

APPLICATION FOR LOAN AND GUARANTEE

Community Facilities Program Water and Waste Disposal Programs

PART A - Guarantee Request:

Loan Amount \$ 5,000,000 Percent of Guarantee Requested (b) (4) Repayment Term (b) (4)
 Proposed Interest Rate (b) (4) Variable or Fixed? adjustin If Rate is Variable, Provide Index and
 Frequency of Adjustments * Actual Interest rate to be set at closing calculated as WSJ Prime +1.00%
 Rate will adjust every 120 months to the market rate based on the same rate spread calculation until
 the loan matures.

PART B - Lender Information:

Name: (b) (4) Tax ID Number: (b) (4)
 Address: (b) (4) Date organized: _____
 Phone: 919-948-1986
 Fax: _____
 Contact Person: _____ Contact's Extension: (b) (4)

PART C - Organization Information:

Name: The Bethany Foundation, LLC Tax ID Number: (b) (4)
 Address: 1 East Campus Drive Date organized: _____
Bethany WV Zip 26032 Phone: 304-829-7111
 Contact Person: Dr. Tamara Rodenberg Fax: _____
 Contact's Extension: _____

Part D - Facility Information:

Name: same as above NAICS CODE (RHS only): _____
 Address: same as above County: Brooke
 _____ Zip _____ Date Established: _____
 Contact Person: _____ Phone: _____
 Population of _____ Fax: _____
 city, town, etc. 1,036 Contact's Extension: _____
 Population Served: 1500 +

PART E - Project Purpose & Funding	Project Budget	Guaranteed Loan	Owner Funds	USDA CF			
				Other Funding	Direct Loan		
Purchase Land & Real Estate	(b) (4)	(b) (4)	(b) (4)				
Real Estate Improvements							
Furnishings							
Equipment							
Debt Restructuring							
Initial O&M							
Professional Fees							
Lender & Guarantee Fees						\$750,000	
Working Capital							\$0
Other							
TOTAL PROJECT			\$0	\$37,500,000			
				\$37,500,000			

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0137. The time required to complete this information collection is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

PART F - Attachments

The Lender must attach the following supporting documentation:

1. Current and previous year's financial and income statement.
2. Operating budget for current operating cycle.
3. Narrative statement describing organization's services, scope of operation, and geographical area served, including any proposed management agreements or leases.
4. Financial feasibility analysis and projected budgets.
5. Preliminary construction plans and cost estimates (including contingency fund).
6. Intergovernmental review and State clearinghouse comments or recommendations (when available).
7. For Community Programs loans - Form RD 1940-20, "Request for Environmental Information," with attachments. When applicable, FEMA Form 81-93, "Standard Flood Hazard Determination."
8. For Water and Waste Disposal Programs - Submit an environmental report consistent with 7 CFR part 1794 and RUS Bulletin 1794A-602. If applicable, attach FEMA Form 81-93.
9. Record of any pending litigation or regulatory action.
10. Provide a "Certificate of Need" for facilities when required by State law.
11. Lender's credit evaluation.
12. Proposed loan agreement.
13. Security available for loan.
14. Copies of organizational documents (nonprofit organizations).
15. Evidence of community support.
16. Other documents used by lender that are material to making a credit decision.

PART G - Signatures

LENDER'S CERTIFICATION AND AGREEMENT

Lender hereby certifies that it has reviewed the Lender Agreement and Certification contained in this application. Lender further certifies that it has completed a comprehensive analysis of the proposal and has determined its loan applicant is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment based on its loan applicant's history, projections, and community support for the facility. Lender also certifies that it has no undisclosed conflicts of interest.

The signature of lender's representative is the lending institution's agreement to comply with the terms, agreements, and limitations outlined in the Lender Agreement and Certification and the applicable regul

7/10/17
(Date)

Name: (b) (6)

By: A. Riddick Skinner

Title: EVP - West Town Savings Bank

ORGANIZATION'S CERTIFICATION AND AGREEMENT

The organization certifies that its representative has read the Organization Agreement contained in this application. The organization, by its representative's signature, agrees to comply with conditions and requirements outlined in the Organization Agreement and applicable regulations.

I certify as the organization's representative, that the organization applying for this loan and its members, or those controlling or controlled by the organization applying for the loan, do not have any judgments against them by the United States and are not presently delinquent on any non-tax Federal debt. I further certify that information entered or attached to this application is correct or is a true copy of original documents contained in the organization records.

7/14/17
(Date)

Name: (b) (6)

By: Gregory B. Jordan

Title: Board Chairman

LENDER AGREEMENT AND CERTIFICATION

The lender representative's signature on this application shall satisfy regulatory requirements for completion of Form AD-1047 and compliance with 18 U.S.C. § 1913, 31 U.S.C. § 1352, and 42 U.S.C. § 3601 *et seq.*

(I) RESTRICTIONS AND DISCLOSURE OF LOBBYING ACTIVITIES - AGREEMENT APPLICABLE TO LOAN EXCEEDING \$150,000

The lender agrees to complete and submit Form SF LLL, "Disclosure of Lobbying Activities," in accordance with the form's instructions if any funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee this loan.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file Form SF LLL is subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(II) COMPLIANCE WITH FAIR HOUSING ACT

If this loan finances a housing-related facility such as a nursing home, group home, or assisted living facility, the lender agrees to monitor its borrower for compliance with Fair Housing Act requirements including approving and having a Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," in effect at all times.

(III) CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

The following certification is required by 7 C.F.R. § 3017.510, copies of which may be obtained from USDA.

(A) The prospective lender certifies that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for (i) commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; (ii) violation of Federal or State antitrust statutes; or (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making a false statement, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A.2. of this certification; and
- (4) Have not within a 3-year period preceding this application or proposal had one or more public transactions (Federal, State, or local) terminated for cause.

(B) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.

The inability of a lender to provide this certification will not necessarily result in denial of participation in this covered transaction. The prospective lender shall submit an explanation of why it cannot provide this certification. The certification or explanation will be considered in connection with the agency's determination whether to enter into this transaction. However, failure of the prospective lender to furnish either a certification or an explanation will disqualify such lender from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the agency may terminate this transaction for cause.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," and "voluntarily excluded," as used in this clause, have the meanings contained in 7 C.F.R. part 3017.

