work has been inspected and that the construction was completed in accordance with the approved contract documents. Exhibit E of EJCDC No. 1910-1-FA, "Notice of Acceptability of Work," should be used for this purpose.
5. A statement from the borrower indicating full acceptance of the project.

V. Project Sign

For contracts exceeding \$100,000, the Contractor shall supply, erect, and maintain a project sign (Exhibits A and B) according to the specifications set forth below:

- Size: 4' x 8' x 3/4"
- Material: APA Rated A-B Grade - Exterior
- Framing: 2" x 4" nominal on four sides and center cross bracing
- Supports: 4" x 4" x 11' nominal post
- Mounting: Sign is to be mounted to the 4" x 4" post with a 3/8" minimum bolt and nut, four on each side of the sign. Each bolt is to have two washers, one between the sign and the head of the bolt and the other between the post and the nut.
- Erection: 4" x 4" posts are to set three to four feet deep into concrete 12" in diameter.
- Paint: Face: three coats outdoor enamel (sprayed)  
Rear: one coat outdoor enamel (sprayed)
- Colors: White background with black lettering except for USDA logo (green background with white lettering)
- Lettering: Silk screen enamel. Lettering sizes and positioning will be as illustrated.

Location and height of sign will be coordinated with the agency responsible for highway or street safety in the area, if any possibility exists for obstruction of traffic line of sight.

The project sign will be substantially in accordance with Exhibits A and B, placed in a prominent location, and maintained in good condition until the completion of the project.

Information for items will be supplied by the Engineer/Architect.

Cost of sign, including erection and removal, shall be included in the lump sum or unit prices bid.

Instructions for the owner and engineer utilizing the “Standard Form of Agreement Between Owner and Engineer for Professional Services Funding Agency Edition” - EJCDC No. 1910-1-FA (1997 Edition).

This document consists of the basic thirteen-page agreement and nine bolt-on exhibits. These exhibits are as follows.

1. Exhibit A - Explains the services to be provided by the engineer. This exhibit is required.
2. Exhibit B - Explains the responsibilities of the owner. The owner and engineer need to evaluate the capability of the owner to undertake these responsibilities. If the owner is not capable of performing all of these duties, some may be switched to the engineer. The engineer's compensation should be adjusted for the additional duties. This exhibit is required.
3. Exhibit C - This outlines how the engineer is to be compensated. This exhibit really consists of two options, only one of which is required. For Rural Development projects in Virginia, only the lump sum method will be used to determine the basic engineering fee. The percentage of construction method will not be used.

Note that attached to this instruction sheet is Virginia Attachment 1 (Virginia RUS Bulletin 1780-2). This needs to be attached to the required Exhibit C in addition to the Attachment 1 to Exhibit C. This exhibit is required.

4. Exhibit D - This outlines the duties of the engineer-provided resident project representative. This exhibit is required when the engineer provides resident project representative services.
5. Exhibit E - “Notice of Acceptability of Work.” This is to be utilized by the engineer when the construction work is finalized and the engineer is satisfied that the project is finished. This exhibit is required
6. Exhibit F - This is an optional form to be utilized in setting a construction cost limit.
7. Exhibit G - Outlines the insurance to be carried by the owner and engineer. This may be affected by the owner's condition of financing. This exhibit is required.
8. Exhibit H - This sets a method for dispute resolutions. This exhibit is recommended.
9. Exhibit I - This exhibit is available for any special provisions. This exhibit is optional.

**Note that this instruction sheet is not to be made part of the Agreement for Engineering Services.** The sheets that follow should be attached to Exhibit C.

This is **Virginia Attachment 1** consisting of four pages, referred to in and part of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition** dated \_\_\_\_\_.

Initial:  
OWNER \_\_\_\_\_  
ENGINEER \_\_\_\_\_

This **Virginia Attachment 1** amends and supplements Exhibit C of the **Agreement between OWNER and ENGINEER for Professional Services -- Funding Agency Edition** for utilization with Rural Development-funded projects in Virginia.

Below is a fee percentage table which may be used to determine Basic Engineering fees considered reasonable for Rural Development projects. The Study and Report phase as outlined in paragraph A.1.1.01 is not included in the fees as outlined below. The fees as outlined below are for those performed or furnished under paragraphs A.1.02 through A.1.06. For water and sewer treatment facilities, add one percent to the Table I fee.

FEEES CONSIDERED REASONABLE FOR BASIC ENGINEERING

CONSTRUCTION COST *        \$	TABLE I % BASIC ENG. FEE	TABLE II % BASIC ENG. FEE
less than 100,000	----- TO BE NEGOTIATED-----	
100,000	10.7	8.2
200,000	9.9	7.5
300,000	9.3	7.2
400,000	8.8	6.9
500,000	8.3	6.7
600,000	7.9	6.5
700,000	7.7	6.3
800,000	7.5	6.2
900,000	7.3	6.1
1,000,000	7.2	6.0
2,000,000	6.8	5.5
3,000,000	6.5	5.3
4,000,000	6.2	5.1
5,000,000	6.0	5.0
10,000,000	5.7	4.9
20,000,000	5.4	4.6

CONSTRUCTION ITEMS

TABLE I	TABLE II
Water and sewer treatment facilities (add one percent)	Water distribution lines 16" and larger in diameter and appurtenances
Booster Stations	Sanitary sewerlines greater than 24" in diameter and appurtenances
Water distribution lines, under 16" in diameter and appurtenances	Water storage facilities
Sanitary sewer lines under 24" in diameter and appurtenances	Storm sewers and drains
Renovation and rehabilitation	Roads and streets
Lift Stations	Industrial buildings, warehouses, etc.
	Grading except when incidental to the project

\*Estimated construction cost

If a project is divided such that a portion is eligible for TABLE I compensation and the remainder for TABLE II compensation, fee percentages for Basic Engineering services will be determined based on the total estimated construction cost with each corresponding percentage figure applied to the appropriate portion of construction. The appropriate fee percentage should be computed based on an interpolated value and rounded to the nearest tenth of a percent.

		<u>Cost</u>	<u>Basic Fee %</u>
For example:	Treatment Plant	\$400,000	9.3
	Distribution System	\$50,000	8.3
	Water Tank	<u>\$50,000</u>	6.7
	Construction Cost	\$500,000	

Projects bid simultaneously shall be considered as one project for the purpose of computing Basic Engineering fees and project representation fees.

For the purpose of calculating fees, construction cost estimates do not include construction contingencies.

Replace C.4.02.A. 1. through 4 - with the following paragraphs.

(Check the applicable paragraph)

\_\_\_\_\_ A. Full-time project representation will be billed monthly on a hourly basis for the time the inspector spends at the project site. It is estimated that the project representation services will be necessary for \_\_\_\_\_ 40 hour weeks and the hourly fee for the resident project representative will be \$\_\_\_\_\_ per hour. This hourly fee includes any cost associated with Reimbursable Expenses. The total estimated not to exceed fee for this resident project representative is \$\_\_\_\_\_.

Billing for additional resident project representatives will also be based on the amount of time the resident project representative(s) spend at the project site. It is estimated \_\_\_\_\_ additional resident project representative(s) will be provided for an estimated \_\_\_\_\_ hours each. The hourly fee for the additional resident project representative(s) will be \$\_\_\_\_\_ per hour. This hourly fee includes any cost associated with Reimbursable Expenses. The total estimated not to exceed fee for the additional resident project representative(s) is \$\_\_\_\_\_.

The total estimated not to exceed figure for full-time project representation is \$\_\_\_\_\_.

\_\_\_\_\_ B. Part-time project representation will be billed monthly on an hourly basis for the time the resident project representative spends at the project site. It is estimated that the resident project representative's services will be required for a total of \_\_\_\_\_ hours. The hourly fee for this resident project representative will be \$\_\_\_\_\_ per hour. This hourly fee includes any cost associated with Reimbursable Expenses. The total estimated not to exceed fee for part-time project representation is \$\_\_\_\_\_.

Full-time resident project representation is to be interpreted as project representation services provided from the date the contractor begins work to the date of substantial completion. Resident project representation services shall be provided whenever the contractor is on the site of the project performing work as outlined in the construction contract and any modification to the contract. In estimating the length of full-time project representation services, some allowance for part-time project representation services during the period from the date substantial completion to the date of final completion should be made. Full-time project representation is preferred on most Rural Development projects.

Part-time resident project representation is to be used only when the complexity and scope of the construction does not require full-time project representation. Part-time resident project representation will be fully explained and detailed in Exhibit I.

Any costs for resident project representation due to projects not being completed on schedule will be one factor included in determining the amount of liquidated damages. Liquidated damages collected may be used to pay additional resident project representation costs.

Append paragraph A.1.01.A.5 with the following

The preparation of applications will be limited to one for Rural Development funding. The preparation of additional applications could necessitate a change in the fee associated with the Study and Report Phase.

Revise paragraph A.1.02.A.2 to state the following

Provide necessary field surveys to provide necessary plan and profiles for utility type projects and provide utility mapping based upon information provided by the Owner to the Engineer for design purposes. Any topographic surveying is not included.

Append paragraph A.1.03.A.2 with the following:

The permits included in this paragraph is limited to the VPDES permits issued by the Virginia Department of Environmental Quality; construction permits issued by the Virginia Department of Health, the Virginia Department of Environmental Quality and the Virginia Department of Transportation; and erosion and sediment control permits. Modeling of air quality, water quality, waste assimilation and ground water modeling (RASA and others) is not included.

Append paragraph A.2.01.A.1 with the following:

Prepare and provide technical criteria, written descriptions, design data and forms for Owner's use in filing applications for environmental type permits such as those associated with stream crossings or wetlands disturbance. Additionally, work associated with pilot studies and modeling of air quality, water quality, waste assimilation and ground water modeling (RASA and others) is not included.

Add a new paragraph A.2.01.A.26 to state the following:

Services to provide topographic surveys for treatment facilities, storage tanks, and pump station sites.

Add a new payment level under paragraph C.4.01.A.3 as follows:

A sum which equals 30 percent of the Lump Sum compensation payable under paragraph C.4.01.A.2, above, after the Preliminary Design Phase as outlined in paragraph A.1.02 is complete. It is not required that the agency or other governmental authorities review these documents prior to this payment

Add a new paragraph C.4.03.C as follows:

C.4.03.C Attach in detail a list of the Additional Engineering Services to be performed by the engineer along with a cost estimate for each of these services. Approval of this agreement by the Owner and concurrence by Rural Development will act as the authorization to proceed with these services. The billings for additional services shall not exceed the budgeted amount without prior concurrence by the Owner and Rural Development. Should the need for Additional Services which were not previously identified be required during the development of the project, prior concurrence from the owner and Rural Development is needed.

Replace C.4.04.B with the following:

Reimbursable Expenses reasonably and necessarily incurred in connection with services provided under Paragraph C.4.03 will be paid at the rates set forth in Attachment 1, provided, however, services necessary to provide a property plat for an easement, including surveying and any reimbursable expenses, will be reimbursed in the amount of \$ \_\_\_\_\_ per easement.

<b>Partial Payment Estimate</b>				Contract No.	Partial Payment Estimate No.	Contractor
Virginia RUS Bulletin 1780-3				Period of Estimate From _____ to _____	Page _____ of _____	Owner
Weather Related Time Delays						
No. of Days Lost	Date of Days Lost			<b>Estimate</b>		
Change Order Summary				1. Original Contract _____		
Number	FmHA Approval Date	Amount Approved (2)	Amount Installed to Date (5)	2. Change Orders Approved by Rural Development _____		
				3. Revised Contract (1 + 2) _____		
				4. Work Completed to Date _____		
				5. Change Orders Completed to Date _____		
				6. Stored Materials _____		
				7. Subtotal (4 + 5 + 6) _____		
				8. Retainage _____		
				9. Previous Payments _____		
Total				10. Amount Due _____		
<b>CONTRACTOR'S CERTIFICATION</b>  The undersigned Contractor certifies that to the best of their knowledge, information and belief, the work covered by this payment estimate has been completed in accordance with the contract documents, that all amounts have been paid by the contractor for which previous payment estimates were issued, and payments received from the owner and that current payment shown herein is now due.		<b>CERTIFICATION OF FIELD REPRESENTATIVE</b>  I have checked this estimate against the Contractor's Schedule of Amounts of Contract Payments, the notes and reports of my inspection of the project and the periodic reports submitted by the engineer. It is my opinion that the statement of work performed and/or materials supplied is accurate, that the contractor is observing the requirements of the contract, and that the contractor should be paid the amount requested.		<b>CERTIFICATION OF ENGINEER</b>  I hereby certify that to the best of my knowledge and belief, the quantities shown in this estimate are correct and have not been shown in previous estimates and the work has been performed in accordance with the contract documents.		<b>APPROVED BY OWNER</b>  _____ Owner  _____ By  _____ Date  ACCEPTED BY Rural Development:  The review and acceptance of this estimate by Rural Development does not attest to the correctness of the quantities shown or that the work has been performed in accordance with the contract documents.
_____ Contractor		_____ Field Representative		_____ Name of Architectural/Engineering Firm		_____ By
_____ By		_____ Date		_____ Title		_____ By
_____ Date		_____ Date		_____ Date		_____ Date

### PRICE BREAKDOWN

Item	Description	CONTRACT			THIS PERIOD		TOTAL TO DATE		% Complete
		Quantity*	Unit Price*	Amount	Quantity*	Amount	Quantity*	Amount	
	<b>TOTALS</b>								

\* Column not used for lump sum price breakdown

Limit entries to quantities and amounts under original contract

**WATER AND WASTE  
PROCESSING CHECKLIST**

<b>Applicant</b>	<b>Project Name</b>	<b>Type of Facility</b>
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**STAGE 1: APPLICATION**

<b>Document</b>	<b>Document or Form Number</b>	<b>Prepared By</b>	<b>File Position/ Type</b>	<b>Retention Period</b>	<b>Date Received</b>
Notice of intent to file application - <a href="#">1780.18</a>	Newspaper Publication	Applicant	3 Project	Indefinite	
Application for Federal Assistance - <a href="#">1780.31(b)</a>	SF 424 with 424A and B for non-construction <u>OR</u> 424C and D for construction	Applicant	3 Project	Indefinite	
Preliminary Engineering Report/ Evidence of review by agency engineer - <a href="#">1780.33(c)</a>	Report Letter	Applicant Agency	6 Project	Indefinite (if feasibility included; otherwise, 3 yrs.)	
List of users by name expected to use over 20,000 gallons per month - <a href="#">PER</a>	N/A (May appear in PER)	Applicant Consulting Engineer	8 Project	3 years after start of operation	
Use analysis showing separation of residential and non-residential usage - <a href="#">PER</a>	N/A (May appear in PER)	Applicant Consulting Engineer	8 Project	3 years after start of operation	
Copy of existing rate - <a href="#">PER</a>	N/A (May appear in PER)	Applicant Consulting Engineer	8 Project	3 years after start of operation	
Bill analysis for existing system - <a href="#">PER</a>	N/A (May appear in PER)	Applicant Consulting Engineer	8 Project	3 years after start of operation	
Projected bill analysis for new users - <a href="#">1780.39(c)(1)</a>	N/A (May appear in PER)	Applicant Consulting Engineer	8 Project	3 years after start of operation	
Statement reporting the total number of potential users - <a href="#">1780.39(c)(1)</a>	N/A (May appear in PER)	Applicant Consulting Engineer	8 Project	3 years after start of operation	
Adjustments to historic income and cost -- explain changes - <a href="#">1780.7(f)</a>	N/A (May appear in PER)	Applicant Consulting Engineer	8 Project	3 years after start of operation	
Cost breakdown showing treatment, collection, etc. - <a href="#">PER</a>	N/A (May appear in PER)	Applicant Consulting Engineer	8 Project	Indefinite	

