

**REQUIRED PROVISIONS FOR BOND ORDINANCES, ORDERS &  
RESOLUTIONS – TEXAS RUS LOANS  
(Rev. 02/07/2017)**

They are: The Required Provision; the Provision for Debt Provision; and the Chapter 9 Provision.

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**1. The "Required Provision" ---**

*[Comment: The "Required Provision" must be placed in the bond ordinance, order or resolution exactly as provided here. No other wording is acceptable and no changes to the wording here is allowed. The individual sections must be kept together and in the order provided here. The individual sections may not be scattered throughout the ordinance, order or resolution.]*

**SECTION \_\_\_\_.**

**LOAN PROGRAM REQUIREMENTS AND DOCUMENTS TO CONTROL**

***Section \_\_\_\_ . Definitions.***

For the purposes of this Section, the following acronyms and terms shall be defined as follows:

(a) *RUS*: The Rural Utilities Service, an agency of the United States of America within the United States Department of Agriculture, and any successor agency thereof.

(b) *Loan*: The loan in the amount of \$\_\_\_\_\_ from the [Purchaser] to the [Town][City][County][District][Borrower], which has been authorized under 7 U.S.C. § 1926, and which is represented by the [Purchaser's] purchase of the [Certificates][Bonds].

(c) *Agency rules*: The statutes, rules, regulations and policies of the RUS, in effect on the date hereof, which pertain to or which are applicable to the loan and such future statutes, rules, regulations and policies which are not inconsistent with the express provisions hereof.

(d) *Loan document provisions*: The terms, conditions, requirements and provisions of the loan instruments and loan documents, including but not limited to, loan resolutions, security agreements, assurance agreements, certifications, and equal opportunity agreements, which were signed by the \_\_\_\_\_ [borrower] for the benefit of the United States of America and/or of the RUS, and for the purpose of obtaining the loan.

**Section \_\_\_\_\_. Compliance with Agency Rules**

(a) To the extent permitted by State law and if such law is not otherwise preempted by federal statute, regulation or rule, the \_\_\_\_\_ [borrower] shall comply with all agency rules and loan document provisions.

(b) Notwithstanding any other term, condition, requirement or provision contained in this [Ordinance] [Order] [Resolution], the agency rules and loan document provisions shall, to the extent permitted by State law and if such law is not otherwise preempted by federal statute, regulation or rule, control to the extent of any conflict between the [Ordinance] [Order] [Resolution] and such agency rules or such loan document provisions.

**Section \_\_\_\_\_. Interest Accrual.**

Notwithstanding any other term, condition, requirement or provision contained in this [Ordinance] [Order] [Resolution] to the contrary, interest on a [Certificate] [Bond] shall continue to accrue and be payable to the United States of America so long as the [Certificate] [Bond] remains unpaid and outstanding. Interest will not cease to accrue for any reason (including the establishment of a redemption date or prepayment date) until the date when payment in full has been received at the agency office designated to receive payments. For the purpose of determining "the date when payment in full has been received at the agency office designated to receive payments," such date shall be:

1. when payment is made by hand delivery, the date when such payment has been physically delivered into the possession of such agency at the address given to the Issuer;
2. when payment is made by first class mail, the third day following Issuer's mailing of the payment, postage prepaid, using the U.S. Postal Service and Issuer's receipt of written proof of the mailing from the U.S. Postal Service identifying the date of mailing;
3. when payment is made by overnight delivery, the first day following Issuer's sending of the payment, using the U.S. Postal Service or another delivery service, such as Federal Express, and Issuer's receipt of written proof of sending from the delivery service identifying the date of sending;
4. when payment is made by electronic transfer of funds, the date that the electronic transfer of funds for the payment is completed; or
5. when payment is made by preauthorized electronic debit or draft, the date that the electronic debit or draft for the payment is paid.

**Section \_\_\_\_\_. *Redemption or Prepayment.***

Notwithstanding any other term, condition, requirement or provision contained in this [Ordinance] [Order], redemption or prepayment of a [Certificate] [bond] may occur without presentation or presentment of the [Certificate] [bond].

**Section \_\_\_\_\_. *Direct Payment.***

Notwithstanding any other term, condition, requirement or provision contained in the [Ordinance] [Order] [Resolution] or in the [Certificate] [Bond] to the contrary, all payments shall be made by the Issuer directly to the agency office designated to receive payments.