The prospective lender agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into a lower tier covered transaction with a person who is debarred, suspended, ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the agency entering into this transaction.

The prospective lender further agrees by signing this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Transactions," provided by the USDA, without modification, in all lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless the participant knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement debarment list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. If a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the agency may terminate this transaction for cause.

ORGANIZATION AGREEMENT

-5

The organization representative's signature on this application shall satisfy regulatory requirements for signatures on Form RD 400-1, Form RD 400-4, and Form RD 410-9 and compliance with 18 U.S.C. § 1913 and 31 U.S.C. § 1352.

(I) COMPLIANCE WITH FAIR HOUSING ACT

If this loan finances a housing-related facility such as a nursing home, group home, or assisted living facility, the organization agrees to comply with Fair Housing Act requirements and have an approved Form HUD 935.2, "Affirmative Fair Housing Marketing Plan" in effect at all times.

(II) ASSURANCE AGREEMENT (TITLE VI, CIVIL RIGHTS ACT OF 1964)

The organization assures the U. S. Department of Agriculture (USDA) that it is in compliance with and will continue to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), 7 C.F.R. part 15, and 7 C.F.R. § 1901.202. In accordance with that Act and the regulations referred to above, the organization agrees that in connection with any program or activity for which the organization receives Federal financial assistance (as such term is defined in 7 C.F.R. § 15.2) no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination.

(A) The organization agrees that any transfer of any aided facility, other than personal property, by sale, lease, or other conveyance, shall be, and shall be made expressly, subject to the obligations of this agreement and transferee's assumption thereof.

(B) The organization shall:

- (1) Keep such records and submit to the Government such timely, complete, and accurate information as the Government may determine to be necessary to ascertain compliance with this agreement and the regulations.
- (2) Permit access by authorized USDA employees or their representatives during normal business hours to such books, records, accounts, and other sources of information and its facilities as may be pertinent to ascertaining such compliance.
- (3) Make available to users, participants, beneficiaries, and other interested persons information regarding the provisions of this agreement and related regulations in such manner as USDA finds necessary to inform such persons of their rights.

(C) The obligations of this agreement shall continue:

- (1) As to any real property, including any structure, acquired or improved with the aid of the Federal financial assistance, so long as such real property is used for the purpose for which the Federal financial assistance is made or for another purpose which affords similar services or benefits, or for as long as the organization retains ownership or possession of the property, whichever is longer.
- (2) As to any personal property acquired or improved with the aid of the Federal financial assistance, so long as organization retains ownership or possession of the property.
- (3) As to any other aided facility or activity, until the last advance of funds under the loan or grant has been made.

(D) Upon any breach or violation of this agreement the Government may, at its option:

- (1) Terminate or refuse to render or continue financial assistance for the aid of the property, facility, project, service, or activity.
- (2) Enforce this agreement by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the breach or violation occurs. Rights and remedies provided for under this agreement shall be cumulative.

(III) EQUAL OPPORTUNITY AGREEMENT (EXECUTIVE ORDER 11246)

Unless the Secretary of Labor (Secretary) issues an exemption by rule, regulation, or order pursuant to section 204 of Executive Order 11246, the organization (whether one or more) and USDA, agree that when construction costs exceed \$10,000, the organization will:

- (A) Incorporate or cause to be incorporated into any contract for construction work, or modification thereof, subject to the relevant rules, regulations, and orders of the Secretary, or of any prior authority that remain in effect, which is paid for in whole or in part with the aid of such financial assistance, the following "Equal Opportunity Clause":

Equal Opportunity Clause

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by USDA setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by USDA, advising the said labor union or workers' representative of the contractor's commitments under this agreement, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246, and with all rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246, rules, regulations, and orders, and will permit access to the contractor's books, records, and accounts by USDA, Office of Civil Rights, and the Secretary, or their representatives for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the Equal Opportunity Clause or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the Secretary, or as provided by law.

- (7) The contractor will include this Equal Opportunity Clause in every subcontract or purchase order, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order USDA may direct as a means of enforcing such provisions, including sanctions for noncompliance. However, in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by USDA, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

- (B) Except for public bodies and federally recognized Indian tribes, be bound by the provisions of the Equal Opportunity Clause with respect to its own employment when it participates in federally assisted construction work.

- (C) Notify all prospective contractors to file the required "Compliance Statement," Form RD 400-6, with their bids.

- (D) Impose bid conditions for all nonexempt Federal and federally assisted construction contracts that require inclusion of the appropriate "hometown" or "imposed" plan affirmative action and equal employment opportunity requirements. All bidders must comply with the bid conditions contained in the invitation to be considered responsible bidders and hence eligible for the award.

- (E) Assist and cooperate with USDA and the Secretary in obtaining the compliance of contractors and subcontractors with the provisions of the Equal Opportunity Clause and the rules, regulations, and orders. The organization will furnish USDA and the Secretary information as they may require for supervision of compliance. Such information may include Form AD 560, "Certification of Nonsegregated Facilities," and Form CC-257, "Monthly Employment Utilization Report."

- (F) Refrain from entering into any contract, or contract modification, subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order. The organization will carry out such sanctions and penalties for violation of the Equal Opportunity Clause as may be imposed upon contractors and subcontractors by USDA or the Secretary pursuant to part II, subpart D, of the Executive Order.

- (G) Be subject to USDA refusing to extend additional assistance to the organization under the program or taking any other appropriate legal action, including referring the case to the Department of Justice, if the organization fails to comply with this agreement.

(IV) FEDERAL EQUAL CREDIT OPPORTUNITY ACT NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning USDA is the Federal Trade Commission, Washington, D.C. 20580. If a person believes he or she was denied assistance in violation of this law, they should contact the Federal Trade Commission, Washington, D.C. 20580.

WARNING

All information supplied to USDA by you or your agents in connection with your loan application may be released to interested third parties, including competitors, without your knowledge or consent under the provision of the Freedom of Information Act (5 U.S.C. 522).

Much information not clearly marked "Confidential" may routinely be released if requested. Further, if we receive a request for information marked "Confidential," the Federal Government will release the information unless you can demonstrate to our satisfaction that release of the information would likely produce substantial competitive harm to your business or would constitute a clearly unwarranted invasion of personal privacy. Also, forms, consultant reports, etc., cannot be considered confidential in their entirety if confidential material contained therein can reasonably be segregated from other information.

