



United States Department of Agriculture
Rural Development
Hawaii State Office - Western Pacific Region

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VIA E-MAIL

July 20, 2009

Honorable Felix Perez Camacho
Governor of Guam
P. O. Box 2950
Hagatna, GU 96932

30-09-1167
Office of the Secretary
Judith T. ...
Date _____
Time _____
Received by _____
10/01/09
JYP

Dear Governor Camacho:

Subject: Letter of Conditions for the Layon Landfill Financing
Including a \$88,536,000 Direct Loan and \$15,019,300 Grant

This letter with enclosures, establishes conditions which you must understand and agree to before further consideration may be given to your application. The Hawaii State and Guam Area staff of USDA Rural Development (RD) will administer the loan and grant on behalf of the Rural Utilities Service (RUS). You must report any changes in design, project cost, source of funds, scope of services, or any other significant changes in the project to RD for review and approval. A written amendment to this letter will be prepared for approved changes. Changes not approved by RD may be cause for discontinuing the processing of the application. The docket may be completed on the basis of a direct loan not to exceed \$88,536,000 and a grant not to exceed \$15,019,300.

This letter is not to be considered as loan approval or as representation to the availability of funds.

Your documents concerning the creation and legal existence of your entity are administratively acceptable. Any changes required by our Office of the General Counsel will be included in the closing instructions.

You may be required to refinance (graduate) the unpaid balance of the RD loan, in whole or in part, if at any time RD determines your entity is able to obtain a loan for such purposes from responsible cooperative, or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access our web-site located at <http://www.usda.gov/rus/water/> for the following:

- a. RUS Instruction 1780
- b. RUS Bulletin 1780-26, Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with RUS Financial Assistance
- c. RUS Bulletin 1780-30, Water Programs Audit Guide and Compliance Supplement
- d. RUS Bulletin 1780-31, Water Programs Compliance Supplement For OMB Circular A-133 Audits

Room 311, Federal Building, 154 Waiianuenu Avenue, Hilo, Hawaii 96720, Tel: (808) 933-8380, FAX: (808) 933-8327, TDD: (808) 933-8321
<http://www.rurdev.usda.gov>

Committed to the future of rural communities

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The conditions referred to the above are as follows:

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

<u>Project Costs:</u>	<u>Total Budgeted</u>
Construction	\$97,552,300
Land and Right-of-Way	3,390,000
Engineering Fees	14,277,488
Legal Fees	200,000
Interim Financing Interest	1,845,000
Project Contingency	8,852,738
Equipment	14,761,400
Initial O&M	<u>2,551,020</u>
TOTAL	\$143,429,946

2. **Project Funds** - The project funding is planned in the form of a loan and grant from the following sources and amounts:

<u>Project Funding Source:</u>	<u>Funding Amount:</u>
Applicant Contributions	\$12,865,000
Other Funding	27,009,646
RUS Loan	88,536,000
RUS Grant	<u>15,019,300</u>
TOTAL	\$143,429,946

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

Prior to advertisement for construction bids, you must provide evidence of applicant and other contributions, and approval of the other grants that constitute Applicant Contribution. This evidence should include copies of the grant award. An agreement should be reached with all funding sources on how funds are to be disbursed before the start of construction.

3. **Disbursement of Funds** - Any applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining RD project funds will be considered to be part of RD grant funds, and refunded to RD. If the amount of unused RD project funds exceeds the RD grant, that part would be RD loan funds and applied as an extra payment.

Interim financing from another lender of the loan amount should be used for construction, if it is available at reasonable rates and terms. You must provide RD with copies of the draft documents from the interim lender for review and approval. Once the loan amount has been reached, the Rural Development loan will be closed and grant funds will be disbursed on a monthly basis. The RD funds will be advanced monthly as they are needed to cover eligible costs with documentation approved by RD. Funds will be disbursed by electronic transfer of funds.

You must establish a separate account, to be known and hereafter referred to as the Construction Account, with a participating 31 CFR Part 202 collateral depository, Federal Agency, or Federal Reserve Bank acting as a fiscal agent in the United States. All project funds will be deposited into this account. The account shall be used solely for the purpose of paying authorized costs of the project as outlined in the project budget. Once the funds are deposited into the Construction Account, they become your responsibility. Financial institutions, or depositories accepting deposits of public funds and providing other financial agency services to the Federal Government, are required to pledge adequate, acceptable securities as collateral. General requirements for designating depositories and regulations governing the pledging of collateral are identified in 31 CFR Part 202 (Depositaries and Financial Agents of the Federal Government). Treasury's current acceptability and valuation requirements are identified in 31 CFR Part 380 (Collateral Acceptability and Valuation), and specific eligibility and valuation guidance is provided in Treasury's procedural instructions and on The Treasury's Bureau of the Public Debt website at <http://www.publicdebt.treas.gov>. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the Construction Account at any one time.