Supporting documentation on existing debt - <a href="#">1780.33(e)</a>	N/A	Applicant	1 Project	Indefinite	
Financial statements or audit - <a href="#">1780.33(e)</a>	N/A	Applicant	1 Project	5 years	
Other credit information - <a href="#">1780.7(d)</a> and <a href="#">1780.33(d)</a>	Certification	Applicant	3 Project	Indefinite	
Evidence of legal authority and organization - <a href="#">1780.7(e)</a> & <a href="#">1780.33(e)</a>	N/A	Applicant	5 Project	Indefinite	
Articles of Incorporation and Certificates of Incorporation and Good Standing - <a href="#">1780.33(e)</a>	N/A	Applicant	5 Project	Indefinite	
Bylaws, Rules, and Regulations - <a href="#">1780.33(e)</a>	N/A	Applicant	5 Project	Indefinite	
Organizational minutes - <a href="#">1780.33(e)</a>	N/A	Applicant	5 Project	Indefinite	
State intergovernmental review and recommendations - <a href="#">1780.33(b)</a>	Letter	Applicant	3 Project	Indefinite	
Categorical Exclusion Without Report - <a href="#">1794</a>	Exhibit H of Staff Instruction 1794-1	Agency	3 Project	Indefinite	
Categorical Exclusion With Report - <a href="#">1794</a>	Exhibit H of Staff Instruction 1794-1	Agency Applicant Engineer	3 Project	Indefinite	
Environmental Report - <a href="#">1794</a>	Exhibit A of Staff Instruction 1794-1	Agency	3 Project	Indefinite	
Finding of No Significant Impact (FONSI) - <a href="#">1794</a>	Exhibit E of Staff Instruction 1794-1	Agency	3 Project	Indefinite	
Civil Rights Impact Analysis - <a href="#">1794</a>	RD 2006-38	Agency	3 Project	Indefinite	
Environmental Publication - <a href="#">Bulletin 1794A-602</a>	News Advertisement	Applicant	3 Project	Indefinite	
Documentation on historical and archaeological assessments - <a href="#">Bulletin 1794A-602</a> & <a href="#">1901-F, 1901.255(a)(2)</a>	N/A	Agency Applicant	3 Project	Indefinite	
Statement from SHPO on historical sites and archaeological properties - <a href="#">Bulletin 1794A-602</a>	N/A	Applicant	3 Project	Indefinite	
Evidence of environmental review and adoption of other Federal agency assessment - <a href="#">1794</a>	Running Record	Agency	3 Project	Indefinite	
Environmental Impact Statement - <a href="#">1794</a>	N/A	Agency	3 Project	Indefinite	
Identify known relationships/ association with agency employee - <a href="#">1780.1(f)</a>	Memo	Applicant	3 Project	Indefinite	

Evidence proposed facility will be consistent with development plans - <a href="#">1780.1(h)</a>	Letter	Applicant	3 Project	Indefinite	
Certification regarding tying arrangements - <a href="#">1780.33(h)(8)</a>	Certification	Applicant	3 Project	Indefinite	
Certification regarding lobbying - <a href="#">1780.33(h)</a>	1940-Q, Exhibit A or A-1	Applicant Others	3 Project	Indefinite	
Certification regarding a drug-free workplace - <a href="#">1780.33(h)</a>	AD-1049	Applicant	3 Borrower	Indefinite	
Certification regarding debarment or suspension - <a href="#">1780.33(h)</a>	AD-1047 AD-1048	Applicant	3 Borrower	Indefinite	
Application certification, federal collection policies for consumer or commercial debt - <a href="#">1780.33(h)</a>	RD 1910-11	Applicant	3 Project	Indefinite	
Equal Opportunity Agreement - <a href="#">RD Instruction 1901-E</a>	RD 400-1	Applicant	6 Project	3 years after builder's warranty expires	
Assurance Agreement - <a href="#">RD Instruction 1901-E</a>	RD 400-4	Applicant	3 Project	Indefinite	
Evidence of no outstanding judgment - <a href="#">1780.7(g)</a>	Letter	Applicant	3 Project	Indefinite	
Notice of public information meeting and minutes - <a href="#">1780.18</a>	Publication Minutes	Applicant	3 Project	Indefinite	
Documentation relative to health or sanitary hazards - <a href="#">1780.10(c)(1)</a> and <a href="#">1780.13(b)(1)</a>	N/A	Applicant	2 Project	Indefinite	
Agreement for Engineering Services with agency concurrence - <a href="#">1780.39(b)(1)</a>	EJCDC No. 1910-1-FA	Applicant Agency	6 Construc.	3 years after builder's warranty expires	
Legal Services Agreement with agency concurrence - <a href="#">1780.39(b)(2)</a>	Bulletin 1780-7	Applicant Agency	5 Project	Indefinite	
Management Agreement with agency concurrence - <a href="#">1780.39(b)(4)</a>	Bulletin 1780-8	Applicant Agency	3 Project	Indefinite	
Agency's determination and documentation on other credit - <a href="#">1780.7(d)</a> and <a href="#">Staff Instruction 1780-2, section 2.1</a>	Memo/Running Record	Agency	3 Project	Indefinite	
Eligibility determination and recommendations to State Director - <a href="#">Staff Instruction 1780-2, section 2.4(d)</a>	Memo/Running Record	Agency	3 Project	Indefinite	
Site Visit - <a href="#">Staff Instruction 1780-2, section 2.4(a)</a>	Memo	Agency	3 Project	Indefinite	
Inequities within service area - <a href="#">1780.11</a>	Memo/Running Record	Agency	3 Project	Indefinite	

Evidence regarding median household income, if other than census data is used - <a href="#">1780.1(b)</a>	Survey or Other Data	Applicant Agency	3 Project	Indefinite	
Evidence of overall review of applicant's financial status - <a href="#">Staff Instruction 1780-2, section 2.4(c)</a>	Memo	Agency	3 Project	Indefinite	
Project Selection Criteria - <a href="#">1780.17</a>	Bulletin 1780-1	Agency	3 Project	Indefinite	
Justification for Additional Project Points - <a href="#">1780.17(e)</a>	Memo/Running Record	Agency	3 Project	Indefinite	
Water and Waste Disposal Grant Determination - <a href="#">1780.35(b)</a>	Automated Form	Agency	2 Project	Indefinite	
Project Summary - Water and Waste Disposal and Other Utility-Type Projects with Attachments - <a href="#">1780.41(a)</a>	RD 1942-45, RD 442-7, and RD 1942-14	Agency	1 Project	Indefinite	
Initial Operating Budget - <a href="#">1780.33(h)</a>	RD 442-7	Applicant	3 Project	Indefinite	
Association Project Fund Analysis - <a href="#">1780.41(a)</a>	RD 1942-14	Agency	2 Project	Indefinite	
Certification regarding applicant not appearing on debarment/suspension list - <a href="#">1940-M, section 1940.606(b)</a>	Memo/Running Record	Agency	3 Project	Indefinite	
RCFTS Updates - Screens CP03, CP05, CP06, CP08, CP09, CP11, and CP12	RCFTS System	Agency	2 Project	Until updated	

**STAGE 2: DOCKET**

Document	Document or Form Number	Prepared By	File Position/ Type	Retention Period	Date Received
Evidence of application review - <a href="#">1780.32(b)</a>	Memo/Running Record	Approval Official	3 Project	Indefinite	
Certification that the Credit Alert Interactive Voice Response System (CAIVRS) has been checked - <a href="#">S/O unnumbered memo</a>	Memo/Running Record/Printout	Approval Official	3 Project	Indefinite	
Letter of Conditions - <a href="#">1780.41(a)(5)</a>	VA RUS 1780, Exhibit B	Agency	3 Project	Indefinite	
Letter of Intent to Meet Conditions - <a href="#">1780.41(a)(6)</a>	RD 1942-46	Applicant	3 Project	Indefinite	
Electronic Funds Transfer (EFT) Payment Enrollment Form - <a href="#">Letter of Conditions</a>	SF-3881	Applicant	2 Borrower	Indefinite	

Request for Obligation of Funds - <a href="#">1780.41(a)</a>	RD 1940-1	Applicant Agency	3 Project	Indefinite	
Project announcement - <a href="#">Staff Instruction 1780-2, section 2.7(e)</a>	Exhibit A, RD 2015-C	Approval Official	2 Project	Indefinite	
Notification to LAPAS - <a href="#">Staff Instruction 1780-2, section 2.7(e)</a>	N/A - Telephone call	Approval Official	2 Project	Indefinite	
Evidence applicant notified of approval - <a href="#">1780.41(b)</a>	Letter	Approval Official	4 Project	5 years	
Agreement between applicant and individual users - <a href="#">1780.9(g)(2)</a>	Agreement	Applicant	5 Project/ User Portfolio	3 years after start of operation	
Water Purchase Contract/Sewage Treatment Contract with agency concurrence - <a href="#">1780.62 and 1780.63</a>	N/A - Utilize RUS Instruction 1780, section 1780.62, as a guide	Applicant Agency	5 Project	Term of Agreement	
Agreements/Contracts with professional and technical representatives with agency concurrence - <a href="#">1780.39(b)</a>	Agreement/Letter	Applicant Agency	5 Project	Term of Agreement	
Evidence of agreement with accountant - <a href="#">1780.39(b)</a>	Letter	Attorney	3 Project	Term of Agreement	
Resolution or minutes authorizing execution of documents - <a href="#">LOC</a>	N/A	Applicant	5 Project	Indefinite	
Water/Sewer Users Agreement or evidence of mandatory hook-up ordinance - <a href="#">1780.39(c)</a>	Bulletin 1780-9	Applicant	5 Project/ User Portfolio	3 years after start of operation	
Evidence of Users - Map, list of signed users, and having user agreements available - <a href="#">LOC</a>	N/A	Applicant	5 Project/ User Portfolio	3 years after start of operation	
Evidence of program to encourage use of facility with agency approval - <a href="#">1780.39(c)(5)</a>	Letter	Applicant Agency	5 Project/ User Portfolio	3 years after start of operation	
Interim financing: evidence of commitment from commercial lender and notice of agency's commitment - <a href="#">1780.39(d)</a>	Bulletin 1780-10 or 10a	Applicant Agency	1 Project	1 year after permanent loan closing	
Resolution of Members or Stockholders - <a href="#">1780.39(f)</a>	RD 1942-8	Applicant	5 Project	Indefinite	
Evidence of insurance -- property, general liability, flood, and worker's compensation - <a href="#">1780.39(g)</a>	List of Policies or Other Documents	Applicant	7 Borrower	Until replaced/ expires	
Fidelity or employee dishonesty bond - <a href="#">1780.39(g)(3)</a>	Copy of Bond	Applicant	7 Borrower	Until replaced/ expires	
RCFTS Updates - Screens CP05, CP07, CP08, CP10, CP12, and CP14	RCFTS System	Agency	2 Project	Until updated	

**STAGE 3: CLOSING**

Document	Document or Form Number	Prepared By	File Position/ Type	Retention Period	Date Received
Certification regarding applicant/ contractor not appearing on debarment/suspension list - <a href="#">1940-M, 1940-606(b)</a>	Memo/Running Record	Agency	3 Project	Indefinite	
Certification that CAIVRS has been checked	Memo/Running Record/Printout	Agency	3 Project	Indefinite	
Accountant's certification on accounting system - <a href="#">LOC</a>	N/A	Accountant	3 Project	Indefinite	
Approval of accounting system - <a href="#">LOC</a>	N/A	Applicant Agency	3 Project	Indefinite	
Verification of applicant contribution - <a href="#">1780.44(b)</a>	Memo	Applicant	3 Project	Indefinite	
Evidence of availability of other funds - <a href="#">1780.44(f)</a>	Memo	Applicant Agency	2 Project	Until receipt of all funds	
Evidence of commitment of other funds with agency verification - <a href="#">1780.44(f)</a>	Letter	Applicant Agency	2 Project	Until receipt of all funds	
Appraisal report water and waste disposal systems - <a href="#">1780.44(g)</a>	RD 442-10	Agency or Other	8 Project	Indefinite	
Deed to real property - <a href="#">1780.44(g)</a>		Applicant	5 Project	Indefinite	
Evidence of acquisition of necessary property - <a href="#">1780.44(g)</a>	Letter/Agreement	Applicant	5 Project	Indefinite	
Rights-of-way map - <a href="#">LOC</a>	RD 1942-19	Engineer	5 Construc. Portfolio	3 years after builder's warranty expires	
Rights-of-Way/easement - <a href="#">1780.44(g)(1)</a>	RD 442-20 or other approved form	Applicant	5 Construc. Portfolio	3 years after builder's warranty expires	
Rights-of-Way certificate- <a href="#">1780.44(g)(1)(i)</a>	RD 442-21	Applicant	5 Project	Indefinite	
Opinion of Counsel Relative to Rights-of-Way - <a href="#">1780.44(g)(1)(i)</a>	RD 442-22	Attorney	5 Project	Indefinite	
Narrative opinion of attorney - <a href="#">LOC</a>	N/A	Attorney	5 Project	Indefinite	
Preliminary Title Opinion - <a href="#">1780.44(g)(2)</a>	RD 1927-9	Attorney	5 Project	Indefinite	
Title insurance binder - <a href="#">1780.44(a)</a>	Binder	Applicant	5 Project	Indefinite	

Water rights - <a href="#">1780.44(g)(3)</a>	Letter	Applicant	5 Project	Indefinite	
Lease Agreements - <a href="#">1780.44(g)(4)</a>	Agreement	Applicant	5 Project	Term of Agreement	
Draft bond documents - <a href="#">LOC</a>	N/A	Bond Attorney Applicant	2 Bond Portfolio	Until receipt of bond transcript	
Closing Instructions - <a href="#">1780.44(h)</a>	Memos	OGC Approval Official	5 Project	Indefinite	
Loan Resolution (Public Bodies) - <a href="#">1780.45(a)(2)</a>	Bulletin 1780-27	Applicant Agency	5 Project	Indefinite	
Loan Resolution Security Agreement - <a href="#">1780.45(a)(2)</a>	Bulletin 1780-28	Applicant Agency	5 Project	Indefinite	
Association Water or Sewer System Grant Agreement - <a href="#">1780.45(c)</a>	RB 1780-12	Applicant Agency	2 Project	Indefinite	
Bond - <a href="#">1780.83</a>	N/A	Applicant Bond Counsel	2 Project (original in safe)	As long as debt is outstanding	
Promissory Note - <a href="#">1780.45(a)(1)</a>	RD 440-22	Agency	2 Project (original in safe)	As long as debt is outstanding	
Deed of Trust - <a href="#">VA 1780</a>	VA 1780, Exhibit D, Attachment 1	Attorney	5 Project	Indefinite	
Security Agreement - <a href="#">VA 1780</a>	VA 440-4	Applicant	1 Borrower	Indefinite	
Financing Statements with attachment as appropriate - <a href="#">VA 1780</a>	UCC1	Applicant Agency	1 Borrower	Indefinite	
Final Title Opinion - <a href="#">1780.44(g)(2)</a>	RD 1927-10	Attorney	5 Project	Indefinite	
Title insurance - <a href="#">1780.44(g)(2)(i)</a>	Policy	Applicant	5 Project	Indefinite	
Evidence of waiver of title defects - <a href="#">1780.44(g)(2)(ii)</a>	Letter	Agency	5 Project	Indefinite	
Closing certificate - <a href="#">Closing Instructions</a>	VA 1780, Exhibit E	Agency	5 Project	Indefinite	
Closing certificate - <a href="#">Closing Instructions</a>	VA 1780, Exhibit D, Attachment 4	Attorney	5 Project	Indefinite	
Verification of users and other funds - <a href="#">1780.44(b)</a>	Memo	Agency	3 Project	Indefinite	
Initial compliance review - <a href="#">1780.44(c)</a>	RD 400-8	Agency	5 Borrower	Indefinite	
Bond and bond transcript - <a href="#">1780.83</a>	N/A	Applicant Bond Counsel	2 Bond Portfolio	As long as debt is outstanding	

Evidence bond transmitted to finance office	Memo	Agency	2 Bond Portfolio	As long as debt is outstanding	
Post review of loan closing - <a href="#">1780.45(g)</a>	Memos	OGC Approval Official	5 Project	Indefinite	
Estimate of Funds Needed for 30 Day Period - <a href="#">1780.45(b)(1)(ii)</a>	RD 440-11	Applicant	2 Project	3 years after funds expended	
Agreement for prior concurrence in bills and vouchers - <a href="#">1780.45(e)</a>	Agreement	Applicant Agency	2 Project	3 years after funds expended	
Pledge of collateral - <a href="#">1780.45(e)(2)</a> and <a href="#">(3)</a>	Letter	Agency	2 Project	Until all funds expended	
Deposit Agreement - <a href="#">1780.45(e)(3)</a>	RD 402-1	Applicant	2 Project	Until all funds expended	
RCFTS Updates - Screens CP04, CP05, CP07, CP10, and CP12	RCFTS System	Agency	2 Project	Until updated	