Information submitted may be made available to the public during the time it is held in Government files regardless of the action taken by USDA on your application.

Application for Federal Assistance SF-424

Version 02

* 1. Type of Submission:

- Preapplication
- Application
- Changed/Corrected Application

* 2. Type of Application:

- New
- Continuation
- Revision

* If Revision, select appropriate letter(s):

* Other (Specify)

* 3. Date Received:

4. Applicant Identifier:

5a. Federal Entity Identifier:

* 5b. Federal Award Identifier

State Use Only:

6. Date Received by State:

2/6/17

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name:

The Bethany Foundation, LLC

* b. Employer/Taxpayer Identification Number (EIN/TIN):

(b) (4)

* c. Organizational DUNS

(b) (4)

d. Address:

* Street 1:

1 East Campus Drive

Street 2:

* City:

Bethany

County:

* State:

WV

Province:

* Country:

USA: UNITED STATES

* Zip / Postal Code:

26032

e. Organizational Unit:

Department Name:

Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix:

Dr.

* First Name:

Tamara

Middle Name:

N.

* Last Name:

Rodenberg

Suffix:

Title:

President - Bethany College

Organizational Affiliation:

* Telephone Number:

(304) 829-7111

Fax Number:

* Email:

trodenberg@bethanywv.edu

Application for Federal Assistance SF-424

Version 02

9. Type of Applicant 1 - Select Applicant Type:

West VA not-for-profit entity - in support of Bethany College, its sole Member

Type of Applicant 2- Select Applicant Type:

Type of Applicant 3- Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

USDA Rural Development

11. Catalog of Federal Domestic Assistance Number:

10.766

CFDA Title:

USDA Rural Development - Community Facilities Program Direct & Guaranteed Loans

*** 12. Funding Opportunity Number:**

* Title:

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Bethany, West Virginia
Brooke County
Part of the Weirton-Steubenville, WV-OH MSA

*** 15. Descriptive Title of Applicant's Project:**

Acquisition: The Bethany Foundation, LLC (applicant/borrower) is acquiring select facilities from Bethany College in an effort to support the college in its goals to enhance operational efficiencies and balance sheet recapitalization. Facilities to be acquired are on the existing campus of Bethany College

Attach supporting documents as specified in agency instructions.

Application for Federal Assistance SF-424

Version 02

16. Congressional Districts Of:

* a. Applicant

* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

* a. Start Date:

* b. End Date:

18. Estimated Funding (\$):

* a. Federal	<input type="text" value="\$37,500,000.00"/>
* b. Applicant	<input type="text"/>
* c. State	<input type="text"/>
* d. Local	<input type="text"/>
* e. Other	<input type="text" value="\$5,000,000.00"/>
* f. Program Income	<input type="text"/>
* g. TOTAL	<input type="text" value="\$42,500,000.00"/>

USDA Direct Loan: \$37,500,000
USDA Guaranteed Loan: \$5,000,000

* 18. Is Application Subject to Review By State Under Executive Order 12372 Process?

- a. This application was made available to the State under the Executive Order 12372 Process for review on
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E.O. 12372.

** No construction - acquisition only - Categorical Exclusion**

* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)

Yes No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications- and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances **and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:
Middle Name:
* Last Name:
Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative: Date Signed:

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* d. Local	<input type="text"/>
* e. Other	<input type="text" value="\$5,000,000.00"/>
* f. Program Income	<input type="text"/>
* g. TOTAL	<input type="text" value="\$42,500,000.00"/>

USDA Direct Loan: \$37,500,000
USDA Guaranteed Loan: \$5,000,000

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** No construction - acquisition only - Categorical Exclusion**

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21. *By signing this application, I certify (1) to the statements contained in the list of certifications- and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances **and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:
Middle Name:
* Last Name:
Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative: Date Signed:



Rural Development

September 12, 2017

West Virginia State
Office

1550 Earl Core Road,
Suite 101
Morgantown, WV
26505

Voice 304.284.4860
1.800.295.8228

Gregory B. Jordan
Chair, Bethany Foundation LLC
1 Main Street
Bethany WV 26032

Dear Mr. Jordan:

This letter with Attachments and enclosures establishes conditions which you must understand and agree to before further consideration may be given to your application. The loan will be administered on behalf of the Rural Housing Service (RHS) by the West Virginia State Office and Area staff of USDA, Rural Development (RD), both of which are referred to throughout this letter as the Agency. You must report any changes in project cost, source of funds, scope of services, or any other significant changes in the project to the Agency for review and approval. A written amendment to this letter will be prepared for any changes approved. Any changes not approved by RD shall be cause for discontinuing processing of the application.

Your documents concerning the creation and legal existence of your entity are currently administratively acceptable; however, the documents will be reviewed further by our Office of General Counsel (OGC) at the time your file is forwarded for closing instructions. Any changes required by OGC will be included in the closing instructions.

Extra copies of this letter are being provided for use by your engineer/architect, attorney, bond counsel and accountant. All parties may access our website located at www.rd.usda.gov/wv for:

- a. RD Instruction 1942-A, Section 1942.17 Community Facilities Instructions;
- b. Owner Architect Agreement Guidance and Attachment to AIA Document B141 2007.

The conditions referred to above are as follows:

Section I: Project Detail

1. **Project Description:** Project funds will be used for the acquisition of real estate assets and improvements of Bethany College. The land encompasses numerous parcels as outlined in the appraisal completed by (b) (6) having a value of (b) (4) including 26 buildings and approximately 364 acres.

2. **Project Budget:** Funding has been budgeted for the estimated expenditures:

Project Costs:

Acquisition
Costs of Issuance

Total Project Cost

Total Budgeted:

(b) (4)

The funding is offered based on the amounts stated above.

3. **Project Funds:** The project funding will be from the following sources:

Source:

RD Direct Loan
West Town Bank and Trust Guaranteed Loan
Applicant Contributions (DSRF)

Total Project Funding (All Sources)

Amount:

\$34,600,000

(b) (4)

You must provide evidence of applicant contributions and approval of other funding sources at closing. Evidence should include availability of applicant contributions (bank statement or similar) and commitment letters from other sources.