**Section \_\_\_\_\_. *No Presentment or Surrender.***

Notwithstanding any other term, condition, requirement or provision contained in this [Ordinance] [Order] [Resolution] to the contrary, all payments (including payments at maturity or at redemption or prepayment of a [Certificate] [Bond]) may occur without surrender, presentation or presentment of the [Certificate] [Bond].

**Section \_\_\_\_\_. *Replacement [Certificates] [Bonds]***

Notwithstanding any other term, condition, requirement or provision contained in this [Ordinance] [Order] [Resolution] to the contrary, and in the event that a [Certificate] [Bond] is lost, stolen, damaged, mutilated, or destroyed, the United States of America will not be required to obtain a replacement [Certificate] [Bond] in order to continue to receive timely payments under such [Certificate] [Bond] and will not be required to provide security or indemnity as a condition to receiving timely payments under such [Certificate] [Bond].

**Section \_\_\_\_\_. *Limitation on Application of this Section.***

(a) The provisions of this section shall be operative only for so long as any of the [Certificates] [Bonds] issued under this [Ordinance] [Order] [Resolution] are owned or held by: (1) the United States of America; or (2) any agency thereof.

(b) The provisions of this section shall not be used to or shall not be construed so as to allow the [Ordinance] [Order] [Resolution] to violate any applicable provision of Texas law to the extent that such law is not otherwise preempted by applicable federal statute, regulation or rule.

**2. The UCC Chapter 9 Provision ---**

*[Comment: A provision addressing this topic is required for all bond ordinances, orders and resolution. It is not a part of the "Required Provision" and so its location within a bond ordinance, order or resolution may vary. Also, bond counsel may prescribe his or her own version of or wording for this provision. Thus, the wording may vary. In short, this exact wording is not required but a provision addressing this topic is required.]*

**SECTION \_\_\_\_.**

**CHAPTER 9, BUSINESS AND COMMERCE CODE REQUIREMENTS**

Chapter 1208, Government Code, applies to the issuance of the [bonds/notes/certificates of obligation] and the pledge of the [taxes/revenues/combination thereof] granted by the Issuer under Section \_\_\_\_ of this [resolution/ordinance/order], and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the [bonds/notes/certificates of obligation] are outstanding and unpaid such that the pledge of the [taxes/revenues/combination thereof] granted by the Issuer under Section \_\_\_\_ of this [resolution/ordinance/order] is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the registered owners of the [bonds/notes/certificates of obligation] the perfection of the security interest in said pledge, the Issuer agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

### **3. The Debt Provision ---**

*[Comment: A "debt" provision is required for a city or county borrower when the debt is secured in whole or in part by a pledge of taxes. The wording may vary. What you need to look for is a levy of taxes and for no less than two (2%) per cent of the debt to be annually collected and put into a fund. That fund is sometimes referred to as a sinking fund.]*

*The "debt" provision is not a part of the "Required Provision" and so its location within a bond ordinance, order or resolution may vary. Also, bond counsel may prescribe his or her own version of or wording for this provision. Thus, the wording may vary. In short, this exact wording is not required but a provision addressing this topic is required if the debt is to be secured in whole or in part by a pledge of taxes.*

*Bond counsel may, if they so elect, propose their own "debt" provision to be reviewed and approved by the agency. This provision, once approved by RUS, will then be used in all future ordinances or orders drafted by that bond counsel. Otherwise, bond counsel may propose a "debt" provision which varies from ordinance to ordinance.]*

#### **SECTION \_\_\_\_\_.**

#### **PROVISION FOR DEBT**

To the extent that the loan document provisions and/or the agency rules create a "debt" of the \_\_\_\_\_ [borrower] (within the meaning of § 7 of Article 11 of the Texas Constitution), the governing body of \_\_\_\_\_ [borrower] shall compute and ascertain the rate and amount of ad valorem tax, based upon the latest approved tax rolls of said [town][city][county], with full allowances being made for tax delinquencies and costs of collection, which will be sufficient to raise and produce the money required to pay any sums which may be or become due during any such year on account of said "debt", in no instance to be less than two (2%) per cent of such obligation, together with all interest thereon. Said rate and amount of ad valorem tax is hereby ordered to be levied and is hereby levied against all taxable property in said [town][city][county] for each year which any liability exists by reason of the "debt" incurred, and said ad valorem tax shall be assessed and collected each such year until all of the "debt" incurred shall have been discharged.