#### STAGE 4: CONSTRUCTION/ENGINEERING

Document	Document or Form Number	Prepared By	File Position/ Type	Retention Period	Date Received
Permits (building, operating, VDOT, etc.) - <a href="#">1780.57</a>	Permits	Applicant	6 Project	3 years after builder's warranty expires	
Department of Health Approval - <a href="#">1780.57</a>	Letter	DOH Official	6 Project	3 years after builder's warranty expires	
Contract documents - <a href="#">1780.61(a)</a>	Standard Documents	Owner Agency OGC	6 Contract Portfolio	3 years after builder's warranty expires	
Legal certification regarding adequacy of contract documents - <a href="#">1780.61(b)</a>	Certification	Owner Attorney	6 Contract Portfolio	3 years after builder's warranty expires	
Review and approval of contract documents - <a href="#">1780.61(b)</a> and <a href="#">1780.75(i)</a>	Letter	Agency	6 Contract Portfolio	3 years after builder's warranty expires	
Bid tabulation sheet with agency approval - <a href="#">1780.61(b)</a>	Sheets and Letter	Owner Agency	6 Construc. Portfolio	3 years after builder's warranty expires	
Inspection services - <a href="#">1780.67</a>	Letter	Agency Engineer	6 Construc. Portfolio	3 years after builder's warranty expires	
Evidence and certifications for contracts awarded prior to application - <a href="#">1780.74</a>	Certification	Owner	6 Construc. Portfolio	3 years after builder's warranty expires	

Compliance Statement - <a href="#">1780.75</a>	RD 400-6	Contractor	6 Project	3 years after builder's warranty expires	
Performance and Payment Bonds/Treasury Circular - <a href="#">1780.75(c)</a>	Bonds	Contractor and Owner	6 Construc. Portfolio	3 years after builder's warranty expires	
Release by claimants - <a href="#">1780.75(c)</a>	RD 1924-10	Owner	6 Construc. Portfolio	3 years after builder's warranty expires	
Certificate of Contractors Release - <a href="#">1780.75(c)</a>	RD 1924-9	Owner	6 Construc. Portfolio	3 years after builder's warranty expires	
Contract Change Order with agency approval - <a href="#">1780.75(h)</a> and <a href="#">1780.76(h)</a>	RD 1924-7	Agency and Owner	6 Construc. Portfolio	3 years after builder's warranty expires	
Record of Pre-Construction Conference - <a href="#">1780.76(a)</a>	RD 1924-16	Agency Applicant	6 Project	3 years after builder's warranty expires	
Resume of resident inspector with borrower and agency approval - <a href="#">1780.76(c)</a>	Letter	Engineer Agency Owner	6 Construc. Portfolio	3 years after builder's warranty expires	
Evidence of daily diary and inspection reports - <a href="#">1780.76(d)</a>	Bulletin 1780-18	Owner	6 Construc. Portfolio	3 years after builder's warranty expires	
Partial Payment Estimate - <a href="#">1780.76(e)</a>	1924-18	Owner	6 Construc. Portfolio	3 years after builder's warranty expires	
Pre-final inspections - <a href="#">1780.76(f)</a>	RD 1924-12	Agency Owner	6 Construc. Portfolio	3 years after builder's warranty expires	
Final inspections - <a href="#">1780.76(g)</a>	RD 1924-12	Agency	6 Construc. Portfolio	Indefinite	
As-built drawings	Drawings	Engineer	6 Map File	Indefinite	
Warranty inspection - <a href="#">Staff Instruction 1780-2, section 3.2(a)(i)(A)</a>	RD 1924-12	Agency Official	6 Construc. Portfolio	Indefinite	
Subsequent inspections of facility and operation - <a href="#">Staff Instruction 1780-2(3.2)(a)(ii)</a>	Letter	Agency Official	6 Project	Until next inspection is completed	
RCFTS Updates - Screens CP07 and CP12	RCFTS System	Agency	2 Project	Until updated	

**STAGE 5: SERVICING**

Document	Document or Form Number	Prepared By	File Position/ Type	Retention Period	Date Received
EFT/ACH/Banking information	N/A	Agency	2 Project	3 years after all funds expended	
Approval of invoices - <a href="#">1780.45(e)(1)</a> and <a href="#">1780.76(e)</a>	RD 1924-18	Payee Applicant Agency	2 Project	3 years after all funds expended	
Monitoring project costs - <a href="#">1780.45(e)(4)</a>	N/A	Agency	2 Project	3 years after all funds expended	
Planned use of remaining funds with agency concurrence - <a href="#">1780.45(f)</a>	N/A	Applicant Agency	2 Project	3 years after all funds expended	
Audits - <a href="#">1780.47(d)</a>	N/A	Borrower	1 Borrower	5 years	
Quarterly reports - <a href="#">1780.47(f)(1)</a>	RD 442-2	Borrower	1 Project	3 years	
Operational review/District Director Report - <a href="#">Staff Instruction 1780-2</a> ,	Memo RD 442-4	Agency	1 Project	3 years	
Annual Management Reports - <a href="#">1780.47(f)(2)</a>	RD 442-2	Borrower	1 Project	3 years	
RCFTS Updates as necessary	RCFTS System	Agency	2 Project	Until updated	

(Legal Opinion to be Retyped on Local Counsel's Letterhead)

\_\_\_\_\_  
(Date)

United States of America  
Program Director, Rural Utilities Service

\_\_\_\_\_  
(City) (State) (Zip)

Dear Sir:

As counsel to \_\_\_\_\_ (the Borrower) in connection with the delivery of its Promissory Note (the Note) in the principal amount of \$\_\_\_\_\_ dated of even date herewith, I/we have examined:

1. The Articles of Incorporation and Bylaws of the Borrower.
2. The Resolution of the members of the Borrower adopted on \_\_\_\_\_ on Form RD 1942-8, authorizing the construction, acquisition, and financing of a \_\_\_\_\_ facility (the Facility).
3. The Resolution of the governing body of the Borrower adopted on \_\_\_\_\_, on Form RD 1942-9, authorizing the construction, acquisition, and financing of the Facility and executed as a Security Agreement (the Security Agreement) between the Borrower and the United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture (the Government).
4. The Financing Statements from Borrower to the Government (the Financing Statements).
5. Deed of Trust between the Borrower and the Government, dated of even date herewith (the Deed of Trust).
6. Such other materials, including relevant provisions of the constitution and the laws of this State as I/we have deemed pertinent as a basis for rendering the opinions hereinafter set forth.

Based on the foregoing examinations, I am/we are of the opinion and advise you that:

- a. The Borrower has been duly incorporated and it is validly existing under the laws of this State as a non-profit corporation and has full power and authority to execute and deliver the Note, the Security Agreement, the Financing Statement, and the Deed of Trust (hereinafter collectively referred to as the "Loan Instruments").
- b. The Loan Instruments were all duly authorized, executed and delivered, and constitute the valid and legally binding obligations of the Borrower and (\* when recorded will) collectively create a valid first lien upon, or valid first

- security interest in favor of the Government in, the security covered thereby, and are enforceable in accordance with their terms, except to the extent that the enforceability (but not the validity) thereof may be limited by laws of bankruptcy, insolvency, or other laws generally affecting creditors' rights.
- c. The execution and delivery of the Loan Instruments and compliance with the provisions thereof under the circumstances contemplated thereby did not, do not and will not in any material respect conflict with or constitute on the part of the Borrower a breach of or default under any contract or agreement or other instrument to which the Borrower is a party, or any existing law, regulations, Court order, or consent device to which the Borrower is subject.
  - d. All necessary governmental approvals with respect to the acquisition, construction and operation of the Facility have been obtained.
  - e. I/we have no knowledge of any defect in the title of the Borrower to the property described in the Loan Instruments.
  - f. To the best of my/our knowledge, having made due inquiry, there is no action, suit, proceeding or investigation, at law or in equity before or by any court, public board or body, pending or threatened against or affecting the Borrower or the Facility, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by or the validity of any of the Loan Instruments or any related proceedings.

Sincerely,

\* Optional language - if used, the attorney must follow-up this letter with another which states the documents have been recorded and the Government does in fact have a valid first lien.

CLOSING GUIDELINES FOR WATER AND WASTE  
LOANS TO NON-PROFIT (NON-PUBLIC) BODIES

A. General

1. Administrative. The following materials should be reviewed to assure full compliance with all administrative requirements:
  - a. RUS Instruction 1780
  - b. Letter of Conditions (including any amendments)
  - c. Correspondence from the Program Director
  - d. Correspondence from the National Office
2. Taxes. Make certain that all taxes and assessments against the real estate, which are due and payable at the time of closing, have been paid and require tax receipts to be produced at loan closing.
3. Insurance. Make certain that the borrower furnishes policies and/or certificates of insurance at closing in form and substance administratively acceptable to you in light of Agency instructions and the letter of conditions.
4. Civil Rights. Confirm that the following fully executed Civil Rights forms are in the docket:
  - a. Form RD 400-1, Equal Opportunity Agreement
  - b. Form RD 400-4, Assurance Agreement
  - c. Form RD 400-8, Compliance Review, in accordance with RD Instruction 1901-E
5. Environmental Review. Confirm that a completed and executed environmental review, under RUS Instruction 1794, is in the docket. If the assessment indicates that an environmental impact statement must be filed, this must be accomplished prior to loan closing.
6. Intergovernmental Review Comments. Confirm that approval has been received from the local Planning District Commission. Note any comments received and confirm that the Applicant intends to comply with such comments. If the applicant expresses a contrary intention, the Program Director should be notified immediately in detail. The notified Program Director should be consulted with respect to the legal ramifications of any such noncompliance.

B. Organizational Papers

1. Articles of Incorporation. Confirm that the borrower has furnished a copy of its current Articles of Incorporation. These should be manually certified by its Secretary or the State Corporation Commission as being a true and correct copy of the original, including any amendments. The Articles of Incorporation should be checked to be certain that:

- a. The borrower's correct legal name is being used on all the loan instruments.
  - b. The borrower has the power to borrow money and carry out the purposes of the loan.
  - c. The members are not specifically authorized to vote on corporate mortgages. If they are, such provisions must be complied with along with section 13.1-846 (1989) of the Code of Virginia.
  - d. The borrower's term of existence is at least as long as the loan.
2. By-Laws. Confirm that the borrower has furnished a current copy of its By-Laws. These should be manually certified by its Secretary as being a true and correct copy of the original, including any amendments. The By-Laws should be checked to be certain that:
- a. The titles of the officers used in the loan instruments are correct.
  - b. The provisions of the By-Laws do not conflict with any provision of the Articles of Incorporation or any amendments thereto.
  - c. There are no provisions which would violate the Civil Rights Agreements described in A.4 hereof.
  - d. There are no restrictions on borrowing funds, pledging assets, or other transactions contemplated by the loan instruments.
3. Certificate of Good Standing. The borrower should furnish an original Certificate of Good Standing from the State Corporation Commission. The certificate should be dated as close to the date of closing as practicable and should be checked to be certain that the borrower's name is the same as the one being used on the loan instruments. The certificate should not be any older than one (1) year from the date of closing.

C. Resolutions

1. Form RD 1942-8. Confirm that Form 1942-8 has been duly adopted by the general membership of the borrower. The borrower's Secretary must complete the certification on the bottom to the effect that the resolution is still in effect and has not been amended. If Form 1942-8 was not adopted, then borrower's counsel must supply a legal opinion addressed to RUS stating that such approval by the membership is not necessary.
2. RUS Bulletin 1780-28. Confirm that RUS Bulletin 1780-28 has been duly adopted by the members of the borrower's governing Board of Directors and executed by the President and Secretary. The borrower's Secretary should complete the certification at closing to the effect that the resolution is still in effect and has not been amended.

3. Member's Approval of Deed of Trust/Mortgage. If the borrower's Articles of Incorporation or By-Laws specifically entitle members to vote on a mortgage or pledge of corporate assets, confirm that the request for closing instructions identified this requirement and confirm that OGC sent specific instructions concerning compliance with Sections 13.1-899 (1989) and 13.1-900 (1989) of the Code of Virginia. Contact the Program Director well before closing if any discrepancies are noted.

D. Execution of Instruments

1. All loan and security instruments must be executed and attested by those officials authorized to do so in the Articles of Incorporation and By-Laws and in the manner required by the Articles of Incorporation and By-Laws.
2. Manual Signature. All legal instruments should be manually executed originals. The name and title of the person signing should be typed or printed above or below his signature. The original manual signature of the Secretary should appear on all corporate organizational papers and proceedings furnished to RUS. Originals should be retained by RUS.
3. Seal. The borrower's corporate seal should be impressed on all documents. Check sealed instruments carefully to be certain that the correct seal is used.
4. Dates. Legal instruments E.1 and E.2 below should be dated and executed as of the date of loan closing.
5. Blanks. All instruments should be carefully checked to see that all blanks have been properly filled in.

E. Legal Instruments

1. Promissory Note. The authorized officials, as set forth in the Articles of Incorporation and By-Laws, must execute and deliver the borrower's Promissory Note on Form RD 440-22. Only one original note should be created and it would be retained by RUS in a safe place in accordance with regulations.
2. Corporate Deed of Trust. The legal description of the premises must be carefully checked and must be satisfactory to RUS and to the borrower's counsel. The instruments must be dated, executed, acknowledged, and filed in the land records in the Clerk's Office for the county, city, or district where the land lies. This should be done on the day of closing under the supervision of the borrower's counsel. If RUS does not desire a lien on real estate, no mortgage should be executed.
3. Financing Statement. All financing statements will be filed with the State Corporation Commission (SCC) with the exception of fixture filings, which are to be filed locally. If you have both equipment and fixtures to be filed, file the equipment with the SCC and the fixtures with the local County. Fixtures are defined as goods that have become so related to a particular real property that an interest in them arises under real property law. If a lien on motor vehicles is

intended, the provisions of E.5 below must be complied with. If a subsequent loan is being made to an existing borrower and the same security is being taken as covered by existing financing statements, it is not necessary to file new financing statements. However, the existing financing statements must be continued until all loans covered by the security are satisfied.

4. Leaseholds. If the borrower is occupying all or a portion of the premises pursuant to a lease, then confirm that this situation has been communicated to OGC in the request for closing instructions and that OGC has issued specific closing instructions on how this can be accomplished. Contact OGC before closing if any discrepancies are noted.
5. Liens on Motor Vehicles. Listing motor vehicles in the financing statement has no effect in Virginia. A security interest in motor vehicles is perfected by filing with the Division of Motor Vehicles on forms provided by it.
6. Security Agreement (VA Form RD 440-4). In all cases where we are taking a security interest in more than revenues only, a Security Agreement using Virginia Form RD 440-4 must be obtained. If we are taking a security interest in revenues only, the Virginia form of security agreement is not needed; however, RUS Bulletin 1780-28, Loan Resolution Security Agreement, must be executed by the borrower. You must insert specific descriptions of equipment in item 1. If revenues are not taken as security, insert "not applicable" in item 2.

#### F. Legal Opinions and Title Insurance

1. Approving Opinion. The borrower's counsel should deliver a manually signed approving legal opinion addressed to RUS and dated the date of closing in the format approved by OGC. This opinion should be on counsel's letterhead. Attachment 4 hereof is to be used as a guide. If the optional language on page 2 is used, the attorney must follow up with another letter which states the documents have been recorded and we have a valid first lien. The case should not be sent to the Program Director for post review until both letters are available.
2. Title Insurance. The borrower must furnish an acceptable title insurance policy endorsed in favor of the United States of America, acting through the United States Department of Agriculture. The policy must be in the amount of the proposed loan and all listed exceptions must be reviewed and accepted by the Agency.

#### G. Other Requirements

1. Generally. The preceding standard instructions are subject to modification to take into account special facts and circumstances. Be alert to the presence of such factors as the following:
  - a. Second mortgage situations
  - b. Leasehold mortgage situations
  - c. Pledge of less than an entire tract of real estate

- d. Pledge of less than all of borrower's assets
- e. Absence of interim financing
- f. Parity loans
- g. Any other deviation from routine practice

Whenever such factors are present, confirm that their existence has been noted on the request for closing instructions and confirm that OGC has sent specific instructions on these points. Before closing, advise the Program Director of any discrepancies.