It is understood that the USDA loans will be closed and disbursed in 2021 at the current revenue bonds call date or earlier if payment of the outstanding bonds - proves possible prior to 2021, to pay/redeem those bonds in full. The college may obtain interim financing until the call date in 2021 and the USDA will provide the Guide 1a to the interim lender.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. If actual project costs exceed the project cost estimates above, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of application contributions and other funding sources.

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. Loan funds not expended for eligible project purposes will be de-obligated.

Section II: Loan Terms

4. **Loan Repayment:** 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.

The loan is scheduled for repayment over a period (b) (4). Interest only will be due the first 18 months after the loan closes and payable on the due date established at loan closing. Payments for the remaining 38.5 years will be in equal monthly payments. For planning purposes use (b) (4) interest rate and an amortization factor of (b) (4) which provides for a monthly payment of (b) (4).

5. **Electronic Payments:** Payments will be made on the day your payment is due through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28 "Authorization Agreement for Preauthorized Payments" for all new indebtedness to the Agency prior to loan closing. It allows for the payment to be electronically debited from your account on the day your payment is due.
6. **Security:** Security for the loan will be a parity first mortgage with West Town Bank on the all of the real estate acquired from Bethany College. This real estate encompasses the entire campus, several off campus buildings / improvements as outlined in the appraisal completed by (b) (4) having a value of (b) (4) 0, including (b) (4). In addition, approximately (b) (4) of undeveloped land are to be pledged as security by Bethany College along with the gas and mineral rights. A financing statement (UCC-1) on all personal property now owned or hereafter acquired of the borrower, and other agreements between you and RD as set forth in the "Loan Resolution Security Agreement" (Form RD 1942-9). Prior to the adoption of the "Loan Resolution Security Agreement," the members of the Foundation at a properly called meeting, must review and adopt Form RD 1942-8, "Resolution of Members or Stockholders."

A Corporate Real Estate Mortgage will be filed against the property described above. Your attorney must provide us with deed descriptions of the facilities to be included in the mortgage. OGC will examine the above resolution for any additional legal requirements for loan closing. The following will also be required:

- Bethany College must supply a corporate guarantee of the debt.
- Bethany College must pledge the revenue of all of its facilities to cover any potential shortfall in debt service repayment of the Foundation on this loan.
- An "as-developed" real estate appraisal performed by a qualified licensed appraiser, that shows the value of the additional acres inclusive of mineral rights is equal to or greater than (b) (4).
- Final Title polices and insurance will be required for all parcels reflecting the established lien positions in the amount of the proposed loan and name the United States of America, acting through the United States Department of Agriculture, as the proposed insured.

7. **Construction / Closing Completion Timeframe:** All projects must be completed and all funds disbursed within five years of the obligation date. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances. Requests for extensions will be reviewed by the Agency for concurrence decision. The Agency reserves the right to discontinue the project and fully de-obligate the funds if no progress has been made.
8. **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 anticipated and expected expenses including, but not limited to: operation and maintenance, customer deposits, debt service, and capital improvements.

You agree to establish a separate restricted-use account (“Reserve Account”). The Reserve Account will require Agency concurrence in order to withdraw funds. The following reserves are required to be established as a condition of Agency funding:

- The account will be funded monthly in the amount of (b) (4) of the monthly debt repayment requirement). Once the balance in the reserve account reaches (b) (4) (one full annual installment), the reserve deposits may cease.
 - Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account. When funds are approved to be withdrawn, deposits will resume or continue as designated above until the fully-funded amount is reached.
 - The applicant’s reserve account balance for the CF Direct Loan should be reported annually to the State Office. If the reserve account balance, at the end of any fiscal year, is less than the required account total at that point in time, the applicant will provide the agency with a twelve-month budget and plan to correct the cash shortfall.
9. **Other Requirements:** All requirements contained in the Agency’s loan closing instructions as well as any requirements of your bond counsel and/or attorney (if agreed to by the Agency) must be met prior to loan closing, including:
- **System for Award Management:** You are required to maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be done online at: <http://sam.gov>. *This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended.* The Agency cannot disburse any funds if your registration has lapsed.

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

- **Litigation:** You are required to notify the Agency within 30 days of receiving notification of being involved in any type of material litigation. Additional documentation regarding the situation and litigation may be requested by the Agency.
 - The lease agreement between the foundation and the college must be executed prior to loan closing.
 - The Applicant will maintain a debt service coverage ratio of at least (b) (4). If the debt service coverage ratio (EBITDA/Annual Principal and Interest Payments) based on a review of the annual audit is below (b) (4), a fiscal strategy report which documents how the debt service requirement will be achieved will be provided to Rural Development. This ratio will be tested annually based on the ending of the fiscal year.
 - As part of the normal RD servicing requirements, the applicant and college will be required to provide the State Office with quarterly financial reports within 30 days of the quarter end and audited annual reports within 150 days of the year end for the college.
10. **Legal Services:** You must obtain the services of a recognized bond counsel or local attorney. For your convenience, RD Guide 14 “Legal Services Agreement” is enclosed for your use. A completed form AD-1048 “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions” must also be submitted with each Legal Services Agreement.
11. **Property Rights:** You must provide a deed or other Agency approved verification of rights of ownership and control of the location in which equipment, furnishings, or other property will be housed.

Section III: Requirements Prior to Loan Closing

12. **Use of Agency Funds:** Loan closing will occur prior to when the funds are needed, and all of the items detailed in the sections above as well as the items listed in this section must be completed prior to closing. You must provide the Agency with the Form RD 3550-28 “Authorization Agreement for Preauthorized Payments” (electronic payments).
13. **Unrestricted Pledges:** The college must secure (b) (4) in unrestricted donation pledges to occur over a (b) (4) prior to loan closing. These anticipated gift pledges must reflect on the college balance sheet assets prior to loan close.
14. **Requests for closing instructions:** Must occur approximately ninety (90) days prior to actual closing. All insurance, construction, security, title, deed, and other requirements set forth by the Agency or as described in the sections above must or will be satisfied before Agency loan closing occurs, otherwise closing instructions cannot be issued by the Agency. Closing can also be postponed due to exception listed in the title work or for previously approved closing documents not being used at closing. The Agency can provide guidance on what items are typically needed.

The Agency will provide your counsel with a draft loan closing package along with any additional requirements necessary by OGC.