Any RD grant funds not disbursed immediately upon receipt must be deposited in an interest bearing account.

- a. **Non-Profits**
Interest earned on grant funds in excess of \$250 per year will be remitted to the RUS annually as required in 7CFR3019.
 - b. **Public Bodies**
Interest earned on grant funds in excess of \$100 per year will be submitted to RUS at least quarterly as required in 7CFR3016.
 - c. The depository would require a minimum balance so high that it would not be feasible.
4. **Security** – Assignment of Section 30 Revenues in an amount sufficient to service the annual payment of loan over the entire loan term, or until the loan is fully paid. Further security will be provided by revenues generated from user fees of the system. The Assignment will be acknowledged by the Bank of Guam, as Trustee. Additional security requirements are contained in RUS Bulletin 1780-12, Water or Waste System Grant Agreement, and RUS Bulletin 1780-27, Loan Resolution (Public Bodies) which are mentioned later.
- The services of a recognized bond counsel are required. The bond counsel will prepare the form of resolution to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, attachments, and enclosures.
5. **Loan Repayment** – (Annual Installments) The loan will be scheduled for repayment over a period of 30 years, with the first two years at interest only payments. Payments based on the remaining 28 years will be paid in equal amortized annual installments. For planning purposes use a 3.5% interest rate, and an annual amortization factor of .05661 per \$1 of loan amount, which provides for an annual payment of \$5,012,022.96.

The interest rate will be the lower of the rate in effect at the time of loan approval, or the time of loan closing, whichever is less unless you choose otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount. The payment due date will be established as the day that the loan closes. Loan closing will be coordinated to coincide with income received on Section 30 Bonds.

You will be required to complete SF-5510, Authorization Agreement for Preauthorized Payments, for all new and existing indebtedness to RD. It will allow for your payment to be electronically debited from your account on the day your payment is due.

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

It has been determined as part of this funding proposal that you have sufficient funds to establish reserves for the following purposes and amounts:

Operation and Maintenance	\$ 2,551,020	from project budget
Interim Financing Interest Reserve	\$ 1,845,000	from project budget
Asset Management (Short Lived Assets)	\$ 2,899,809	from project budget

7. **Users** – This letter of conditions is based upon you providing evidence or a certification that there will be at least 14,000 residential users on the proposed system when construction has been completed. The RD loan and grant commitment is based on also providing service to large volume users to insure repayment. Large volume users are estimated to contribute 7,342 tons per month.

Before RD can agree to the project being advertised for construction bids, you must provide evidence or a certification that the total required number of users are currently using the system, or signed up to use the system and that the monthly waste disposal projected for each by the engineer is reasonable. In the event any of the large volume users discontinue their waste disposal service, you must obtain enough additional revenue (i.e., increase in user rates, sign up of an adequate number of other users, reduction in project scope to reduce debt service and O&M, etc.) to make up the projected income that would be lost by not having those users on the system.

8. **Income Available** – You must maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance, debt service, and reserves.
9. **Third Party Management** – You must enter into a Third Party Management Agreement to operate, maintain, and manage the solid waste utility, collection, disposal, and landfill operations. Rural Development has the right to review the Third Party Management Agreement.
10. **Operation and Maintenance Expenses** – O&M expenses must be properly budgeted to ensure the financial viability of the operation. For planning purposes, we have projected O&M expenses based on the information provided in the preliminary engineering report which should be representative of a typical operational year. This information is utilized to determine loan repayment and should be reflected in your proposed operating budget. It is expected that O&M will change over each successive year and user rates will need to be adjusted appropriately.

11. **Proposed Operating Budget and User Rate Analysis** - You will be required to submit a copy of your proposed annual operating budget and rate analysis to RD which supports the proposed loan repayment prior to RD giving you written authorization to proceed with the bidding phase. The operating budget should be based on a typical year cash flow after completion of the construction phase. The rate analysis will be required to show the number of users to include large volume users, their average waste generation based on a 12-month consecutive average, and rate structure to support the necessary revenue to make the operating budget cash flow.