2. Specific Closing Instructions. Review and comply with any and all specific closing instructions which OGC may issue in a particular case. Such instructions may modify, amplify, or supersede one or more of the preceding instructions which are of a general nature.
3. Questions. Questions from the Area Office should be directed in the first instances to the Program Director for referral to OGC in those instances where the Program Director believes additional legal counsel is advisable.

CLOSING GUIDELINES FOR WATER AND  
WASTE LOANS AND GRANTS TO PUBLIC BODIES

At or before the closing for the financing, the following conditions must be satisfied:

1. General Requirements. There must be full compliance with all requirements specified in applicable Agency instructions; correspondence from OGC; any applicable correspondence from the Administrator's office; letter of conditions; Intergovernmental Review comments; and any Program Director's memorandums of approval.
2. Loan Resolution. Confirm that the applicant has duly adopted the fully executed RUS Bulletin 1780-27, Loan Resolution (Public Bodies).
3. Grant Agreement. In the event a grant is also to be made to the applicant, the grant may be closed in accordance with RUS Instruction 1780, provided that these closing instructions have also been complied with and duly authorized officials of the applicant have fully executed RUS Bulletin 1780-12, Grant Agreement.
4. Civil Rights. Confirm that the following fully executed civil rights forms are in the docket:
  - a. Form RD 400-1, Equal Opportunity Agreement
  - b. Form RD 400-4, Assurance Agreement
  - c. Form RD 400-8, Compliance Review, in accordance with RD Instruction 1901-E
5. Environmental Review. Confirm that a completed and executed environmental review, under RUS Instruction 1794, is in the docket. If the assessment indicates that an environmental impact statement must be filed, this must be accomplished prior to closing.
6. Intergovernmental Review Comments. Confirm that approval has been received from the local Planning District Commission. Note any comments received and confirm that the applicant intends to comply with such comments. If the applicant expresses a contrary intention, the Program Director should be notified immediately in detail. The notified Program Director should be consulted with respect to the legal ramifications of any such noncompliance.
7. Specimen Bond(s). Prior to closing, confirm that the terms of the specimen bond(s) are consistent with Agency instructions, the letter of conditions, and other obligating documents. Amortization schedules and maturity dates should be checked very carefully.
8. Examination of Executed Bond(s). The Rural Development Manager should examine the executed original Bond(s) at the closing to determine the following:

**Virginia RUS Instruction 1780**  
**Exhibit C, Page 2**

- a. That the repayment and other terms of the Bond(s) are consistent with the letter of conditions and obligating documents.
  - b. That the Bond(s) has been fully executed by the proper officials of the applicant as recited on the face of the Bond(s).
  - c. That the persons executing the Bond(s) are officials of the applicant as shown on the General Incumbency Certificate.
  - d. That the applicant's seal is on the Bond(s).
  - e. That any authentication certificate contained on the Bond(s) has been properly executed.
  - f. That the Bond(s) is fully registered as to both principal and interest in the name of the United States of America.
  - g. That the place of payment shown on the face of Bond is correct and administratively acceptable.
  - h. The closing date, the delivery date, and the date of the initial delivery of funds must be the same date.
9. Dates, Seals, and Signatures. All certifications and opinions furnished by the applicant, local counsel, or bond counsel should be dated as of the date of closing. Wherever appropriate, the seal of the applicant should be impressed on materials being furnished by the applicant.
10. Bond Transcript. A bond transcript must be compiled by bond counsel in accordance with the requirements contained in RUS Instruction 1780, paragraph 1780.83. Confirm that the bond transcript contains each of the following items:
- a. Certified copies of all organizational documents, i.e., special acts, charter, bylaws.
  - b. General Incumbency Certificate (may sometimes be referred to as Signature Certificate).
  - c. Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the Bond(s).
  - d. Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to the calling and holding of a favorable bond election unless bond counsel advises you this is not applicable.
  - e. Certified documents evidencing that the applicant has complied fully with all statutory requirements incident to advertising the consideration and/or adoption of the bond ordinance unless bond counsel advises you that this is not applicable.

- f. Certified copies of the resolutions or ordinances or other documents, such as the bond authorizing resolution or ordinance and any resolution establishing rates and regulating the use of the improvements, if such documents are not included in the minutes furnished.
- g. Copies of official Notice of Sale and Affidavit of Publication of Notice of Sale unless bond counsel advises you that this is not applicable.
- h. Specimen Bond (of each denomination), with any attached coupons.
- i. No Litigation Certificate of Local Counsel (see Item 12 below).
- j. Certified copies of resolution or other documents pertaining to the award of the Bond(s).
- k. Non-Arbitrage Certificate.
- l. Any additional or supporting documents required by bond counsel.
- m. Preliminary approval opinion, if any, and final unqualified approval opinion of Bond Counsel, including opinion regarding interest on bonds being taxable or tax-exempt from Federal and State income taxes. The opinion must also address whether or not the RUS lien on any revenues pledged for payment of the Bond is governed by the terms of Revised Article 9 of the Uniform Commercial Code as enacted in Virginia 8.9A-101 et. seq. of the Code of Virginia and whether or not the filing of a financing statement will be required of RUS.

Items b, i, k, and m listed above should be manually executed originals. For the remaining bond transcript documents, an original manual attestation by the applicant's Clerk or Secretary will suffice.

Any omissions from the bond transcript should be supplied by the Rural Development Manager with the assistance of the applicant and bond counsel. Obviously, certain documents listed above will normally be delivered prior to the closing.

- 11. Attorney's No-Litigation Certificate. Local counsel should deliver a manually executed original attorney's no-litigation certificate dated the date of closing.
- 12. Evidence of Title. In all cases, confirm that local counsel has supplied RUS with his or her title opinion regarding the sites for any project structures such as treatment plants and community buildings. If a Deed of Trust is to be taken as security, the title opinion will be in the form of a title insurance binder. If the loan will be secured by other methods, the title opinion can be provided on Form RD 1927-10 with any changes necessary to reflect the circumstances of each financing transaction. In the case of utility-type financings, confirm that executed Forms RD 442-21 and 442-22 concerning rights-of-way are also in the docket. Any title exceptions should either be removed prior to closing or be specifically cleared through OGC.
- 13. Additional Instructions. OGC will normally issue additional closing instructions on a case-by-case basis containing special requirements for specific loans. The Rural Development Manager should review the closing instructions prepared by OGC relating to the specific case and close the loan in accordance with those instructions.

CORPORATE REAL ESTATE DEED OF TRUST FOR VIRGINIA

This DEED OF TRUST, made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
between \_\_\_\_\_, a nonprofit  
corporation organized and existing under the laws of this State of Virginia, whose  
address is: \_\_\_\_\_  
as grantor, herein called "Borrower," and PHILIP H. STETSON, whose address is 1606  
Santa Rosa Road, Culpeper Building, Suite 238, Richmond, Virginia 23229, as  
Grantee/Trustee, herein called "Trustee," for the benefit of the United States of  
America, acting by and through the Rural Utilities Service, an agency of the United  
States Department of Agriculture, as beneficiary, herein called "the Government,"

WITNESSETH THAT:

The Government has lent the Borrower money as evidenced by one or more promissory note(s). If more than one note is described below, the word "Note" as used herein shall be construed as referring to each note singly or all notes collectively, as the context may require and all of them shall have equal lien under this instrument without regard to their priority in time, maturity or otherwise. The Note has been executed by the Borrower, is payable to the order of the Government in installments as specified therein, authorizes acceleration of the entire indebtedness at the option of the Government upon any default by the Borrower, and is further described as follows:

<u>Date of Instrument</u>	<u>Principal Amount</u>	<u>Annual Rate of Interest</u>	<u>Due Date of Final Installment</u>
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Exemption from taxation under Virginia Code Sections 58.1-801 and 58.1-803 is claimed under Virginia Code Section 58.1-811, and 7 U.S.C., Section 1984. The Government may assign the Note at any time. The Government may also insure the payment of the Note pursuant to the Consolidated Farm and Rural Development Act.

Whenever the Note is held either by the Government or by an uninsured holder, this instrument shall secure payment of the Note. Whenever the Note is held by an insured holder, however, this instrument shall not secure payment of the Note or attach to the underlying debt. In that event, this instrument shall constitute an indemnity mortgage to secure any payments to an insured holder of the Note or other advances which the Government may be required to make upon default by the Borrower. The insured holder shall have no right, title or interest in or to the lien of this instrument or its benefits. This instrument also secures the Borrower's obligations and covenants under other instruments delivered in connection with the loan evidenced by the Note, including the Borrower's Loan Resolution which hereby is incorporated herein by reference. The Note, Loan Resolution and this instrument together with any supplements, amendments, attachments, modifications, additions and related financing statements are collectively referred to as the "Loan Instruments".

The lien of this instrument shall extend to and cover all real property and property rights of whatever character or nature, that may at any time hereafter be acquired, owned, held, possessed, or enjoyed in any manner by Borrower in or on the premises described below.

NOW THEREFORE, in consideration of the loan(s) as evidenced and described by the Note described above the Borrower does hereby grant, assign, and convey to the Trustee, his successors, grantees and assigns, in fee simple forever, the following property:

ALL that real estate in \_\_\_\_\_ County(ies), Virginia, and being more particularly described as follows:

TOGETHER with all easements and rights of way used in connection with the premises or as a means of access thereto.

TOGETHER with all improvements now on the premises or hereafter placed thereon, including, without limitation, all heating, lighting, refrigeration, plumbing, ventilating, incinerating, water heating, cooling and air-conditioning equipment and apparatus and all appurtenances now and hereafter placed or installed within or about such improvements, and all renewals, replacements, and substitutions therefor, all of which are hereby deemed a part of the realty.

TOGETHER with all fixtures, machinery, appliances, and equipment of every nature and kind whether now on the premises or hereafter to be placed or installed therein or thereon, appurtenant to the buildings erected or to be erected on the premises and intended for the use of occupants, including all of which are hereby

deemed a part of the realty as between Borrower and the Government, their successors and assigns, and a portion of the security for the indebtedness herein mentioned and to be conveyed by this instrument.

TOGETHER with all water, water rights, and water stock pertaining thereto, and all payments at any time owing to the Borrower by virtue of any sale, lease, transfer, conveyance, or condemnation of any part thereof or interest therein.

TOGETHER with the rents, issues, and profits of the premises, subject, however, to the right reserved by Borrower to collect and apply such rents, issues, and profits prior to any default hereunder.

PROVIDED, HOWEVER, that with respect to any goods above which are or become fixtures and proceeds thereof this instrument shall also serve as a fixture filing pursuant to Section 8.9-402(6) of the Code of Virginia without the necessity of filing a fixture financing statement under the Uniform Commercial Code.

All of the foregoing property is hereinafter collectively referred to for convenience of reference as the "Encumbered Property."

IN TRUST, to secure (a) payment of the Note in accordance with its terms, including any extensions or renewals thereof, whenever the Note is held by either the Government or by an uninsured holder; (b) repayment, with interest, of any payments, advances and expenditures made by the Government pursuant to the terms of this or any other Loan Instrument; (c) performance of every covenant and agreement of the Borrower's contained in this or any other Loan Instrument; and (d) all future advances, whether obligatory, protective or voluntary, made to the Borrower by the Government from time to time.

The Borrower, for itself, its successors and assigns, WARRANTS the Encumbered Property to the Trustee against the lawful claims of all persons whose claims are not based upon liens, encumbrances, easements or reservations specified above.

The Borrower, for itself, its successors and assigns, COVENANTS AND AGREES as follows:

(1) Borrower will promptly pay any indebtedness secured by this instrument when due.

(2) Borrower will indemnify the Government against any loss which the Government may incur as a result of making payments to an insured holder of the Note after the Borrower's default.

(3) Borrower will pay the Government any fees or other charges required under regulations of the United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture.

(4) Borrower will pay when due all taxes, liens, judgments, encumbrances and assessments lawfully attaching to or assessed against the Encumbered Property, and, without demand, will also provide the Government with proof of those payments.

(5) Borrower will pay the Government for any expenses necessary or incidental to (a) the protection of the lien or priority of any Loan Instrument and to (b) the enforcement of or compliance with the provisions of any Loan Instrument. "Expenses" includes (without limitation) costs of evidence of title, surveys, recording fees, attorneys' fees and trustees' fees, as well as court costs and expenses of advertising, selling and conveying the Encumbered Property or any portion of it.

(6) Borrower will use the loan evidenced by the Note solely for the purposes authorized by the Government.

(7) Borrower will keep the Encumbered Property insured as required by the Government and will deliver the originals of all insurance policies to the Government for safekeeping if so requested.

(8) Borrower will comply with all laws, ordinances and regulations affecting the Encumbered Property and the conduct of Borrower's business operations.

(9) Borrower will maintain the Encumbered Property in a good repair and make any repairs the Government may require.

(10) Borrower will operate the Encumbered Property in a good and efficient manner and will comply with management plans and practices which the Government may prescribe from time to time.

(11) Borrower will not abandon the Encumbered Property; effect waste, lessening, or impairment of the Encumbered Property; or cut, remove or lease any timber, gravel, oil, gas, coal or other minerals.

(12) Borrower will not (except as may be authorized in the Loan Resolution or as may be in the ordinary course of business) lease, assign, sell, transfer or further encumber the Encumbered Property or any nonexpendable part thereof, voluntarily or otherwise, either in whole or in part, without the prior written consent of the Government. This covenant may be modified by the Loan Resolution and does not preclude any lease, assignment, sale, transfer or further encumbrance of the Encumbered Property in the ordinary course of the Borrower's business. NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED EXCEPT AS OTHERWISE PROVIDED IN THIS COVENANT.

(13) The premises described herein was obtained or improved through Federal financial assistance. The Encumbered Property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the premises continues to be used for the same or similar purpose for which

financial assistance was extended or for so long as the Borrower owns it, whichever is longer.

(14) If at any time it shall appear to the Government that the Borrower may be able to obtain a loan from a production credit association, a federal land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, the Borrower will, upon the Government's request, apply for and accept a loan in sufficient amount to pay the Note and any other indebtedness secured by this instrument and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such a loan.

(15) The Government may require the Borrower to make additional monthly payments equal to one-twelfth of the estimated taxes, assessments, insurance premiums and other charges upon the Encumbered Property.

(16) The Government and its agents may inspect the Encumbered Property at reasonable times to ascertain whether the Borrower is fulfilling its obligation under this or any other Loan Instrument.

(17) The Government may at any time pay as advances for the Borrower's account any amounts which the Borrower is obligated to pay under any Loan Instrument and any expenses incurred by the Government in enforcing or protecting the Government's rights hereunder. The Government may exercise this right regardless of whether the note is insured and regardless of whether advances exceed the face amount of the Note. Advances by the Government pursuant to the terms of this paragraph shall bear interest at the rate borne by the Note which bears the highest interest rate. Advances, with interest, shall be immediately due and payable by the Borrower at the place designated in the latest Note. Advances under this paragraph shall neither relieve the Borrower of its obligation to pay nor cure any default under any Loan Instrument. Such advances, together with interest accruing on them, shall automatically become a part of the mortgage debt secured by this instrument.

(18) To the extent specified by the Government in writing, the Government in its sole discretion may grant an extension of the time for payment or reamortize the indebtedness secured by any Loan Instrument, release any party from liability to the Government, release portions of the Encumbered Property from the lien of any Loan Instrument, and waive any other Government right under any Loan Instrument without affecting the lien or priority of any Loan Instrument or the liability of the Borrower or any other party for payment of the indebtedness secured by any Loan Instrument. The Government shall have the sole and exclusive rights as beneficiary hereunder, including, but not limited to, the power to grant consents, partial releases, subordinations, and satisfaction, and no insured holder shall have any right, title, or interest in or to the lien or any benefits hereof.

(19) The Government and its assigns are empowered to appoint a substitute trustee at any time. This power may be exercised without giving any notice or rationale for its use. THE BORROWER WAIVES notice of the exercise of this power and any requirement of, or right to require, a bond from any substitute trustee. The power to appoint a substitute trustee shall be exercised by filing an instrument of appointment in

the office where this instrument is recorded, whereupon the substitute trustee shall succeed to all the estates, rights, powers and trusts granted to or vested in the Trustee and the former trustee or Substitute Trustee shall be divested.