15. **Use of Remaining Funds:** Applicant contributions will be the first funds to be 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 purposes provided the use will not result in major changes to the original scope of work and the purpose of the loan remains the same; and
 - Loan funds that are not needed will be applied as an extra payment on the Agency indebtedness and will not reduce the original closing payment amount.

Section IV: Servicing Requirements During the Term of the Loan

16. **Prepayment and Extra Payments:** Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the borrower, with no penalty. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt shall, after payment of interest, shall be applied to principal.
17. **Additional Debt:** The college or the foundation is prohibited in entering into combined total additional debt in (b) (4) without USDA Rural Development concurrence with the exception of interim financing from the date of this letter to loan closing
18. **Graduation:** By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance upon request of the Government. If at any time the Agency determines you are able to obtain a loan for such purposes from private sources at better rates and terms, you may be requested to refinance. Your ability to refinance will be assessed every other year for those loans five years old or older.
19. **Security/Operational Inspections:** The Agency will perform Security Inspections of the facility, your operations and records management system and any conflict of interest policy every three years for the life of the loan. You agree to participate in these inspections and provide the required information needed for the Agency to perform these inspections.
20. **Compliance Reviews and Data Collection:** The Agency will conduct regular Compliance Reviews of the borrower and its operation in accordance with 7 CFR 1901 subpart E. Compliance Reviews will typically be conducted in conjunction with Security Inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service which you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

21. **Insurances:** You are required to maintain insurance on the facility and employees, volunteers, officers, and others as previously described in this letter for the life of the loan.
22. **Accounting and Reporting:** You will be required to obtain the services of an independent licensed Certified Public Accountant (CPA). Financials will be required to be submitted to the agency quarterly. Audits will be required to be submitted to the agency annually for the term of the loan within 150 days of year end for the borrower.
- 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 loan closing. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the following:

- i. A statement that the auditor will perform and document the audit work in accordance with 2 CFR Part 200 as adopted by USDA through 2 CFR Part 400, Generally Accepted Government Auditing Standards, (GAGAS), and the professional standards of the AICPA;
- ii. A 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;
- iii. A statement that the auditor will make all audit-related documents, including work papers, available to RD or its representatives, upon request; and
- iv. A statement that the auditor will immediately report, in writing, all irregularities and illegal acts to your governing body and the Agency.

Prior to loan closing, your accountant must certify to you and RD that the accounts and records as required by your bond ordinance 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 3 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:

- i. An annual audit under the Single Audit Act is required if you expend **(b) (4)** or more from all sources of Federal financial assistance per fiscal year. All audits are to be performed in accordance with 2 CFR Part 200 as adopted by the USDA through 2 CFR Part 400. For Community Facility Projects, in years after the program funds are expended and construction is completed, and the only ongoing financial activity of the program is the payment of principal and interest on outstanding balances, the prior loan balances are not considered to have continuing compliance requirements.
- ii. Other borrower/recipients must submit management report information per RD Instruction 1942-A, 1942.17 (q) (5) within 60 days from the end of the borrower's fiscal year.

Compensation for preparation of any audits 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: If you expend less than **(b) (4)** in Federal financial assistance from all sources per fiscal year, you may submit financial statements in lieu of an audit which include at a minimum a balance sheet and an income and expense statement. This financial data is to be submitted thirty days prior to the beginning of your fiscal year. You may use Form RD 442-2 "Statement of Budget, Income and Equity" and Form RD 442-3 "Balance Sheet" or similar format to provide the financial information. For Form RD 442-2, the only data required at this time on Page 1 Schedule 1 is Columns 2 and 3, and on Page 2 the remainder of Schedule 1 and all of Schedule 2 is required. With the submission of the annual budget, you will be required to provide a current listing of the Board or Counsel Members and terms.

Quarterly Reports – Borrowers receiving any new loan assistance 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. This information should be received in the servicing office thirty days after the end of each of the first three quarters of the fiscal year.

23. **Statutory and National Policy Requirements:** 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 RHS 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 provides services, programs and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities, which accommodate the public.

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

Limited English Proficiency (LEP) Under Executive Order 13166 – LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005 “Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA”.

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

Section V: Obligation Processing and Letter Closing

24. **Processing Forms:** You must adopt and properly execute the following forms, and minutes showing the adoption must be provided:

Form RD 1940-1, “Request for Obligation of Funds”
 Form RD 1942-9, “Loan Resolution Security Agreement”
 Form RD 400-1, “Equal Opportunity Agreement”
 Form RD 400-4, “Assurance Agreement”
 Form AD 1047, “Certification Regarding Debarment – Primary”
 Form AD 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)

Certification of Compliance
Standard Form 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form"
Form RD 1942-46, "Letter of Intent to Meet Conditions"

The listed forms must be completed and returned to the processing office within thirty (30) days from the date of this letter.

Final loan approval is dependent on the availability of funds and the receipt of all necessary documents. A fully executed copy of Form RD 1940-1 "Request for Obligation of Funds" will be mailed to you to notify you of the final approval.

If the conditions set forth in this letter are not met within 5 years from the date of obligation 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 5 years from the date of obligation 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 explains the conditions which must be complied with; however, this letter does not relieve you from meeting the requirements set forth in RD Instruction 1942-A and/or 1942-C.

If you have any questions, please do not hesitate to contact me.

Sincerely,

SUSAN L. NEWCOMER
Assistant State Director

Attachments

cc: Janna Lowery, Community Programs Director
Morgantown, WV

Dr. Tamara Rodenberg, President, Bethany College
Bethany, WV

CONDITIONAL COMMITMENT FOR GUARANTEE

TO: Lender	Case No.
(b) (4)	(b) (4)
	State
Borrower	County
Type of Loan	Principal Amount of Loan

From an examination of information supplied by the Lender on the above proposed loan, and other relevant information deemed necessary, it appears that the transaction can be properly completed.

Therefore, the United States of America acting through _____ 1/ or any successor agency, the United States Department of Agriculture (USDA) (herein referred to as "Government") hereby agrees that, in accordance with applicable provisions of Government regulations published in the Federal Register and related forms, it will execute the "Loan Note Guarantee," subject to the conditions and requirements specified in said regulations and below.