12. **Insurance and Bonding Requirements** - Prior to loan closing or start of construction, whichever occurs first, you must acquire the types of insurance and bond coverage shown below. The use of deductibles may be allowed providing you have the financial resources to cover potential claims requiring payment of the deductible. RD strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility, and not that of RD, to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained. If you are self-insured, we would need evidence of the adequacy of your self-insurance program to cover a reasonable amount of potential liability.
 - a. **General Liability Insurance** – Include vehicular coverage.
 - b. **Workers' Compensation** - In accordance with appropriate State laws.
 - c. **Position Fidelity Bond(s)** - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. You should have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The minimum coverage acceptable to RD will be for each position to be bonded for an amount at least equal to one annual installment on your loan. The coverage may be increased during construction of this project based on the anticipated monthly advances. The amount of coverage should be discussed and approved by RD.
 - d. **National Flood Insurance** - If the project involves acquisition or construction in designated special flood or mudslide prone areas, you must purchase a flood insurance policy at the time of loan closing.
 - e. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

13. **Accounting Services** - You may be required to obtain the services of an independent licensed Certified Public Accountant (CPA). When permitted by State statutes or with the approval of RD, a State or Federal auditor may perform the audit in lieu of a CPA. A CPA will be considered independent if the CPA:
 - a. Meets the standards for independence contained in the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct in effect at the time the CPA's independence is under review;
 - b. Does not have any direct financial interest, or any material indirect financial interest in the borrower during the period covered by the audit; and

- c. Is not, during the period of the audit, connected with the borrower as a promoter, underwriter, trustee, director, officer or employee.

Audit Agreement: You must enter into a written audit agreement with the auditor and submit a copy to RD prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the following:

- a. Statement that the auditor will perform and document the audit work in accordance with Generally Accepted Government Auditing Standards, (GAGAS);
- b. Statement that the auditor will submit the completed audit and accompanying letters to your governing body 30 days prior to the date the audit is due to RD;
- c. Statement that the auditor will make all audit-related documents, including work papers, available to RD or its representatives, upon request; and
- d. Statement that the auditor will immediately report, in writing, all irregularities and illegal acts to your governing body and the Agency.

Prior to the advertisement for bids, your accountant must certify to you and RD that the accounts and records as required by your bond documents have been established and are operational.

Quality Review Requirement: As required by GAGAS, the auditor must belong to and participate in an external quality review program, and provide you with a copy of the most recent quality review report. These reviews are performed every three years by an independent organization to determine if the auditor is following established audit procedures and applicable auditing standards.

Audit Requirements: The following management data will be required from you on an annual basis, and be submitted to RD as specified below:

- a. A borrower that expends \$500,000 or more in Federal financial assistance per fiscal year shall submit an audit performed in accordance with the requirements of OMB Circular A-133. As described above, the total federal funds expended from all sources shall be used to determine Federal financial assistance expended. Projects financed with interim financing are considered Federal expenditures. OMB Circular A-133 audits shall be submitted no later than nine months after the end of the fiscal year. In addition to submitting two copies of the audit report to RD, the borrower is also required to submit copies of OMB Circular A-133 audits, accompanying audit letters (the "reporting package"), and the Data Collection Form to the Federal clearinghouse designated by OMB to retain as an archival copy. The Federal clearinghouse address is: Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, Indiana 47132. RUS Bulletin 1780-31, Water Programs Compliance Supplement for OMB Circular A-133 Audits outlines the requirements of OMB Circular A-133 audits.

- b. A borrower that expends less than \$500,000 in Federal financial assistance per fiscal year and an outstanding RD loan balance of \$1,000,000 or more, shall submit an audit performed in accordance with Water and Waste audit requirements (i.e., a GAGAS audit). These audits shall be submitted to RD no later than 150 days after the end of the fiscal year. Two copies of the audit report are required by RD. An audit performed in accordance with Water and Waste audit requirements should not be submitted to the Federal clearinghouse. RUS Bulletin 1780-30, Water Programs Audit Guide and Compliance Supplement outlines the requirements for Water Programs Audits.

Compensation for preparation of the A-133 audit or your annual audit is not included in project funds, and should be paid from the operational revenues generated from your system operation.

Annual Budget and Projected Cash Flow: Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. You should submit two copies of Form RD 442-2, Statement of Budget, Income and Equity, Schedule 1, page 1; and Schedule 2, Projected Cash Flow. The only data required at this time on Schedule 1, page 1, is Columns 2 & 3. All of Schedule 1, page 2 and Schedule 2, Projected Cash Flow will be required. You may submit annual budgets on other financial statements for cash flow projections rather than Form RD 442-2. With the submission of the annual budget, you will be required to provide a current rate schedule.