(20) All powers and agencies granted in this instrument are coupled with an interest and are irrevocable by death or otherwise.

(21) The Government will not be bound by any present or future state laws (a) providing for valuation, appraisal, or exemption of the Property; (b) prohibiting or restricting an action for deficiency judgment or limiting the judgment amount which may be awarded; (c) prescribing any statute of limitations; (d) allowing any right of redemption or possession following any foreclosure sale, or (e) limiting the conditions the Government may impose by regulation as a condition of approving a transfer of the Encumbered Property to a new borrower. THE BORROWER WAIVES THE BENEFIT OF ANY SUCH STATE LAWS.

(22) Should the Borrower DEFAULT on any of its obligations under any Loan Instrument; breach any of its warranties or covenants under any Loan Instrument; merge, dissolve, be declared bankrupt or insolvent; or make an assignment for the benefit of creditors, the Government may without notice (a) accelerate the entire indebtedness secured by this instrument by declaring it immediately due and payable; (b) charge the Borrower's account for any reasonable expenses which the Government may pay or incur to maintain and repair the Encumbered Property; (c) operate or rent the Encumbered Property and apply any moneys received to the Borrower's account; (d) have a receiver appointed for the Encumbered Property who may exercise the usual powers of receivers in similar cases; and (e) authorize the Trustee to foreclose this and any other Loan Instrument and sell the Encumbered Property as a business unit without any requirement for marshalling of assets and without regard to whether the Encumbered Property is realty or personalty.

(23) At the request of the Government, the Trustee may foreclose this instrument by advertisement and sale of the Encumbered Property as provided by law, for cash or secured credit as the Government may desire. Except to the extent it may be required by law, personal notice of sale need not be served on the Borrower. The sale may be adjourned from time to time without notice other than oral proclamation at the time and place originally appointed for the sale and written correction made on the posted notices. At the sale the Government and its agents may bid and purchase as a stranger. The Trustee's execution of a conveyance of all or part of the Encumbered Property to any purchaser at foreclosure sale shall be conclusive evidence that the sale was conducted in accordance with the provisions of the Loan Instruments, either by the Trustee personally or through his duly authorized delegates. Any Trustee may act.

(24) Proceeds of a foreclosure sale pursuant to any Loan Instrument shall be applied in the following order to the payment of: (a) costs and expenses incident to enforcing or complying with the provisions hereof; (b) all taxes, levies, and assessments, with costs and interests if they have priority over the lien of this Deed of Trust, including the due pro rata thereof for the current year; (c) any prior liens required by law or competent court to be paid; (d) all indebtedness to the Government secured by this instrument; (e) inferior liens of record required by law or a competent court to be paid; and (f) any balance to Borrower.

(25) If the Government is the successful bidder at a foreclosure sale under any Loan Instrument, any portion of the purchase price not owed to a third party may be paid by crediting that amount on any debts of the Borrower which are owed to or insured by the Government.

(26) The rights and remedies provided in this instrument are cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, by statute or by regulation.

(27) A waiver, amendment, release or modification of this instrument may be effected only by a writing which has been duly executed by the Government and shall not be established by conduct, custom or course of dealing.

(28) This instrument shall be subject to the present regulations of United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture, and to its future regulations not inconsistent with the express provisions of this instrument, and shall be construed and enforced in accordance with applicable federal law. In all other respects, this instrument shall be governed by the laws of the State in which it is recorded.

(29) Default under this instrument shall constitute a default under any other instruments of the Borrower held or insured by the Government and default under any other instrument constitutes default under this instrument.

(30) The invalidity or unenforceability of any portion of this instrument shall not effect the validity or enforceability of the remaining portion of this instrument.

(31) Notices to the Borrower shall be sent to its address as shown on the first page of this instrument. Notices to the Government shall be addressed to the United States of America, Rural Utilities Service, \_\_\_\_\_  
\_\_\_\_\_. Notices shall be sent by certified mail (postage prepaid) unless otherwise required by law. The Government and the Borrower may designate any further or different addresses to which subsequent notices shall be sent.

(32) In the event that the Government at its option desires to extend additional credit to the Borrower from time to time, then the lien of this instrument shall automatically be extended to cover such indebtedness. The Borrower shall evidence its consent by the execution and delivery of a Loan Resolution on Form RD 1942-9 and an additional note on Form RD 440-22, or their equivalents. In the event that at the time of the additional borrowing, the laws of the state in which this instrument is recorded do not permit such future advances to enjoy the lien of this instrument, then the Borrower shall execute and deliver an additional deed of trust. Future deeds of trust may be in statutory form, with such additional provisions, either expressed or incorporated by reference to this deed of trust, as the Government and the Borrower agree upon. Nothing contained in this section shall be construed to require the Government to evidence and secure obligatory advances under the

Note or protective advances under this instrument with additional notes and deeds of trust.

IN WITNESS WHEREOF, the Borrower has caused this Deed of Trust to be executed by its President and its corporate seal to be affixed and attested by its Secretary, all as of the date first written above.

(CORPORATE SEAL)

\_\_\_\_\_  
(Borrower)

ATTEST: \_\_\_\_\_ By: \_\_\_\_\_

(Title) \_\_\_\_\_ (Title) \_\_\_\_\_



REQUIRED INFORMATION FOR  
WATER AND WASTE ELIGIBILITY DETERMINATION  
AND/OR INITIAL APPLICATION

Agency regulations provide for the applicant to submit a request for applicant eligibility versus an initial application. If you wish to receive only an eligibility determination, please provide us with the following items:

1. Organizational Documents
2. Financial Statements and/or Audits
3. Existing Debt Instruments
4. A brief description of the project

If you wish to proceed with an initial application, we request the following. Unless noted, please provide two copies. If you are notified to proceed with a full application, there are additional Agency forms that you will be required to execute.

- \*1. Completed Standard Form (SF) 424, Application for Federal Assistance, accompanied by SF 424A and 424B for non-construction OR SF 424C and 424D for construction
2. State Intergovernmental Review Comments or one copy of the filed application for State intergovernmental review
3. Preliminary Engineering Report (You may submit the PER to the processing office prior to the rest of the application material if you desire a preliminary review.) [Exhibit A, pages 3, 4, and 5, can be used as a guide to summarize information in the PER.]
4. Written certification that other credit is not available
- \*\*5. Organizational Documents
- \*\*6. Last year's audit and current financial statement (one copy)
- \*\*7. Copy of outstanding debt instruments including the authorizing resolution or ordinance for non-RUS debts (one copy)
8. Form FmHA 1940-20, Request for Environmental Information
9. Your Internal Revenue Service Taxpayer Identification Number

\*Within sixty (60) days of filing an application with the Agency, you must publish a notice of intent to apply for an RUS loan and/or grant. The notice of intent must be published in a newspaper of general circulation in the proposed area to be served.

\*\*If these items are submitted for an eligibility determination, there is no need to resubmit same if you decide to proceed with an initial application.

All of the above information should be submitted as a complete package to the Rural Development Office.

**Virginia RUS Instruction 1780  
Exhibit A, Page 2**

If you need further assistance, please feel free to write or call the person(s) listed below. Your contact person(s) is:

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

Please note that item 2 requires copies of the application and a description of the project [detailing its exact nature, its location(s), etc.] to be sent to the following address:

(Insert name and address of appropriate Planning District Commission)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT PLANNING FACTORS

Project Cost

Construction	\$ _____
Land and Rights	\$ _____
Legal Fees	\$ _____
Bond Counsel	\$ _____
Engineering:	
Basic	\$ _____
Inspection	\$ _____
Other	\$ _____
Interest	\$ _____
Equipment	\$ _____
Contingencies	\$ _____
<b>TOTAL PROJECT COST</b>	<b>\$ _____</b>

Funding Sources

RUS Loan	\$ _____
RUS Grant	\$ _____
_____ Loan	\$ _____
_____ Grant	\$ _____
Borrower Contribution	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>

EXISTING RATE SCHEDULE (indicate if not monthly)

First	_____ gallons @ \$ _____	Min.
Next	_____ gallons @ \$ _____	per 1,000 gal.
Next	_____ gallons @ \$ _____	per 1,000 gal.
Next	_____ gallons @ \$ _____	per 1,000 gal.
All Over	_____ gallons @ \$ _____	per 1,000 gal.

(Min. by meter size)

5/8" meter	_____
3/4" meter	_____
1" meter	_____
1-1/2" meter	_____
2" meter	_____
3" meter	_____
4" meter	_____
6" meter	_____

PROPOSED RATE SCHEDULE

First	_____	gallons @ \$ _____	Min.
Next	_____	gallons @ \$ _____	per 1,000 gal.
Next	_____	gallons @ \$ _____	per 1,000 gal.
Next	_____	gallons @ \$ _____	per 1,000 gal.
All Over	_____	gallons @ \$ _____	per 1,000 gal.

(Min. by meter size)

5/8" meter	_____
3/4" meter	_____
1" meter	_____
1-1/2" meter	_____
2" meter	_____
3" meter	_____
4" meter	_____
6" meter	_____

USE AND INCOME ESTIMATES  
 (according to proposed rate schedule)

Residential Users

<u>Existing</u>	<u>New</u>	<u>Total</u>				
_____	_____	_____	users @ _____	gal./mo.	\$ _____	/mo.
_____	_____	_____	users @ _____	gal./mo.	\$ _____	/mo.
_____	_____	_____	users @ _____	gal./mo.	\$ _____	/mo.
_____	_____	_____	users @ _____	gal./mo.	\$ _____	/mo.
_____	_____	_____	users @ _____	gal./mo.	\$ _____	/mo.
_____	_____	_____	users @ _____	gal./mo.	\$ _____	/mo.
_____	_____	_____	users @ _____	gal./mo.	\$ _____	/mo.

TOTAL RESIDENTIAL USERS

\_\_\_\_\_ users

Non-Residential

<u>Existing</u>	<u>New</u>	<u>Total</u>				
_____	_____	_____	users @	_____	gal./mo.	\$ _____/mo.
_____	_____	_____	users @	_____	gal./mo.	\$ _____/mo.
_____	_____	_____	users @	_____	gal./mo.	\$ _____/mo.
_____	_____	_____	users @	_____	gal./mo.	\$ _____/mo.
_____	_____	_____	users @	_____	gal./mo.	\$ _____/mo.
_____	_____	_____	users @	_____	gal./mo.	\$ _____/mo.
_____	_____	_____	users @	_____	gal./mo.	\$ _____/mo.

TOTAL NON-RESIDENTIAL USERS

\_\_\_\_\_ users

TOTAL = \$ \_\_\_\_\_ x 12 = \$ \_\_\_\_\_ annually

BUDGET FOR COMPLETED FACILITY

	Actual (Fiscal Year Ending 19 )	Current Operating Year	Estimated (Completed Facility)
<u>Income:</u>			
Sales	\$ _____	\$ _____	\$ _____
Connection Fees	\$ _____	\$ _____	\$ _____
Other	\$ _____	\$ _____	\$ _____
TOTAL	\$ _____	\$ _____	\$ _____
<u>Expenses:</u>			
Salaries			
Supt. and Clerk	\$ _____	\$ _____	\$ _____
Labor	\$ _____	\$ _____	\$ _____
Soc. Security Tax	\$ _____	\$ _____	\$ _____
Office Expenses (Supplies, Postage, Heat, Electricity, Telephone, Equipment, etc.)	\$ _____	\$ _____	\$ _____
Bond and Insurance	\$ _____	\$ _____	\$ _____
Chemicals	\$ _____	\$ _____	\$ _____
Transportation	\$ _____	\$ _____	\$ _____
Electricity	\$ _____	\$ _____	\$ _____
Supplies	\$ _____	\$ _____	\$ _____
Maintenance and Repairs	\$ _____	\$ _____	\$ _____
Miscellaneous	\$ _____	\$ _____	\$ _____
Bulk Water Purchase	\$ _____	\$ _____	\$ _____
Debt Service			
Existing	\$ _____	\$ _____	\$ _____
Proposed	\$ _____	\$ _____	\$ _____
Reserve	\$ _____	\$ _____	\$ _____
Funded Depreciation	\$ _____	\$ _____	\$ _____
TOTAL	\$ _____	\$ _____	\$ _____
BALANCE AVAILABLE	\$ _____	\$ _____	\$ _____

Use this statement if security is taken in the form of revenues only: **All debtor's accounts and intangible assets.**

Use this statement if security is taken in the form of personal property only: **All personal property with all replacements, substitutions, additions, and accessions financed with loan/grant funds as hereby described: (INSERT SPECIFIC DESCRIPTIONS)**

If taking security in both revenues AND personal property, **use both of the above descriptions.**

RESOLUTION OF GOVERNING BODY OF

\_\_\_\_\_

The governing body of the \_\_\_\_\_, consisting of \_\_\_\_\_ members, in a duly called meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ at which a quorum was present RESOLVED as follows:

BE IT HEREBY RESOLVED that, in order to facilitate obtaining financial assistance from the United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture, (the Government) in the development of a \_\_\_\_\_ to serve the community, the governing body does hereby adopt and abide by the covenants contained in the agreements, documents, and forms required by the Government to be executed.

BE IT FURTHER RESOLVED that the \_\_\_\_\_ of the \_\_\_\_\_ be authorized to execute on behalf of the above-referenced agreements and to execute such other documents including, but not limited to, debt instruments and security instruments as may be required in obtaining the said financial assistance.

This Resolution, along with a copy of the above-referenced documents, is hereby entered into the permanent minutes of the meetings of this Board.

Attest: \_\_\_\_\_  
By \_\_\_\_\_ (ENTITY NAME)

CERTIFICATION

I hereby certify that the above resolution was duly adopted by the \_\_\_\_\_ of the \_\_\_\_\_ in a duly assembled meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Secretary/Clerk

RUS INSTRUCTION 1780

WATER AND WASTE LOANS AND GRANTS

I. Purpose - This instruction is issued to supplement various paragraphs of RUS Instruction 1780. The purpose is to provide for uniform and orderly processing and closing of Water and Waste projects.

II. Subpart B - Loan and Grant Application Processing

A. Paragraph 1780.31(c) - Eligibility Determination

The referenced paragraph states "Applicants seeking only an eligibility determination should contact the processing office to obtain a list of items needed to make this determination." In order to be consistent throughout the State, Exhibit A (Required Information for Water and Waste Eligibility Determination and/or Initial Application) will be used to request documentation. This same Exhibit will be used to inform applicants of the items required for an initial application. When submitting a copy of the organizational documents, an officer of the applicant entity must certify that the documents are a true and complete set of all documents creating the applicant entity. The following will assist you in determining what documents each type of entity should have:

1. Corporations, Stock, and Non-Stock:

- a. Articles of Incorporation
- b. Certificate of Incorporation
- c. Corporate By-laws
- d. Recent Certificate of Good Standing
- e. Articles and Certificates of Merger, Amendment, Correction, or Restatement (if applicable)

2. Cities, Counties, and Towns:

- a. Charter
- b. All relevant Acts of Assembly
- c. All relevant court orders (if created judicially)

3. Sanitary Districts:

- a. All court orders creating, enlarging, or merging the Sanitary District

4. Industrial Development Authorities:

- a. City or County Ordinance Creating Authority

## Virginia RUS Instruction 1780

### Page 2

#### 5. Water and Sewer Authorities:

- a. Ordinance(s), Resolution(s), or Agreement(s) creating Authority
  - b. Articles of Incorporation
  - c. Certificate of Incorporation
  - d. By-laws
  - e. All Ordinance(s), Resolution(s), or Agreement(s) agreeing to let a political subdivision join or leave the Authority (if applicable)
  - f. Certificates of Joinder or Withdrawal (if applicable)
6. All amendments to any documents referred to in paragraphs II, A, 1-6.

#### B. Paragraph 1780.31(e)- Environmental Issues

Any environmental mitigation requirements determined necessary must be included in the draft Letter of Conditions (LOC) submitted to the Program Director.

#### C. Paragraph 1780.33 - Application Requirements

Exhibit A of this instruction contains all the items required for an initial application.