The fee payable by the Lender to the Government will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The interest rate for the loan is _____ 2/. If the rate is variable, it must be indexed with a rate which cannot change more often than _____ 3/ in a financial publications specifically agreed to between the Lender and its borrower.

A Loan Note Guarantee will not be issued until the Lender certifies that there has been no adverse change in the borrower's financial condition, nor any other adverse change in the borrower's condition during the period of time from issuance of the Conditional Commitment for Guarantee to the date of Lender's certification. The Lender's certification must address all adverse changes and be supported by financial statements of the borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "borrower" includes any parent, affiliate, or subsidiary of the borrower.

This Conditional commitment for Guarantee is null and void unless the conditions are accepted by the Lender and borrower within 60 days from the date of issuance by the Government. Any negotiations for revisions of these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used are set out on the Application for Loan and Loan Note Guarantee. Upon acceptance by Lender and Lender's borrower and return to the Government, no major changes of the conditions or approved loan purposes as listed on the forms will be considered. Additional conditions and requirements including the source and use of funds include _____ 4/.

This Conditional Commitment will expire on _____ 5/ unless the time is extended in writing by the Government. The Lender for Guarantee may terminate this Conditional Commitment for Guarantee at any time by written notification to the Government at the address shown below.

UNITED STATES OF AMERICA

By: _____

Date: _____

(Title)

(USDA Agency)

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it display a valid OMB control number. The valid OMB control number for this information collection is 0575-0137. the time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**ACCEPTANCE OF
CONDITIONS**

To: _____
(Insert name of USDA Agency from which a guarantee is requested).

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within _____ days.

(Name of Lender)

By: _____
(Signature for Lender)

(Signature for Borrower)

- 1/ Insert name of agency executing Conditional Commitment for Guarantee.

- 2/ Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V" and the appropriate loan rate.

- 3/ Insert the period prescribed in the applicable RD regulation. For CP loans "annually" will be inserted in this space.

- 4/ Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise insert "NONE".

- 5/ The Government will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.



Rural Development

September 12, 2017

West Virginia State
Office

1550 Earl Core Road,
Suite 101
Morgantown, WV
26505

Voice 304.284.4860
1.800.295.8228

Gregory B. Jordan
Chair, Bethany Foundation LLC
1 Main Street
Bethany WV 26032

Dear Mr. Jordan:

This letter with Attachments and enclosures establishes conditions which you must understand and agree to before further consideration may be given to your application. The loan will be administered on behalf of the Rural Housing Service (RHS) by the West Virginia State Office and Area staff of USDA, Rural Development (RD), both of which are referred to throughout this letter as the Agency. You must report any changes in project cost, source of funds, scope of services, or any other significant changes in the project to the Agency for review and approval. A written amendment to this letter will be prepared for any changes approved. Any changes not approved by RD shall be cause for discontinuing processing of the application.

Your documents concerning the creation and legal existence of your entity are currently administratively acceptable; however, the documents will be reviewed further by our Office of General Counsel (OGC) at the time your file is forwarded for closing instructions. Any changes required by OGC will be included in the closing instructions.

Extra copies of this letter are being provided for use by your engineer/architect, attorney, bond counsel and accountant. All parties may access our website located at www.rd.usda.gov/wv for:

- a. RD Instruction 1942-A, Section 1942.17 Community Facilities Instructions;
- b. Owner Architect Agreement Guidance and Attachment to AIA Document B141 2007.

The conditions referred to above are as follows:

Section I: Project Detail

1. **Project Description:** Project funds will be used for the acquisition of real estate assets and improvements of Bethany College. The land encompasses numerous parcels as outlined in the appraisal completed by (b) (6) having a value of (b) (4).

2. **Project Budget:** Funding has been budgeted for the estimated expenditures:

Project Costs:

Acquisition
Costs of Issuance

Total Project Cost

Total Budgeted:

(b) (4)

The funding is offered based on the amounts stated above.

3. **Project Funds:** The project funding will be from the following sources:

Source:

RD Direct Loan
West Town Bank and Trust Guaranteed Loan
Applicant Contributions (DSRF)

Total Project Funding (All Sources)

Amount:

\$34,600,000

(b) (4)

You must provide evidence of applicant contributions and approval of other funding sources at closing. Evidence should include availability of applicant contributions (bank statement or similar) and commitment letters from other sources.

It is understood that the USDA loans will be closed and disbursed in 2021 at the current revenue bonds call date or earlier if payment of the outstanding bonds - proves possible prior to 2021, to pay/redeem those bonds in full. The college may obtain interim financing until the call date in 2021 and the USDA will provide the Guide 1a to the interim lender.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. If actual project costs exceed the project cost estimates above, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of application contributions and other funding sources.

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. Loan funds not expended for eligible project purposes will be de-obligated.

Section II: Loan Terms

4. **Loan Repayment:** 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.

The loan is scheduled for repayment over a period of 40 years. Interest only will be due the first 18 months after the loan closes and payable on the due date established at loan closing. Payments for the remaining 38.5 years will be in equal monthly payments. For planning purposes use a 3.25% interest rate and an amortization factor of .00380 which provides for a monthly payment of 131,480.

5. **Electronic Payments:** Payments will be made on the day your payment is due through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28 "Authorization Agreement for Preauthorized Payments" for all new indebtedness to the Agency prior to loan closing. It allows for the payment to be electronically debited from your account on the day your payment is due.
6. **Security:** Security for the loan will be a parity first mortgage with West Town Bank on the all of the real estate acquired from Bethany College. This real estate encompasses the entire campus, several off campus buildings / improvements as outlined in the appraisal completed by David McConahay having a value of \$46,000,000, including 26 buildings and 364 acres. In addition, approximately 570 acres of undeveloped land are to be pledged as security by Bethany College along with the gas and mineral rights. A financing statement (UCC-1) on all personal property now owned or hereafter acquired of the borrower, and other agreements between you and RD as set forth in the "Loan Resolution Security Agreement" (Form RD 1942-9). Prior to the adoption of the "Loan Resolution Security Agreement," the members of the Foundation at a properly called meeting, must review and adopt Form RD 1942-8, "Resolution of Members or Stockholders."