Quarterly Reports: Borrowers receiving their first loan from RD will be required to submit two copies of Form RD 442-2, Schedule 1, page 1, columns 2-6, as appropriate, and page 2. You may submit historical quarterly financial statements on a format other than Form RD 442-2. This information should be received in the RD office 30 days after the end of each of the first three quarters of the fiscal year. You will receive written notice when these reports are no longer required.

14. Legal Services – RD has not reviewed the Legal Services Agreement. The agreement should be submitted for acceptance and approval. Project funding included for this purpose should be outlined in the Agreement.
15. Property Rights - Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation and Real Property Acquisition Act.

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 and rights needed for the project. Such evidence of control over the lands and rights 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. Preliminary Title Work - 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. A separate Form RD 1927-9, Preliminary Title Opinion, may be used for each property currently owned or to be acquired.

A certification and legal opinion relative to title to rights-of-way and easements, Form RD 442-22, Opinion of Counsel Relative to Rights-of-Way, may be used. This form may contain a few exceptions such as properties that must be condemned. However, prior to the start of construction or loan closing, whichever occurs first, a new Form RD 442-22, must be provided which does not provide for any exceptions.

A narrative opinion from your attorney concerning all permits, certificates, licenses and other items necessary to show that all legal requirements can be met and stating how they will be met.

Final Title Work - Immediately after closing, a Title Insurance Policy showing no exceptions must be provided.

16. **Engineering Services** – RD must approve any agreements or modifications to agreements for professional design services. The agreement for engineering services should consist of the EJCDC documents as indicated in RUS Bulletin 1780-26, Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with RUS Financial Assistance, or other approved form of agreement.
17. **Resident Inspection** – Full-time inspection is required unless waived or modified by RD in writing prior to advertisement for bids. This service is to be provided by the consulting engineer or other arrangements as approved by RD. Prior to the pre-construction conference, a resume of qualifications of the resident inspector will be submitted to the owner and RD for review and approval. The owner will provide a letter of acceptance for all proposed inspectors to the engineer and RD. The resident inspector must attend the pre-construction conference.
18. **Environmental Requirements** -
 - a. **Mitigation** – Any specific actions listed in the project Environmental Report must be negotiated with environmental regulatory officials to avoid or minimize adverse environmental impacts. The list of actions is required for successful completion of the project and must be adhered to during project design and construction.
 - b. **Project Modifications** – The project as proposed has been evaluated to be consistent with all applicable environmental requirements. If the project or any project element deviates from or is modified from the original approved project, additional environmental reviews may be required. A Finding of No Significant Impacts (FONSI) was published on June 23, 2009.
19. **Permits** - Copies of all permits needed for the project must be provided for review prior to the advertisement for construction bids. Such permits will include, but are not limited to the following:
 - Guam Environmental Protection Agency
 - Solid Waste Facility Permit
 - Building Permits

20. **Contract Documents, Final Plans and Specifications -**

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

21. **American Recovery and Reinvestment Act of 2009 ("Recovery Act") -**

Recovery Act requirements apply to this financing. In addition to the other conditions contained in this Letter of Conditions, you must understand and agree to these following conditions specific to the Recovery Act:

- a. **Certifications.** With respect to Recovery Act funds made available to State or local governments for infrastructure investments, Section 1511 of the Recovery Act requires the Governor, mayor or other chief executive, as appropriate, to certify that the infrastructure investment has been properly approved as required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. RD Water and Waste personnel will provide specific guidance on the information required in the certification.
- b. **Reports on Use of Funds.** Section 1512 of the Recovery Act requires each recipient receiving Recovery Act funding to provide specific information to the government on a periodic basis for inclusion in various internal and publicly-available reports. RD Water and Waste Program personnel will provide specific guidance on the type and frequency of information required to assist Recovery Act recipients in complying with this condition.
- c. **Buy American.** Section 1605 of the Recovery Act requires that all projects financed with Recovery Act funds be bid and constructed using only iron, steel and manufactured goods produced in the United States in accordance with Section 1605 of the Recovery Act. Specific guidance, including contract provisions to be included in any construction contracts is being formulated and drafted as of the date of this Letter of Conditions. RD Water and Waste Program personnel will provide specific guidance related to this condition as soon as it is available.

- d. Wage Rate Requirements. Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors for the project will be paid wages at rates not less than those prevailing on projects of a character similar in the locality where this project will occur. Specific guidance, including contract provisions to be included in any construction or otherwise related contracts, is being formulated and drafted as of the date of this Letter of Conditions. RD Water and Waste Program personnel will provide specific guidance related to this condition as soon as it is available.

Compliance with the conditions in this section is required for financing under the Recovery Act. However, these conditions are not substitutes for, or in lieu of, the remaining conditions contained in this Letter of Conditions. Each of the conditions in this Letter of Conditions must also be understood and complied with to receive financing for your project.