#### D. Paragraph 1780.39 - Application Processing

1. Paragraph 1780.39(a) - This paragraph is supplemented to provide a uniform Checklist for all Water and Waste loan and grant processing. Virginia RUS Bulletin 1780-4 will be used as the official Virginia Checklist and to assist the applicant with the development of a full application. The checklist in the Area Office file will be filed in Position 1 and will be kept current by Area Office personnel as processing advances.
2. Paragraph 1780.39(b) - Agreements between borrowers and third parties such as, but not limited to, contracts for professional and technical services and contracts for the purchase of water or treatment of waste, which will be handled as follows. The Rural Development Manager will analyze the document and forward it along with written recommendations concerning its appropriateness and acceptability to the Program Director for concurrence. If the document is clearly unacceptable, it should be revised prior to submission for concurrence.
3. Paragraph 1780.39(b)(1), Engineering and Architectural Services - The RUS Instructions state that in the procurement of engineering and/or architectural services, our applicants may use State or Local procurement guidelines provided the State Director determines that these meet the intent of the RUS instructions. In this State, the Virginia Procurement Act applies to the Counties, Authorities, and Cities. It also applies to Towns with a population of greater than 3,500 people. It has been determined that the Virginia Procurement Act meets the intent of the RUS instructions. Therefore, for

Counties, Authorities, and Towns with a population over 3,500, we do not need to review the procurement of engineering and/or architectural services.

The Virginia Procurement Act does not apply to non-profit corporations and Towns with a population of less than 3,500. For these Towns, we will need to review either their procurement guidelines or the procurement of engineering services.

The form of agreement for engineering services will be the latest Engineers Joint Contract Documents Committee (EJCDC) Standard Form of Agreement Between Owner and Engineer for Professional Services Funding Agency Edition (EJCDC No. 1910-8-FA). This will be modified by Virginia RUS Bulletin 1780-2.

**E. Paragraph 1780.39(c)(2) - New User Cash Contributions**

The U.S. Department of Housing and Urban Development prohibits the payment of connection fees by low and moderate income families on projects which use their Community Development Block Grants. On projects jointly funded with CDBG funds, the following will apply:

1. Low and moderate income families may be charged a prepayment/deposit at the time they execute their user agreement to connect to the Rural Utilities Service/ Community Development Block Grant funded improvement. This prepayment will be limited to no more than an amount equivalent to the projected minimum user fee for six months.
2. Upon completion of construction/start-up of service, an account will be set up for the customer with a credit in the amount of their deposit.
3. As monthly billing takes place, the customer will be credited with their deposit, against actual use until that amount is depleted.

**F. Paragraph 1780.41(a) - Loan or Grant Approval.**

1. The Rural Development Manager will use Exhibit B to develop a draft letter of conditions for a water and waste project. The Exhibit must be reproduced and used as is. Any changes, additions, or deletions must be made by hand and be legible in order to facilitate the Program Director's review. This is only a guide and should not be relied upon to cover all situations in all cases.

Form SF-3881, Electronic Funds Transfer Payment Enrollment Form, must be furnished to the borrower at the time of delivery of the letter of conditions for each loan and/or grant which will be established for the borrower. Once completed, the form(s) should be retained in Position 2 of the borrower's official file. Please note the following:

- a. If the letter of conditions is delivered to an entity who has received no prior Rural Development assistance and who will be establishing new accounting information on the Electronic Funds Transfer (EFT) system for the loan and/or grant, it will be necessary for both the borrower and the

financial institution to expeditiously complete the form and return it to the Area Office. The Area Office should then establish the account information in the EFT system after notification from the State Office that funds have been obligated.

- b. If an existing borrower is receiving a subsequent loan and/or grant and they have already furnished their financial account information for prior loans and/or grants, the borrower can confirm at the time of delivery of the letter of conditions that the account information remains unchanged by writing "No Change" in both the Payee and Financial Institution sections of Form SF-3881 and signing the form. The Area Office should then establish a new account(s) under the new loan and/or grant numbers, using the routing and bank account numbers previously provided after notification from the State Office that funds have been obligated.
2. All loans must be processed using the Community Programs Application Processing (CPAP) software. The CPAP electronic docket must be exported to a diskette and the diskette forwarded along with the docket to the approval official (State Office).
  3. Exhibit B, Attachment 1, Resolution Adopting Agreements, Documents, and Forms, is to be used as a guide to facilitate meeting the requirements of the letter of conditions regarding the adoption and execution of forms.

G. Paragraph 1780.44(g)(2) - Title for land or existing facilities.

From time to time in reviewing deeds, title opinions, and property descriptions, you can be expected to encounter a class of title exceptions which attorneys loosely categorize as "reverters" or "reversions." In either case, the existence of such a defect should be of critical importance to any lender taking real estate as security for a loan.

Simply put, real estate subject to a reversion will automatically go back to the former owner at a later date, and real estate subject to a reverter will go back to the former owner upon the occurrence or non-occurrence of some future condition which may or may not occur. In either case, the value of the real estate security is substantially diminished by the existence of these defects and should the reverter or reversion occur, the present owner's interest in the real estate would be extinguished along with any real estate liens given by the present owner.

You are more likely to encounter reversions in loans to individuals. In reviewing deeds, property descriptions, and title binders or opinions, you should be on the alert for words such as "reversion," "life estate," and "so long as grantee shall live." The foregoing are words that limit the new owner's rights to use and enjoy the property. When found, they are typically found at the beginning or the end of the property description. However, they may appear anywhere in an instrument and, of course, other words of limitation may be used besides those quoted above. In any event, they almost always impact adversely on a secured lender's interests.

True reverters are more often found in loans to associations. In transactions where the borrower has acquired title from a municipality or where land has been donated to a charitable organization, you should exercise extra caution in reviewing documents. In such transactions, it is not unusual for a conveyance to a non-profit association to be conditioned upon the borrower's continued use of the property in furtherance of the purposes for which the gift was made. For example, a town may donate land for a nursing home and provide in the deed that the grantee shall have the land "so long as it operates a non-profit health care facility on the premises." Thus, in the event that the borrower became financially distressed and ceased its operations, or made a voluntary conveyance to us, or the property was sold through foreclosure to a profit-making organization, title would automatically go back to the municipality. Obviously, depending upon the condition itself, such a reverter could pose a significant obstacle to effective loan servicing and, in some cases, render any lien on the real estate virtually worthless.

Any time you encounter words such as "reversion," "reverter," "right of re-entry," or similar words of limitation in deeds, declarations, title opinions, title policies, or property descriptions, you should immediately consult with the Program Director who will in turn consult with OGC concerning the legal ramifications of such words. The forms for reversions and reverters may vary substantially from the above examples, depending on the objectives of the original owner and the ingenuity of counsel. When in doubt, it is better to check with the Program Director and OGC. Since title defects of this nature sometimes cannot be resolved and at other times can be resolved only after substantial delays, it is required that these problems be addressed at the earliest stages of loan preparation and not deferred until the closing stage.

H. Paragraphs 1780.44(h) and 1780.45(a) - Loan and Grant Closing, and Subpart D, Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants.

These instructions are supplemented to give specific guidance, establish document signatory requirements, minimum review requirements, and to provide standard instructions for closing Water and Waste loans and grants in Virginia.

1. Exhibit C - Closing Guidelines for Water and Waste Loans and Grants to Public Bodies.
  - a. This exhibit contains requirements common to closing most Water and Waste loans and grants to public bodies and establishes the closing official's minimum review and document requirements.
  - b. Submission of a request for closing instructions by the Area Office to the Program Director must contain draft closing documents which may include but are not limited to:
    1. RUS Bulletin 1780-27, Loan Resolution (Public Bodies) - You must review this form to ensure it has been completed properly. REMEMBER: This form is a resolution of the governing body (i.e.,

Board of Directors, Town Council) of the public body, not a resolution of the public body itself. Also, the vote shown on page 2 must indicate the vote of the governing body.

2. RUS Bulletin 1780-12, Water and Waste System Grant Agreement – To ensure uniformity in the State, in the space describing real property, insert “See attached Exhibit A.” Exhibit A should be a copy of each Final Title Opinion, along with property descriptions. The Final Title Opinions and descriptions must be labeled as “Exhibit A” and attached to the Grant Agreement. In the space describing equipment, insert “Any equipment associated with the real property described in Exhibit A attached to this Grant Agreement.”
  3. Ordinance of public body authorizing the bond issue.
  4. Bond Resolution setting forth details of the bond issue.
  5. Specimen Bond or Form of Bond included in the Bond Resolution.
  6. Form of Final Opinion of Bond Counsel.
  7. Any other pertinent documents to be reviewed by the Program Director and/or the Office of General Counsel.
2. Exhibit D - Closing Guidelines for Water and Waste Loans to Non-Profit (Non-Public) Bodies.
- a. This exhibit contains requirements common to closing most Water and Waste loans to non-public bodies and establishes the closing official's minimum review and document requirements.
  - b. Submission of a request for closing instructions by the Area Office to the Program Director must contain draft closing documents which may include but are not limited to:
  - c. Copy of completed Form RD 1942-8, Resolution of Members or Stockholders - You must review this form to ensure it has been completed properly. REMEMBER: This is a resolution of the total membership of the entity and the number of members stated in the Certification must reflect the total number.
  - d. RUS Bulletin 1780-28, Loan Resolution Security Agreement - You must review this form to ensure it has been completed properly. REMEMBER: This form is a resolution of the governing body (i.e., Board of Directors) of the entity and the vote shown after Section 12 of the form and the number of members indicated in the Certification must reflect the number of members of the governing body. However, the number of members referred to and to be completed in the second WHEREAS paragraph on the first page of the form must indicate total membership versus the members of the governing body.

- e. Form RD 440-22, Promissory Note (Association or Organization) - You must review this form to ensure it has been completed in accordance with the FMI for the form.
  - f. Corporate Real Estate Deed of Trust for Virginia - Exhibit D, Attachment 1, is the acceptable format for the Deed of Trust which should be reproduced and completed by the Area Office.
  - g. Forms UCC1, UCC1Ad, and UCC3, Financing Statements - A form with the appropriate attachment should be completed. Exhibit D, Attachment 2, should be used as a guide in preparing a description of collateral. Form UCC1 is used when filing a new financing statement with the State Corporation Commission. Forms UCC1 and UCC1Ad are used when filing a new financing statement with the local County to be indexed against the real estate. Form UCC3 is to be used as a continuation statement or to make any amendments to either State or local financing statements.
  - h. Exhibit D, Attachment 3, Security Agreement (VA Form RD 440-4)
  - i. Form RD 1927-9, Preliminary Title Opinion, or a Preliminary Title Binder.
  - j. Form RD 1927-10, Final Title Opinion, or Title Insurance Policy.
  - k. Opinion of applicant's attorney - Exhibit D, Attachment 4, is to be used by the attorney as a guide.
3. Exhibit E is to be used as a guide for the form of Closing Certificate to be executed by the closing official upon closing any loan and/or grant to a public body or a non-public body. This executed Certificate must be filed in the borrower case file and two manually executed copies forwarded to the Program Director when the file is submitted for post closing review.
- I. Paragraph 1780.47 - Audits and financial statements.
- 1. The Rural Development Manager is responsible for obtaining all audit reports and financial statements from the borrower. Sometimes it appears to be a difficult task to obtain copies of borrowers' audits and financial statements as evidenced by the number of letters contained in borrower files which request the copies and the number of follow-up requests for the copies. Letters are not the only means by which to fulfill your responsibilities. Regular borrower visits for security inspections, compliance reviews, and such provide an excellent opportunity for requesting copies of audits and other information needed to properly service and assist your borrowers. Therefore, prior to making a borrower visit, you should determine what items may be needed and request them during your visit.
  - 2. The Rural Development Manager is responsible for the review of audits and for recommendations and instructions for borrower assistance. RUS Bulletin 1780-16 or 1780-17, as appropriate, will be used to facilitate review of audits that are reviewed by Area Office personnel. The Bulletin must be completed

in detail and positive recommendations for any changes that should be made in the audit by the accountant or any changes in the business operations of the borrower must be included.

J. Subpart C - Planning, Designing, Bidding, Contracting, Constructing, and Inspections - Paragraph 1780.61

Applicants, with their engineers, are to utilize the contract documents listed in Virginia RUS Bulletin 1780-1 and RUS Bulletin 1780-26.

### PRICE BREAKDOWN

Item	Description	CONTRACT			THIS PERIOD		TOTAL TO DATE		% Complete
		Quantity*	Unit Price*	Amount	Quantity*	Amount	Quantity*	Amount	
	<b>TOTALS</b>								

\* Column not used for lump sum price breakdown

Limit entries to quantities and amounts under original contract

<b>Partial Payment Estimate</b>				Contract No.	Partial Payment Estimate No.	Contractor
Virginia RUS Bulletin 1780-3				Period of Estimate From _____ to _____	Page _____ of _____	Owner
Weather Related Time Delays						
No. of Days Lost	Date of Days Lost			<b>Estimate</b>		
Change Order Summary				1. Original Contract _____		
Number	FmHA Approval Date	Amount Approved (2)	Amount Installed to Date (5)	2. Change Orders Approved by Rural Development _____		
				3. Revised Contract (1 + 2) _____		
				4. Work Completed to Date _____		
				5. Change Orders Completed to Date _____		
				6. Stored Materials _____		
				7. Subtotal (4 + 5 + 6) _____		
				8. Retainage _____		
				9. Previous Payments _____		
Total				10. Amount Due _____		
<b>CONTRACTOR'S CERTIFICATION</b>  The undersigned Contractor certifies that to the best of their knowledge, information and belief, the work covered by this payment estimate has been completed in accordance with the contract documents, that all amounts have been paid by the contractor for which previous payment estimates were issued, and payments received from the owner and that current payment shown herein is now due.		<b>CERTIFICATION OF FIELD REPRESENTATIVE</b>  I have checked this estimate against the Contractor's Schedule of Amounts of Contract Payments, the notes and reports of my inspection of the project and the periodic reports submitted by the engineer. It is my opinion that the statement of work performed and/or materials supplied is accurate, that the contractor is observing the requirements of the contract, and that the contractor should be paid the amount requested.		<b>CERTIFICATION OF ENGINEER</b>  I hereby certify that to the best of my knowledge and belief, the quantities shown in this estimate are correct and have not been shown in previous estimates and the work has been performed in accordance with the contract documents.		<b>APPROVED BY OWNER</b>  _____ Owner  _____ By  _____ Date  ACCEPTED BY Rural Development:  The review and acceptance of this estimate by Rural Development does not attest to the correctness of the quantities shown or that the work has been performed in accordance with the contract documents.
_____ Contractor		_____ Field Representative		_____ Name of Architectural/Engineering Firm		_____ By
_____ By		_____ Date		_____ Title		_____ By
_____ Date		_____ Date		_____ Date		_____ Date

USDA-RUS-VA  
VA Form RD 440-4  
(Rev. 07-06-98)

## SECURITY AGREEMENT

I. THIS SECURITY AGREEMENT, dated \_\_\_\_\_, 19\_\_, is made between the United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture, (herein called Secured Party) and \_\_\_\_\_ (herein called Debtor), whose mailing address is \_\_\_\_\_.