A Corporate Real Estate Mortgage will be filed against the property described above. Your attorney must provide us with deed descriptions of the facilities to be included in the mortgage. OGC will examine the above resolution for any additional legal requirements for loan closing. The following will also be required:

- Bethany College must supply a corporate guarantee of the debt.
- Bethany College must pledge the revenue of all of its facilities to cover any potential shortfall in debt service repayment of the Foundation on this loan.
- An "as-developed" real estate appraisal performed by a qualified licensed appraiser, that shows the value of the additional acres inclusive of mineral rights is equal to or greater than \$15,000,000.
- Final Title polices and insurance will be required for all parcels reflecting the established lien positions in the amount of the proposed loan and name the United States of America, acting through the United States Department of Agriculture, as the proposed insured.

7. **Construction / Closing Completion Timeframe:** All projects must be completed and all funds disbursed within five years of the obligation date. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances. Requests for extensions will be reviewed by the Agency for concurrence decision. The Agency reserves the right to discontinue the project and fully de-obligate the funds if no progress has been made.
8. **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 anticipated and expected expenses including, but not limited to: operation and maintenance, customer deposits, debt service, and capital improvements.

You agree to establish a separate restricted-use account (“Reserve Account”). The Reserve Account will require Agency concurrence in order to withdraw funds. The following reserves are required to be established as a condition of Agency funding:

- The account will be funded monthly in the amount of \$13,148 (10% of the monthly debt repayment requirement). Once the balance in the reserve account reaches \$1,577,760 (one full annual installment), the reserve deposits may cease.
 - Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account. When funds are approved to be withdrawn, deposits will resume or continue as designated above until the fully-funded amount is reached.
 - The applicant’s reserve account balance for the CF Direct Loan should be reported annually to the State Office. If the reserve account balance, at the end of any fiscal year, is less than the required account total at that point in time, the applicant will provide the agency with a twelve-month budget and plan to correct the cash shortfall.
9. **Other Requirements:** All requirements contained in the Agency’s loan closing instructions as well as any requirements of your bond counsel and/or attorney (if agreed to by the Agency) must be met prior to loan closing, including:
- **System for Award Management:** You are required to maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be done online at: <http://sam.gov>. *This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended.* The Agency cannot disburse any funds if your registration has lapsed.

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

- **Litigation:** You are required to notify the Agency within 30 days of receiving notification of being involved in any type of material litigation. Additional documentation regarding the situation and litigation may be requested by the Agency.
 - The lease agreement between the foundation and the college must be executed prior to loan closing.
 - The Applicant will maintain a debt service coverage ratio of at least 1.0. If the debt service coverage ratio (EBITDA/Annual Principal and Interest Payments) based on a review of the annual audit is below 1.0 a fiscal strategy report which documents how the debt service requirement will be achieved will be provided to Rural Development. This ratio will be tested annually based on the ending of the fiscal year.
 - As part of the normal RD servicing requirements, the applicant and college will be required to provide the State Office with quarterly financial reports within 30 days of the quarter end and audited annual reports within 150 days of the year end for the college.
10. **Legal Services:** You must obtain the services of a recognized bond counsel or local attorney. For your convenience, RD Guide 14 “Legal Services Agreement” is enclosed for your use. A completed form AD-1048 “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions” must also be submitted with each Legal Services Agreement.
11. **Property Rights:** You must provide a deed or other Agency approved verification of rights of ownership and control of the location in which equipment, furnishings, or other property will be housed.

Section III: Requirements Prior to Loan Closing

12. **Use of Agency Funds:** Loan closing will occur prior to when the funds are needed, and all of the items detailed in the sections above as well as the items listed in this section must be completed prior to closing. You must provide the Agency with the Form RD 3550-28 “Authorization Agreement for Preauthorized Payments” (electronic payments).
13. **Unrestricted Pledges:** The college must secure \$10,000,000 in unrestricted donation pledges to occur over a 5-year period prior to loan closing. These anticipated gift pledges must reflect on the college balance sheet assets prior to loan close.
14. **Requests for closing instructions:** Must occur approximately ninety (90) days prior to actual closing. All insurance, construction, security, title, deed, and other requirements set forth by the Agency or as described in the sections above must or will be satisfied before Agency loan closing occurs, otherwise closing instructions cannot be issued by the Agency. Closing can also be postponed due to exception listed in the title work or for previously approved closing documents not being used at closing. The Agency can provide guidance on what items are typically needed.

The Agency will provide your counsel with a draft loan closing package along with any additional requirements necessary by OGC.

15. **Use of Remaining Funds:** Applicant contributions will be the first funds to be 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 purposes provided the use will not result in major changes to the original scope of work and the purpose of the loan remains the same; and
 - Loan funds that are not needed will be applied as an extra payment on the Agency indebtedness and will not reduce the original closing payment amount.

Section IV: Servicing Requirements During the Term of the Loan

16. **Prepayment and Extra Payments:** Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the borrower, with no penalty. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt shall, after payment of interest, shall be applied to principal.
17. **Additional Debt:** The college or the foundation is prohibited in entering into combined total additional debt in excess of \$500,000 without USDA Rural Development concurrence with the exception of interim financing from the date of this letter to loan closing
18. **Graduation:** By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance upon request of the Government. If at any time the Agency determines you are able to obtain a loan for such purposes from private sources at better rates and terms, you may be requested to refinance. Your ability to refinance will be assessed every other year for those loans five years old or older.
19. **Security/Operational Inspections:** The Agency will perform Security Inspections of the facility, your operations and records management system and any conflict of interest policy every three years for the life of the loan. You agree to participate in these inspections and provide the required information needed for the Agency to perform these inspections.
20. **Compliance Reviews and Data Collection:** The Agency will conduct regular Compliance Reviews of the borrower and its operation in accordance with 7 CFR 1901 subpart E. Compliance Reviews will typically be conducted in conjunction with Security Inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service which you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

21. **Insurances:** You are required to maintain insurance on the facility and employees, volunteers, officers, and others as previously described in this letter for the life of the loan.
22. **Accounting and Reporting:** You will be required to obtain the services of an independent licensed Certified Public Accountant (CPA). Financials will be required to be submitted to the agency quarterly. Audits will be required to be submitted to the agency annually for the term of the loan within 150 days of year end for the borrower.
- 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 loan closing. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the following:

- i. A statement that the auditor will perform and document the audit work in accordance with 2 CFR Part 200 as adopted by USDA through 2 CFR Part 400, Generally Accepted Government Auditing Standards, (GAGAS), and the professional standards of the AICPA;
- ii. A 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;
- iii. A statement that the auditor will make all audit-related documents, including work papers, available to RD or its representatives, upon request; and
- iv. A statement that the auditor will immediately report, in writing, all irregularities and illegal acts to your governing body and the Agency.