2. Note – We have not maintained a comprehensive list of “approved provisions.” This is for illustration only.

List of Approved "Debt" Provisions

1. Mark Mendel, Kemp, Smith, Duncan & Hammond, P.C., El Paso, Texas --

To provide for the payment of any other legally incurred obligations of the [Town][City][County] with respect to the United States under the Agency rules or Loan Document Provisions, there is hereby levied for the current year and each succeeding year thereafter while the [Certificates] [Bonds] or interest thereon or any such other legally incurred obligations remain outstanding and unpaid, a tax on the taxable property in the [Town][City][County] that is sufficient to pay such other legally incurred obligations, within the limits prescribed by law, full allowance being made for delinquencies and costs of collection. The tax, if any, levied by this Section [9.3(c)] shall be assessed and collected each year and retained by the [Town][City][County] for application to the payment of such other legally incurred obligations, and such tax shall not be diverted to any other purpose.

**[NOTE: The words appearing within brackets may vary or change from one ordinance or order to another depending upon the type of borrower and the terms used in the ordinance or order.]**

## REQUIREMENTS FOR BOND COUNSEL OPINIONS

[Revised 02/07/2017]

*[Note: The references to Part 1780 are for RUS loans and the references to Parts 1942.17 and 1942.19 are for loans made under the RHS CF loan program.]*

### I. Bond Counsel Opinion - General

7 C.F.R. § 1780.81 [and 7 C.F.R. § 1942.17(1)(2) & § 1942.19(b)]  
- Policies related to use of bond counsel -

REQUIREMENTS TO USE BOND COUNSEL - The applicant will obtain the services and opinion of **recognized bond counsel** with respect to the validity of a bond issue.

However, the applicant may elect, with approval of the agency, not to use bond counsel under the circumstances set out in the regulations. Please refer to the appropriate regulations to determine the requirements for the exceptions to this general rule.

**IDENTITY OF BOND COUNSEL** - Ideally, the draft opinions of bond counsel should be on letterhead disclosing the identity of the bond counsel. Alternatively, OGC must be advised of the identity of bond counsel. A copy of the engagement letter from bond counsel to the applicant would be sufficient to disclose the identity of bond counsel.

### II. Address on Bond Counsel Opinions

Opinions of bond counsel should be addressed as follows:

State Director for Rural Development  
Rural Utilities Service [for RUS loans]  
Rural Housing Service [for CF loans]  
101 S. Main Street  
Temple, Texas 76501

### III. 7 C.F.R. §§ 1780.83(k) & 1942.19(c)(11) - Preliminary approving opinion of bond counsel

A. When required:

(1) for loans involving multiple advances of agency loan funds; and

(2) when a final unqualified opinion of bond counsel cannot be obtained until all funds are advanced

B. When delivered to Agency: The signed opinion must be delivered at or before the time that the first loan funds are advanced.

C. Contents: The opinion must state, as a minimum, that the applicant has the legal authority to:

(1) issue the bonds [or other debt instrument];

(2) construct, operate and maintain the facility and repay the loan;

(3) pledge the security [revenue or taxes or both] to the payment of the bonds

This opinion may be made subject only to changes occurring during the advance of funds, such as litigation resulting from the failure to advance loan funds and receipt of closing certificates.

**IV. 7 C.F.R. §§ 1780.83(1) & 1942.19(c) (12) - Final unqualified approving opinion of bond counsel**

A. When provided: After all loan funds are advanced

B. Contents: The opinion should state, as a minimum, that:

(1) The bonds [or other debt instruments] -

(a) have been authorized, issued and delivered in accordance with state law and the state constitution and with the provisions of the bond ordinance [or other legislative action];

(b) constitute valid, legally binding and enforceable obligations of the applicant secured by [or payable from] a \_\_\_\_\_ [first, second, etc.] priority lien [or pledge] of



the revenue of the applicant's system [and/or ad valorem taxes]

(2) Whether interest on the bonds [or other debt instruments] will be exempt from federal and state income taxes.

C. The opinion may be qualified as follows:

except to the extent that the enforceability thereof may be affected by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditor's rights of the exercise of judicial discretion in accordance with the general principles of equity.