22. Applicable State Statutes and Requirements – All applicable Guam laws and requirements must be met. A letter from your legal counsel stating that Government of Guam has the legal authority to design, construct, finance, own and operate a landfill must be submitted.
23. Processing Forms - At a properly called meeting, you must adopt and properly execute the following forms:

Form RD 442-3, Balance Sheet (Applicant and Accountant Copies)
Form RD 442-2, Statement of Budget, Income and Equity (Applicant and Accountant Copies)
Form RD 1927-9, Preliminary Title Opinion (Attorney Copy)
Form RD 442-22, Opinion of Counsel Relative to Rights-of-Way (Attorney Copy)
Form RD 1927-10, Final Title Opinion (Attorney Copy)
RD Instruction 1940 – C, Exhibit A
Form RD 442-7 - Operating Budget (Applicant and Accountant Copies)
Form RD 400-1 - Equal Opportunity Agreement
Form RD 400-4 - Assurance Agreement
Form AD 1047 - Certification Regarding Debarment, Suspension and other Responsibility Matters
Form AD 1049 - Certification Regarding Drug-Free Workplace Requirements
Form RD 1910-11 - Applicant Certification, Federal Collection Policies
RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grants and Loans
Standard Form LLL - Disclosure of Lobbying Activities (If Applicable)
RUS Bulletin 1780-22, Eligibility Certification
RUS Bulletin 1780-27 - Loan Resolution (Public Bodies)

Please complete and return the enclosed Form RD 1942-46, Letter of Intent to Meet Conditions and Form RD 1940-1, Request for Obligation of Funds, if you desire further consideration be given your application.

The loan and grant will be considered approved on the date a signed copy of Form RD 1940-1, Request for Obligation of Funds, is mailed to you.

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

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

Section 504 of the Rehabilitation Act of 1973 – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RD financial assistance.

Civil Rights Act of 1964 – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and Subpart E of Part 1901 of this title, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by paragraph 1901.202(e) of this title.

The Americans with Disabilities Act (ADA) of 1990 – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications. Title II of the Act applies to facilities operated by State and local public entities which provide services, programs and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities which accommodate the public.

Age Discrimination Act of 1975 – This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

RD financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap.

25. **Bid Authorization** - Once all the conditions outlined in this letter have been met, RD may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate Territory statutes. No Notice of Award will be issued until RD concurs with the engineer's recommendations. Immediately after bid opening you must provide RD with (a) bid tabulation, and (b) your engineer's evaluation of bids and recommendations for contract awards. If RD agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued to you setting forth any further requirements that must be met before the loan can be closed. Subsequently, a Notice of Award may be issued. Obligated loan and grant funds not needed to complete the proposed project will be de-obligated prior to construction. Any reductions will be applied to grant funds first.

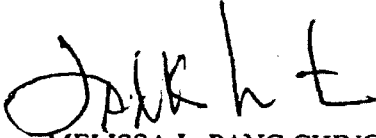
When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

26. **Cost Overruns** – Cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means prior to consideration by RD for subsequent funding. Such requests will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at the time of loan or grant approval, or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.
27. **Use of Remaining Funds** – Applicant contributions will be the first funds expended in the project. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:
- Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work, and the purpose of the loan and grant remain the same.
 - RD loan funds that are not needed will be applied as an extra payment on the RD indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute.
 - Grant funds not expended for authorized purposes will be cancelled within 60 days of project completion. Prior to actual cancellation, you, your attorney and engineer will be notified of RD's intent to cancel the remaining funds and given appropriate appeal rights.

If the conditions set forth in this letter are not met within 12 months from the date of this letter, RD reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within 24 months and it is determined the applicant still wishes to proceed, it may be necessary to review the conditions outlined in this letter. If during that review, it is determined the conditions outlined are no longer adequate, RD reserves the right to require that the Letter of Conditions be revised or replaced.

We believe the information in this letter clearly sets forth the conditions with which you must comply. However, this letter does not relieve you from meeting the requirements of RUS Instruction 1780. If you have any questions, please do not hesitate to contact Ted K. Matsuo, Community Programs Director at (808) 933-8310.

Sincerely,


MELISSA L. PANG CHING
Acting State Director

cc: Sandi Boughton, Director, Water & Environmental Programs (via email w/o enclosures)
Anthony C. Blaz, Administrator, Guam Economic Development Authority (via email w/enclosures)
Joe Diego, Director, USDA Rural Development Guam Area Office (via email w/enclosures)

Enclosures