Prior to loan closing, your accountant must certify to you and RD that the accounts and records as required by your bond ordinance 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 3 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:

- i. An annual audit under the Single Audit Act is required if you expend \$750,000 or more from all sources of Federal financial assistance per fiscal year. All audits are to be performed in accordance with 2 CFR Part 200 as adopted by the USDA through 2 CFR Part 400. For Community Facility Projects, in years after the program funds are expended and construction is completed, and the only ongoing financial activity of the program is the payment of principal and interest on outstanding balances, the prior loan balances are not considered to have continuing compliance requirements.
- ii. Other borrower/recipients must submit management report information per RD Instruction 1942-A, 1942.17 (q) (5) within 60 days from the end of the borrower's fiscal year.

Compensation for preparation of any audits 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: If you expend less than \$750,000 in Federal financial assistance from all sources per fiscal year, you may submit financial statements in lieu of an audit which include at a minimum a balance sheet and an income and expense statement. This financial data is to be submitted thirty days prior to the beginning of your fiscal year. You may use Form RD 442-2 "Statement of Budget, Income and Equity" and Form RD 442-3 "Balance Sheet" or similar format to provide the financial information. For Form RD 442-2, the only data required at this time on Page 1 Schedule 1 is Columns 2 and 3, and on Page 2 the remainder of Schedule 1 and all of Schedule 2 is required. With the submission of the annual budget, you will be required to provide a current listing of the Board or Counsel Members and terms.

Quarterly Reports – Borrowers receiving any new loan assistance 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. This information should be received in the servicing office thirty days after the end of each of the first three quarters of the fiscal year.

23. **Statutory and National Policy Requirements:** 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 RHS 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 provides services, programs and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities, which accommodate the public.

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

Limited English Proficiency (LEP) Under Executive Order 13166 – LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled “Improving Access to Services by Persons with Limited English Proficiency” and further affirmed in the USDA Departmental Regulation 4330-005 “Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA”.

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

Section V: Obligation Processing and Letter Closing

24. **Processing Forms:** You must adopt and properly execute the following forms, and minutes showing the adoption must be provided:

- Form RD 1940-1, “Request for Obligation of Funds”
- Form RD 1942-9, “Loan Resolution Security Agreement”
- Form RD 400-1, “Equal Opportunity Agreement”
- Form RD 400-4, “Assurance Agreement”
- Form AD 1047, “Certification Regarding Debarment – Primary”
- Form AD 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)

Certification of Compliance
Standard Form 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form"
Form RD 1942-46, "Letter of Intent to Meet Conditions"

The listed forms must be completed and returned to the processing office within thirty (30) days from the date of this letter.

Final loan approval is dependent on the availability of funds and the receipt of all necessary documents. A fully executed copy of Form RD 1940-1 "Request for Obligation of Funds" will be mailed to you to notify you of the final approval.

If the conditions set forth in this letter are not met within 5 years from the date of obligation 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 5 years from the date of obligation 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 explains the conditions which must be complied with; however, this letter does not relieve you from meeting the requirements set forth in RD Instruction 1942-A and/or 1942-C.

If you have any questions, please do not hesitate to contact me.

Sincerely,

SUSAN L. NEWCOMER
Assistant State Director

Attachments

cc: Janna Lowery, Community Programs Director
Morgantown, WV

Dr. Tamara Rodenberg, President, Bethany College
Bethany, WV

CONDITIONAL COMMITMENT FOR GUARANTEE

TO: Lender	Case No.
Lender's Address	State
Borrower	County
Type of Loan	Principal Amount of Loan

From an examination of information supplied by the Lender on the above proposed loan, and other relevant information deemed necessary, it appears that the transaction can be properly completed.

Therefore, the United States of America acting through _____ 1/ or any successor agency, the United States Department of Agriculture (USDA) (herein referred to as "Government") hereby agrees that, in accordance with applicable provisions of Government regulations published in the Federal Register and related forms, it will execute the "Loan Note Guarantee," subject to the conditions and requirements specified in said regulations and below.

The fee payable by the Lender to the Government will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The interest rate for the loan is _____ % _____ 2/. If the rate is variable, it must be indexed with a rate which cannot change more often than _____ 3/ and published in a financial publications specifically agreed to between the Lender and its borrower.

A Loan Note Guarantee will not be issued until the Lender certifies that there has been no adverse change in the borrower's financial condition, nor any other adverse change in the borrower's condition during the period of time from issuance of the Conditional Commitment for Guarantee to the date of Lender's certification. The Lender's certification must address all adverse changes and be supported by financial statements of the borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "borrower" includes any parent, affiliate, or subsidiary of the borrower.

This Conditional commitment for Guarantee is null and void unless the conditions are accepted by the Lender and borrower within 60 days from the date of issuance by the Government. Any negotiations for revisions of these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used are set out on the Application for Loan and Loan Note Guarantee. Upon acceptance by Lender and Lender's borrower and return to the Government, no major changes of the conditions or approved loan purposes as listed on the forms will be considered. Additional conditions and requirements including the source and use of funds include _____ 4/.

This Conditional Commitment will expire on _____ 5/ unless the time is extended in writing by the Government. The Lender for Guarantee may terminate this Conditional Commitment for Guarantee at any time by written notification to the Government at the address shown below.

UNITED STATES OF AMERICA

By: _____

Date: _____

(Title)

(USDA Agency)

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it display a valid OMB control number. The valid OMB control number for this information collection is 0575-0137, the time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**ACCEPTANCE OF
CONDITIONS**

To: _____
(Insert name of USDA Agency from which a guarantee is requested).

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within _____ days.

(Name of Lender)

By: _____
(Signature for Lender)

(Signature for Borrower)

- 1/ Insert name of agency executing Conditional Commitment for Guarantee.
- 2/ Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V" and the appropriate loan rate.
- 3/ Insert the period prescribed in the applicable RD regulation. For CP loans "annually" will be inserted in this space.
- 4/ Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise insert "NONE".
- 5/ The Government will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.