II. WHEREAS Debtor is justly indebted to Secured Party as evidenced by one or more certain promissory note(s) or other instrument(s), and in the future may incur additional indebtedness to Secured Party which will also be evidenced by one or more promissory note(s) or other instrument(s), all of which are herein called "note," which has been executed by Debtor, is payable to the order of Secured Party, and authorizes acceleration of the entire indebtedness at the option of Secured Party upon any default by Debtor; and

The note evidences a loan to Debtor, and Secured Party, at any time, may assign the note and insure the payment thereof to any extent authorized by the Consolidated Farm and Rural Development Act or any other act administered by the United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture; and

It is the purpose and intent of this instrument that, among other things, at all times when the note is held by Secured Party, or in the event Secured Party should assign this instrument without insurance of the note, this instrument shall secure payment of the note; but when the note is held by an insured holder, this instrument shall not secure payment of the note or attach to the debt evidenced thereby, but as to the note and such debt shall constitute an indemnity security agreement to secure Secured Party against loss under its insurance contract by reason of any default by Debtor; and

NOW THEREFORE, in consideration of said loan(s) and (a) at all times when the note is held by Secured Party, or in the event Secured Party should assign this instrument without insurance of the payment of the note, to secure the prompt payment of all existing and future indebtedness and liabilities of Debtor to Secured Party and of all renewals and extensions thereof and any additional loans or future advances to Debtor heretofore or hereafter made or insured by Secured Party under the then existing provisions of the Consolidated Farm and Rural Development Act or any other act administered by the United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture, all with interest; (b) at all times when the note is held by an insured holder, to secure performance of Debtor's agreement herein to indemnify and save harmless Secured Party against loss under its insurance contract by reason of any default by Debtor; (c) in any event and at all times to secure the prompt payment of all advances and expenditures made by Secured Party, with interest, as hereinafter described, and the performance of every covenant and agreement of Debtor contained herein or in any supplementary agreement:

DEBTOR HEREBY GRANTS to Secured Party a security interest in Debtor's interest in the following collateral, including the proceeds and products thereof:

Item 1. All personal property with all replacements, substitutions, additions, and accessions financed with loan/grant funds as hereby described:

<u>Ln</u>	<u>Quan.</u>	<u>Kind</u>	<u>Manu.</u>	<u>Size and</u> <u>Type</u>	<u>Condi-</u> <u>tion</u>	<u>Year of</u> <u>Manu.</u>	<u>Serial or</u> <u>Motor No.</u>
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**INSERT SPECIFIC DESCRIPTIONS**

Item 2. All debtor's accounts and intangibles.

**III. DEBTOR WARRANTS, COVENANTS, AND AGREES THAT;**

A. Debtor is the absolute and exclusive owner of the above-described collateral, and such collateral is free from all liens, encumbrances, security, and other interests except (1) any existing liens, encumbrances, security, or other interests in favor of Secured Party which shall remain in full force and effect; and (2) other liens, encumbrances, security, or other interests, as follows:

and Debtor will defend the collateral against the claims and demands of all other persons. Reference to the above liens, encumbrances, security, and other interests is for warranty purposes only and does not indicate their priority.

B. Statements contained in Debtor's loan application(s) are true and correct; and Debtor will (1) use the loan funds for the purposes for which they were or are advanced; (2) comply with management plans as may be agreed upon from time to time by Debtor and Secured Party; (3) care for and maintain the collateral in a good and husband-like manner; (4) insure the collateral in such amounts and manner as may be required by Secured Party, and if Debtor fails to do so, Secured Party; at its option, may procure such insurance; (5) permit Secured Party to inspect the collateral at any reasonable time; (6) not abandon the collateral or encumber, conceal, remove, sell, or otherwise dispose of it or of any interest therein, or permit others to do so, without the prior written consent of Secured Party; and (7) not permit the collateral to be levied upon, injured, or destroyed, or its value to be impaired.

C. Debtor will pay promptly when due all (1) indebtedness evidenced by the note and any indebtedness to Secured Party secured hereby; (2) rents, taxes, insurance premiums, levies, assessments, liens, and other encumbrances, and costs of lien searches and maintenance and other charges now or hereafter attaching to, levied on, or otherwise pertaining to the collateral or this security interest; (3) filing or

recording fees for instruments necessary to perfect, continue, service, or terminate this security interest; and (4) fees and other charges now or hereafter required by regulations of the United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture. At all times when the note is held by an insured holder, Debtor shall continue to make payments on the note to Secured Party, as collection agent for the holder.

- D. If the note is insured by Secured Party, Debtor will indemnify and save harmless Secured Party against any loss by reason of any default by Debtor.
- E. At all times when the note is held by an insured holder, any amount due and unpaid under the terms of the note to which the holder is entitled may be paid by Secured Party to the holder of the note for the account of Debtor. Any amount due and unpaid under the terms of the note, whether it is held by Secured Party or by an insured holder, may be credited by Secured Party on the note and thereupon shall constitute an advance by Secured Party for the account of Debtor. Any advance by Secured Party as described in this paragraph shall bear interest at the note rate from the date on which the amount of the advance was due to the date of payment to Secured Party, provided that Borrower shall be required to pay interest on only the principal portion of such advance unless otherwise provided in the regulations of the United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture.
- F. Whether or not the note is insured by Secured Party, Secured Party may at any time pay any other amounts required herein to be paid by Debtor and not paid when due, including any costs and expenses for the preservation or protection of the collateral or this security interest, as advances for the account of Debtor. All such advances shall bear interest at the rate borne by the note which has the highest interest rate.
- G. All advances by Secured Party as described in this instrument, with interest, shall be immediately due and payable by Debtor to Secured Party without demand at the place designated in the latest note and shall be secured hereby. No such advance by Secured Party shall relieve Debtor from breach of the covenant to pay. Any payment made by Debtor may be applied on the note or any indebtedness to Secured Party secured hereby, in any order Secured Party determines.
- H. In order to secure or better secure the aforesaid obligations or indebtedness, Debtor will execute and deliver to Secured Party at any time, upon demand, such additional security instruments on such real and personal property as Secured Party may require. Debtor authorizes Secured Party to file a financing statement prior to disbursement and to file amendments and continuations of the financing statement.

IV. IT IS FURTHER AGREED THAT:

- A. Until default, Debtor may retain possession of the collateral.
- B. Default shall exist hereunder if Debtor fails to perform or discharge any obligation or to pay promptly any indebtedness hereby secured or to observe or perform any covenants or agreements herein or in any supplementary agreement contained, or if any of Debtor's representations or warranties herein prove false or misleading or upon the death or incompetency of the parties named as Debtor, or upon the

**Virginia RUS Instruction 1780**  
**Exhibit D**  
**Attachment 3, Page 4**

bankruptcy or insolvency of anyone of the parties named as Debtor. Upon any such default.

1. Secured Party, at its option, with or without notice as permitted by law, may (a) declare the unpaid balance on the note and any indebtedness secured hereby immediately due and payable; (b) enter upon the premises and take possession of, cultivate, and harvest crops, repair, improve, use, and operate the collateral or make equipment unusable for the purpose of protecting or preserving the collateral or this lien, or preparing or processing the collateral for sale; and (c) exercise any sale or other rights accorded by law.
  2. Debtor hereby (a) agrees to assemble the collateral and make it available to Secured Party at such time(s) and place(s) as designated by Secured Party; and (b) waives all notices, exemptions, compulsory disposition, and redemption rights.
  3. A default shall exist under any other security instrument held or insured by Secured Party and executed or assumed by Debtor on real or personal property. Likewise, default under any such other security instrument shall constitute default hereunder.
- C. Proceeds from disposition of collateral shall be applied first on expenses of retaking, holding, preparing for sale, selling and the like, and for payment of reasonable attorneys' fees and legal expenses incurred by Secured Party; second to the satisfaction of prior security interests or liens to the extent required by law and in accordance with current regulations of the United States of America, acting by and through the Rural Utilities Service, an agency of the United States Department of Agriculture; third to the satisfaction of indebtedness secured hereby; fourth to the satisfaction of subordinate security interests to the extent required by law; fifth to any other obligations of Debtor owing to or insured by Secured Party; and sixth to Debtor. Any proceeds collected under insurance policies shall be applied first on advances and expenditures made by Secured Party, with interest, as herein above provided; second on the debt evidenced by the note, unless Secured Party consents in writing to their use by Debtor under Secured Party's direction for repair or replacement of the collateral; third on any other obligation of Debtor owing to or insured by Secured Party; and any balance shall be paid to Debtor unless otherwise provided in the insurance policies. Debtor will be liable for any deficiency owed to Secured Party after such disposition of proceeds of the collateral and insurance.
- D. It is the intent of Debtor and Secured Party that to the extent permitted by law and for the purpose of this Agreement, no collateral covered hereby is or shall become realty or accessioned to other goods.
- E. This Agreement is subject to the present regulations of the Secured Party and to its future regulations not inconsistent with the express provisions hereof.
- F. If any provision of this Agreement is held invalid or unenforceable, it shall not affect any other provisions hereof, but this Agreement shall be construed as if it had never contained such invalid or unenforceable provision.

- G. The rights and privileges of Secured Party under this Agreement shall inure to the benefit of its successors and assigns. All covenants, warranties, representations, and agreements of Debtor contained in this Agreement are joint and several and shall bind personal representatives, heirs, successors, and assigns.
- H. If at any time it shall appear to Secured Party that Debtor may be able to obtain a loan from a private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, Debtor will, upon Secured Party's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby.
- I. Secured Party shall have the sole and exclusive rights as the secured party hereunder, including, but not limited to, the power to grant or issue any consent, release, subordination, continuation statement, or termination statement, and no insured holder shall have any right, title, or interest in or to the security interest created by this agreement or any benefits hereof.
- J. SECURED PARTY HAS INFORMED DEBTOR THAT DISPOSAL OF PROPERTY COVERED BY THIS SECURITY AGREEMENT WITHOUT THE CONSENT OF SECURED PARTY, OR MAKING ANY FALSE STATEMENT IN THIS SECURITY AGREEMENT, OR ANY OTHER LOAN DOCUMENT, MAY CONSTITUTE A VIOLATION OF FEDERAL CRIMINAL LAW.
- K. Failure by the Secured Party to exercise any right, whether once or often, shall not be construed as a waiver of any covenant or condition or of the breach thereof. Such failure shall also not affect the exercise of such right without notice upon any subsequent breach of the same or any other covenant or condition.

Attest: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

CERTIFICATION OF LOAN AND/OR GRANT CLOSING OFFICIAL

I hereby certify all the provisions of the closing instructions as outlined in Virginia Instruction 1780 (Exhibit C)(Exhibit D) for Loans (and Grants), OGC's closing instructions, RUS closing instructions, and the Letter of Conditions for \_\_\_\_\_  
(Name of Entity)  
have been fully complied with.

DATE: \_\_\_\_\_  
\_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Title)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

This letter, with Attachments 1 through \_\_\_\_\_ and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application for financial assistance from the Rural Utilities Service (RUS) to provide \_\_\_\_\_ to \_\_\_\_\_. The Rural Development staff administers this financial assistance on behalf of 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 Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

This letter is not to be considered as loan (and grant) approval or as a representation as to the availability of funds. The docket may be completed on the basis of an RUS loan not to exceed \$\_\_\_\_\_ and an RUS grant not to exceed \$\_\_\_\_\_, and other funding in the amount of \$\_\_\_\_\_, for a total project cost of \$\_\_\_\_\_. The other funding is planned in the form of \_\_\_\_\_ from \_\_\_\_\_.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel, and accountant. The enclosures and attachments listed below are attached to the copies as noted.

Enclosed are the following:

- Attachment No. 1 - Final Project Planning Factors (All copies)
- Attachment No. 2 - RUS Instruction 1780, Subpart B, and RUS Staff Instruction 1780-4 (Applicant copy)
- Attachment No. 3 - RUS Instruction 1780, Subpart C (Engineer copy)
- Attachment No. 4 - RUS Instruction 1780, Subpart D (Attorney and Bond Counsel copies)
- Attachment No. 5 - Virginia RUS Bulletin 1780-1, with attachment, and RUS Bulletin 1780-26 (Engineer copy)
- Attachment No. 6 - (Water) (Sewer) Users Agreement (RUS Bulletin 1780-9) (Applicant and Attorney copies)
- Attachment No. 7 - RD Instruction 1940-Q and all exhibits

INSERT THE APPROPRIATE SENTENCE: [The agreements you provided with your application for engineering and legal services have been found acceptable.] [You must provide agreements for engineering and legal services for our review.] The costs for these services have been included in the project budget contained in Attachment No. 1.

[INSERT THIS PARAGRAPH FOR PUBLIC BODIES] We have reviewed the documents creating your \_\_\_\_\_ and (have found them acceptable)(the following changes are necessary).

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[INSERT THIS PARAGRAPH FOR NON-PROFIT CORPORATIONS] Your documents concerning the creation of your \_\_\_\_\_ have been reviewed by our Office of the General Counsel and (have been found acceptable) (the following changes are necessary).

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of \_\_\_\_\_ years. The payments due the first \_\_\_\_\_ months will consist of interest only and will be paid annually on the first anniversary (and second anniversaries) of the bond. Payments for the remaining \_\_\_\_\_ months will be equal amortized monthly installments. For planning purposes use a \_\_\_\_\_ interest rate and a monthly amortization factor of \_\_\_\_\_ which provides for a monthly payment of \$\_\_\_\_\_.

A reserve is required and must be accumulated at the rate of 10% of the monthly debt payment for the life of the loan. For the first ten years, or until an annual payment is accumulated, the reserve will be placed into a debt service reserve. After the debt service reserve is fully funded, and as long as it remains fully funded, the remaining reserves will be placed into a depreciation account and used for asset replacement.

You have the option of participating in the Preauthorized Debit (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due.

2. Security - The loan must be secured by a Bond which pledges the net revenues of your (water)(sewer) utility (of first priority) (on parity with \_\_\_\_\_), along with a pledge of the full faith and credit of the \_\_\_\_\_, and other agreements between you and Rural Development as set forth in the Bond (Resolution) (Ordinance) which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-27, Loan Resolution, (and RUS Bulletin 1780-12, Grant Agreement,) which is (are) mentioned later.
2. Security - The loan must be secured by a General Obligation Bond which pledges the full faith and credit of the issuer and other agreements between you and Rural Development as set forth in the Bond (Resolution) (Ordinance) which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-27, Loan Resolution, (and RUS Bulletin 1780-12, Grant Agreement,) which is (are) mentioned later.
2. Security - The loan must be secured by a revenue bond (of first priority) (on parity with \_\_\_\_\_), a pledge of your (water)(sewer) system revenues, and other agreements between you and Rural Development as set forth in the Bond (Resolution)(Ordinance) which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-27, Loan Resolution, (and RUS Bulletin 1780-12, Grant Agreement,) which is (are) mentioned later.

[INSERT THIS PARAGRAPH IF THERE ARE ANY OUTSTANDING REVENUE BONDS HELD BY RUS] As an existing bondholder, RUS hereby waives the requirement that net revenues be at least 120 percent of the annual debt service on all bonds outstanding and hereby consents to the issuance of this additional debt.

2. Security - The loan must be secured by a Deed of Trust having \_\_\_\_\_ priority, a financing statement on all personal property financed with these loan (and grant) funds, a Security Agreement using Virginia Form RD 440-4, all accounts and intangible assets of the (water)(sewer) system, and other agreements between you and Rural Development as set forth in the Association Loan Resolution (RUS Bulletin 1780-28), which must be adopted and executed by the appropriate applicant officials. Prior to the adoption of the Association Loan Resolution, the members of the Association, at a properly called meeting, must review and adopt Form RD 1942-8, Resolution of Members or Stockholders. Your attorney must provide us with a description of the real property which should be included in the Deed of Trust.
3. Users - This conditional commitment is based upon your having obtained a minimum of \_\_\_\_\_ properly executed users agreements from bona fide full-time actual users located within the planned service area. These \_\_\_\_\_ users represent \_\_\_\_\_ equivalent users. Each user signing an agreement must make a user contribution of \$ \_\_\_\_\_.

Information and material evidencing the above requirements must be provided for Rural Development review and verification. Such evidence will, as a minimum, consist of (1) signed users agreements, (2) records of user contributions being paid, (3) a map locating each potential user's property and identifying it by a number, and (4) a list of all signed bona fide users numbered with corresponding numbers so as to be a cross reference with the map required by (3) above.

The enclosed RUS Bulletin 1780-9 will be used as a guide in developing the (water) (sewer) users agreement. A copy of the proposed user agreement must be forwarded for Rural Development approval. Copies of each executed user agreement must be maintained in your file for our inspection.

3. Users - This conditional commitment is based upon your \_\_\_\_\_ providing evidence that you will have a minimum of \_\_\_\_\_ bona fide actual users ( \_\_\_\_\_ equivalent users) on the proposed system when it has been completed and is placed in operation. This evidence will consist of signed user agreements and certification from you that identifies and attests to the number of users that are actually connected to and using the \_\_\_\_\_ existing (water)(sewer) system. Each user signing an agreement must make a user contribution of \$ \_\_\_\_\_.

Information and material evidencing compliance with this requirement must consist of (1) your certification (written) to the number of users connected to and using the service of the existing system (paying monthly bills), (2) signed user agreements, (3) records evidencing user's contributions having been paid, (4) a map locating each potential user's property and identifying it by number, (5) a list of all signed bona fide users numbered with corresponding numbers so as to be

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a cross reference with the map required by (4) above, and (6) a list of all users receiving service from the existing system.

The enclosed RUS Bulletin 1780-9 will be used as a guide in developing the (water) (sewer) users agreement. A copy of the proposed user agreement must be forwarded for Rural Development approval. Copies of each executed user agreement must be maintained in your file for our inspection.

3. Users - This conditional commitment is based upon your \_\_\_\_\_ providing evidence that you have a minimum of \_\_\_\_\_ bona fide actual users ( \_\_\_\_\_ equivalent users) on the existing (water)(sewer) system. This evidence will consist of a written certification from you as to the number of users actually connected to and using the \_\_\_\_\_ existing system (paying monthly bills).
4. Bond Counsel - The services of a recognized bond counsel are required. The bond counsel will prepare the form of (Resolution) (Ordinance) to be used, in accordance with RD Instruction 1780, Subpart D. You should immediately provide your bond counsel with a copy of this letter of conditions and its attachments and enclosures. **[INSERT IF REVENUE BOND IS BEING ISSUED: The bond documents should reflect that the borrower must maintain a 10% debt service reserve in accordance with item 1 above.]**
5. Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands needed for the project. Such evidence must be in the following form:
  - a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
  - b. A copy of deeds, contracts, or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form RD 1927-9, Preliminary Title Opinion, may be used. Also, in the case of existing systems or where the \_\_\_\_\_ has already acquired real property (land or facilities), a preliminary title opinion concerning all such property must be provided.
  - b. A copy of deeds, contracts, or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. The title opinion must be in the form of a title insurance binder. Also, in the case of existing systems or where the \_\_\_\_\_ has already acquired real property (land or facilities), the title insurance binder must cover all such property.
  - c. Prior to or at the time of closing, a Final Title Opinion showing no exceptions must be provided. Form RD 1927-10 may be used.
  - c. Prior to or at the time of closing, the applicant must furnish an acceptable title insurance policy endorsed in favor of the United States of America, acting through the United States Department of Agriculture. The policy must be in the amount of the proposed loan and all listed exceptions must be reviewed and accepted by Rural Development.

- d. A copy of the right-of-way easements for any rights-of-way needed on private lands. Form RD 442-20, Right-of-Way Easement, may be used. Each easement need not be provided this office; however, each must be available for Rural Development review. A copy of the easement to be used must be approved by Rural Development.
- e. Form RD 442-21, Right-of-Way Certificate, and Form RD 442-22, Opinion of Counsel Relative to Rights-of-Way, must be completed. These forms may contain a few exceptions such as properties that must be condemned; however, prior to start of construction or loan closing, whichever occurs first, new Forms RD 442-21 and 442-22, which do not provide for any exceptions, must be provided.

If rights-of-way are not needed for the proposed project, a certification to that effect from your attorney will satisfy items a, d, and e above.

6. Permits - Copies of all permits needed for the project or a statement of permit availability from the permit issuer must be provided for our review prior to advertisement for construction bids. Such permits may include, but are not limited to, those issued by the following:

- Zoning Code Permits
- Building Code Permits (including erosion and sedimentation control plans)
- Virginia Department of Highways and Transportation
- Railroads
- State Department of Health
- Department of Environmental Quality
- Corps of Engineers
- State Corporation Commission
- Marine Resources Commission

In addition, you must provide a narrative opinion from your attorney which identifies and addresses the need and adequacy of all certificates, permits, licenses, etc., needed for the construction and operation of the facility.

7. Approval of Rates - The \_\_\_\_\_ must properly develop, adopt, and promulgate the required rates in accordance with the applicable provisions of the Code of Virginia, as amended, and to the satisfaction of your counsel. The adopted rates must be properly filed with the State Corporation Commission, if required. A draft rate resolution must be provided for Rural Development review and concurrence prior to its adoption.

It should be clearly understood that the rates and rate related information included in Attachment No. 1 hereto were developed based on the information provided by you and/or your consultants and that it is presented as a minimum requirement only. The \_\_\_\_\_, its accountant, and/or engineer must develop the rates and necessary rate related information which are to be included in the (water) (sewer) rate resolution.

Additionally, since it has been determined there will be certain users on the sewer system that are not users on the water system, it will be necessary for the

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rate resolution to include a "flat rate" schedule to cover those users. The minimum "flat rate" will not be less than the minimum bill shown on the project planning factors (Attachment No. 1).

8. Accounting - You must enter into an audit agreement with a qualified accountant. You must obtain from your accountant the following:

- a. Prior to advertisement for bids, your accountant must state in writing that he will establish your accounts and records in accordance with the requirements of the resolution and the requirements of the State Corporation Commission, if applicable, within 20 days from the notice to do such.
- b. Prior to loan closing or the start of construction, whichever occurs first, the accountant must certify that the accounts and records as required in (a) above have been established and are operational.

A Rural Development representative may want to review your accounts and records prior to authorizing the issuance of award(s) to the contractor(s).

8. Accounting - You must maintain an audit agreement with a qualified accountant. You must obtain from your accountant a certification that the records and accounts required by your previous USDA financing have been established and are operational.

A Rural Development representative may want to review your accounts and records prior to authorizing the issuance of award(s) to the contractor(s).

9. Audit Requirements - As a recipient of Federal financial assistance, you must provide an audit which is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS), issued by the Comptroller General of the United States in 1994, and any subsequent revisions. The audit shall comply with the requirements of Office of Management and Budget (OMB) circular A-133, Audits of States, Local Governments and Non-profit Organizations, OR water and waste audit requirements as outlined in RUS Bulletin 1780-30. Subsequent audits will be in accordance with current Rural Development regulations and the attached audit guide.

In addition to the audit required above, RUS Staff Instruction 1780-4 (Attachment No. 2) outlines management reports which must be submitted to Rural Development. As soon as the facility is operational, you will be required to provide these reports.

10. Insurance and Bonding Requirements - Prior to loan closing or start of construction, whichever occurs first, you must acquire the following insurance and bond coverage:

- a. Liability and Property Damage Insurance - (1) The project will be reviewed for liability and property damage needs, and amounts will be established accordingly, and (2) public liability and property damage insurance will be obtained on all vehicles driven over public highways.

- b. Workers' Compensation - In accordance with appropriate State Laws.

- c. Position Fidelity Bond Coverage - You must provide evidence of adequate fidelity bond coverage for all persons who have access to funds by loan closing or start of construction, whichever occurs first. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of coverage will normally approximate the total annual debt service requirements for your RUS loan. Form RD 440-24, Position Fidelity Schedule Bond, may be used for this purpose. We encourage you to have your attorney, consulting engineer/architect, and/or insurance provider review proposed types and amounts of coverage, including any deductible provisions. Rural Development must agree on the acceptability of proposed coverage. You must continue to provide evidence to Rural Development that adequate coverage is being maintained for the life of the loan. This is your responsibility, not that of Rural Development.
  - d. National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:
    - 1. If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.
    - 2. Applicants whose buildings, machinery, or equipment are to be located in an area which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.
  - e. Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above ground structures to include machinery and equipment housed therein, in an amount equal to the insurable value thereof. This does not apply to water reservoirs, standpipes, elevated tanks, or noncombustible materials used in treatment plants, clearwells, filters, and the like.
11. Contract Documents/Procurement - Construction contracts will be competitively bid in accordance with RUS Instruction 1780, Subpart C. The contract documents should consist of the following and must be submitted to Rural Development for approval:
- a. The documents as listed in Virginia RUS Bulletin 1780-1, supplemented by RUS Bulletin 1780-26. One copy of each of these items is attached hereto (Attachment No. 5). Additional copies must be reproduced by the engineer.
  - b. Plans and specifications and all addenda.

**NOTE:** For competitively negotiated contracts, the invitation to bid, instructions to bidders, and bid forms are to be deleted and a request for proposal substituted in its place.

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12. Code of conduct - You must adopt and maintain a written code or standards of conduct which shall govern the performance of your officers, employees, or agents engaged in the award and administration of contracts supported by RUS funds. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by RUS funds if a conflict of interest, real or apparent, would be involved.
13. Interim Financing - Interim financing must be used for the RUS loan provided such funds can be borrowed at reasonable rates and terms. You must provide Rural Development with a copy of the tentative agreement reached in connection with interim financing.
14. Utility Purchase Contract - You propose to purchase \_\_\_\_\_ from \_\_\_\_\_; therefore, you must enter into a utility purchase contract. You should utilize RUS Instruction 1780, section 1780.62, in the development of this utility purchase contract. All utility purchase contracts must be approved by Rural Development prior to loan closing.
15. Other Grants/Funds - Prior to advertisement for construction bids, you must provide evidence showing the approval of the other grants/funds. The evidence of other grants should include a copy of the grant award. Prior to award of contract(s) to the contractor(s), you must provide written evidence that the other grant funds are available for expenditure. This evidence should consist of a letter from the grantor stating that funds are now available for expenditure.
16. Disbursement of RUS Grant Funds - RUS grant funds will be advanced as they are needed in the amount necessary to cover the RUS proportionate share of obligations due and payable by the \_\_\_\_\_ (insert applicant's name). Interest earned on grant funds in excess of \$\_\_\_\_\_ (insert **\$250** for non-profit applicants **OR \$100** for public body applicants) per year will be submitted to RUS at least quarterly as required in \_\_\_\_\_ (insert **7 CFR 3019** for non-profit applicants **OR 7 CFR 3016** for public body applicants).
17. Agency Forms - You will be required to execute certain Agency forms in order to obtain financial assistance from RUS. By resolution, these forms must be adopted and properly executed, and minutes showing the adoption must be provided.
18. Environmental Mitigation - As a result of the environmental review performed for this project, the following mitigation requirements must be accomplished:

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 RUS financial assistance.

Rural Development may authorize you to advertise the project for construction bids once all required documents have been submitted. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening, you must provide Rural Development with (a) a bid tabulation, (b) recommendations from you and

your engineer as to the acceptability of the bids received, (c) your recommendations for contract awards, and (d) a revised project budget based upon current prices. The revised project budget will not include a construction contingency greater than five (5) percent of the construction items. If, after bidding, it is determined there are Rural Development funds in excess of that necessary to complete the project, you will work with Rural Development to deobligate funds not needed for successful completion of the project.

If all parties then agree the construction bids received are acceptable and it is determined that adequate funds are available to cover the total facility costs and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed. **LOAN CLOSING WILL NOT BE SCHEDULED UNTIL CLOSING INSTRUCTIONS ARE RECEIVED FROM RURAL DEVELOPMENT.** When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

The Debt Collection Improvement Act (DCIA) of 1996 requires that all Federal payments be made by Electronic Funds Transfer/Automated Clearing House (EFT/ACH). Borrowers receiving payments by EFT will have funds directly deposited to a specified account at a financial institution with funds being available to the recipient on the date of payment. The borrower should complete Form SF-3881, Electronic Funds Transfer Payment Enrollment Form, for each account where funds will be electronically received. The completed form(s) must be received by Rural Development at least thirty (30) days prior to the first advance of funds.

As a recipient of federal financial assistance, you must comply with all applicable federal, state, and local statutes, ordinances, regulations, and codes. The major portion of existing rules and regulations which must be met are included in RD Instruction 1780, Attachments 2, 3, and 4. No modifications or waiver of any portion of these regulations is authorized. Such regulations shall govern regardless of any misinterpretation, omission, misunderstanding, or statements made by any Rural Development employee. The most critical requirements of the instructions have been highlighted or clarified in this letter.

In addition, you will be required to refinance the unpaid balance of the proposed loan, in whole or in part, upon the request of the government if at any time it shall appear to the government that you are able to refinance your obligation by obtaining a loan for such purposes from responsible lending sources at reasonable rates and terms for loans for similar purposes and periods of time.

Attached is a copy of RUS Bulletin 1780-12, "Association Water or Sewer System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing.

The applicant contribution shall be considered as the first funds expended except \_\_\_\_\_ (insert appropriate exceptions if funds from other sources make an exception necessary). After providing for all authorized cost, any remaining RUS project funds will be considered to be RUS grant funds and refunded to RUS. If the amount of unused RUS project funds exceeds the RUS grant, then that part would be RUS loan funds.

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We believe the information herein clearly sets forth the action which must be taken; however, if you have any questions, please do not hesitate to contact my office.

Please complete and return the enclosed Form RD 1942-46, Letter of Intent to Meet Conditions, if you desire that further consideration be given to your application.

If the conditions set forth in this letter are not met within \_\_\_\_\_ months from the date hereof, Rural Development reserves the right to discontinue processing of the application.

Sincerely yours,

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Rural Development Manager  
USDA, Rural Development

cc: State Director, Rural Development, Richmond, VA  
Attorney  
Bond Counsel  
Accountant  
Engineer

Attachment No. 1  
 Letter of Conditions  
 For: \_\_\_\_\_  
 Dated: \_\_\_\_\_

**PROJECT PLANNING FACTORS**

The following estimates are to be used as a basis for project planning and must not be changed without prior approval of Rural Development:

Project Costs

Construction	\$ _____
Land and Rights	_____
Legal Fees	_____
Bond Counsel	_____
Engineering:	
Basic	_____
Inspection	_____
Other	_____
Interest	_____
Equipment	_____
Contingencies	_____
 TOTAL PROJECT COSTS	 \$ _____

Funding Sources

RUS Loan	\$ _____
RUS Grant	_____
_____ Loan	_____
_____ Grant	_____
Borrower Contribution	_____
 TOTAL FUNDING	 \$ _____

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PROPOSED RATE STRUCTURE

First \_\_\_\_\_ gallons @ \$ \_\_\_\_\_ per 1,000 gallons  
 Next \_\_\_\_\_ gallons @ \$ \_\_\_\_\_ per 1,000 gallons  
 Next \_\_\_\_\_ gallons @ \$ \_\_\_\_\_ per 1,000 gallons  
 Next \_\_\_\_\_ gallons @ \$ \_\_\_\_\_ per 1,000 gallons  
 Next \_\_\_\_\_ gallons @ \$ \_\_\_\_\_ per 1,000 gallons  
 Next \_\_\_\_\_ gallons @ \$ \_\_\_\_\_ per 1,000 gallons  
 Over \_\_\_\_\_ gallons @ \$ \_\_\_\_\_ per 1,000 gallons

(Minimum Monthly Bill = \$ \_\_\_\_\_ )

USE AND INCOME ESTIMATES

_____ users @ _____	gallons @ \$ _____	per user = \$ _____	monthly
_____ users @ _____	gallons @ \$ _____	per user = \$ _____	monthly
_____ users @ _____	gallons @ \$ _____	per user = \$ _____	monthly
_____ users @ _____	gallons @ \$ _____	per user = \$ _____	monthly
_____ users @ _____	gallons @ \$ _____	per user = \$ _____	monthly
_____ users @ _____	gallons @ \$ _____	per user = \$ _____	monthly
_____ users @ _____	gallons @ \$ _____	per user = \$ _____	monthly
_____ users @ _____	gallons @ \$ _____	per user = \$ _____	monthly
_____ users @ _____	gallons @ \$ _____	per user = \$ _____	monthly
_____ users @ _____	gallons @ \$ _____	per user = \$ _____	monthly

Total actual users = \_\_\_\_\_; Total equivalent users = \_\_\_\_\_  
 Total revenue = \$ \_\_\_\_\_ monthly x 12 = \$ \_\_\_\_\_ annually

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BUDGET

Income

(Water)(Sewer)Revenue	\$ _____	
Other Income	_____	
<b>Total Income</b>		\$ _____

Expenses

Operation and Maintenance	\$ _____	
Debt Service	_____	
Reserve	_____	
<b>Total Expenses</b>		_____
<b>Balance and Depreciation</b>		\$ _____

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Operation and Maintenance Expenses

Wages - Salaries	\$ _____
Office Expenses (telephone, rent, supplies)	_____
Taxes, Insurance, Bonds	_____
Fees (accounting, audit, legal)	_____
Utilities (electric, water, sewer, gas, fuel oil)	_____
Repair to Facilities and Equipment	_____
Fuel - Gasoline - Oil	_____
Miscellaneous Materials and Supplies	_____
Reading, Billing, and Collection	_____
Water Purchase	_____
<b>TOTAL</b>	\$ _____