

BE IT RESOLVED

That **Haywood County** accepts the conditions set forth in a Letter of Conditions dated **July 27, 2010** and Form RD-NC 1942-47, "Loan Resolution":

That the **Chairman of the Board of Commissioners of Haywood County** approves the budget as shown on, Form RD 442-7 - Operating Budget:

That the **Chairman of the Board of Commissioners of Haywood County** be authorized to execute all forms necessary to obtain a **loan** from Rural Development, including, but not limited to the following forms:

| | |
|-----------------|--|
| Form RD 1942-47 | Loan Resolution |
| Form RD 1942-46 | Letter of Intent to Meet Conditions |
| Form RD 442-7 | Operating Budget |
| Form RD 400-1 | Equal Opportunity Agreement |
| Form RD 400-4 | Assurance Agreement |
| Form RD 1940-1 | Request for Obligation of Funds |
| Form RD 1910-11 | Applicant Certification Federal Collection Policies |
| Form AD-1047 | Certification Regarding Debarment Primary Covered Transactions |
| Unnumbered Form | Certificate of Compliance |

That if the interest rate charged by Rural Development should change between this date and the date of actual approval, **Chairman of the Board of Commissioners of Haywood County** be authorized to execute new forms reflecting the current interest rate and revised payments as required by Rural Development.

That the **Board of Commissioners of Haywood County** elects to have the interest charged by Rural Development to be the lower of the rate in effect at either the time of loan approval or loan closing.

That the **Board of Commissioners of Haywood County** hereby agrees to abide by the mitigation requirements in the Letter of Conditions.

This resolution is to become a part of the official minutes of the **Haywood County Board of Commissioners** meeting held on **Monday, August 2, 2010**.

MOTION MADE BY: _____ and

SECONDED BY : _____ THAT THE RESOLUTION BE APPROVED.

MOTION PASSED _____ FOR AND _____ AGAINST.

BY: _____
J.W. "Kirk" Kirkpatrick, III, Chairman

Attest: August 2, 2010
(Date)

BY: _____
David B. Cotton, County Manager
Clerk to the Board of Commissioners

STATE OF NORTH CAROLINA)
)
COUNTY OF HAYWOOD) ss:

I, DAVID B. COTTON, Clerk to the Board of Commissioners of the County of Haywood, North Carolina, **DO HEREBY CERTIFY** that the foregoing is a true and exact copy of a resolution entitled "LOAN RESOLUTION" adopted by the Board of Commissioners of the County of Haywood, North Carolina at a meeting held on the 2nd day of August, 2010.

WITNESS my hand and the corporate seal of the County of Haywood, North Carolina, this the 2nd day of August, 2010.

DAVID B. COTTON
County Manager and Clerk to the Board
County of Haywood, North Carolina



United States Department of Agriculture
Rural Development

#1 copy for your records

Mr. J.W. "Kirk" Kirkpatrick, III, Chairman
Haywood County Board of Commissioners
215 N. Main Street
Waynesville, NC 28786

July 27, 2010

RE: Letter of Conditions
Purchase and Remodeling of Existing Building for Dept. of Social Services, Health
Department, and Inspections Department

Dear Chairman Kirkpatrick:

This letter establishes conditions that must be understood & agreed to by you before further consideration may be given to the application. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or application must be reported to and approved by Rural Development by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a Community Facility Loan not to exceed \$12,500,000.

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

If the conditions set forth in this letter are not met within 24 months from the date hereof, USDA-Rural Development reserves the right to discontinue processing the application.

If Rural Development makes the loan, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form RD 1940-1, Request for Obligation of Funds" is mailed to you. If you want the lower of the two rates, your written request should be submitted to Rural Development as soon as practical. In order to avoid possible delays in loan closing such a request should ordinarily be submitted at least 30 calendar days before loan closing."

Organization:

The applicant must provide a certification concerning its organization, in accordance with Rural Development Instruction 1942-A, subsection 1942.17(k).

84 Coxe Avenue, Suite 1E, Asheville, North Carolina 28801
Phone: (828) 254-0916 Ext 7 • Cell: (828) 273-3373 • Fax: (828) 696-2915 • TDD: (919) 873-2003
Web: <http://www.rurdev.usda.gov/nc> Email: pam.hysong@nc.usda.gov
Committed to the future of rural communities.

"USDA is an equal opportunity provider, employer and lender."

To file a complaint of discrimination write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

Interim Financing:

Because the project is two-fold, purchase of the property and construction, Rural Development will close the loan to purchase the real estate.

Repayment Schedule:

The loan will be scheduled for repayment over a period not to exceed forty (40) years. Payments will be due annually, beginning one year following the date of loan closing. All payments will be fully amortized installments.

Reserve Requirements:

As a condition of this loan, your organization will be required for ten (10) years to deposit each year, one-tenth (10%) of the annual loan payment into a reserve account in accordance with provisions of the RD form 1942-47, Loan Resolution.

Security Requirements:

Security will consist of a Promissory note secured by a first lien (Deed of Trust) on that 15 acre tract of land know as the "Old Wal-Mart Building" with an address of 121 Paragon Parkway, Clyde, NC with any necessary rights-of-way necessary to access the property from a public road.

This site must be delineated by a registered surveyor enabling the creation of a written legal description of the property. The survey will be "as built" and will include as a minimum, the "footprint of the building, associated parking areas, sidewalks, ingress/egress areas.

In addition to real estate security, a lien will be perfected upon any equipment to be purchased with Rural Development project funds. A financing statement filed with the North Carolina Secretary of State will be required as well as an Installment Purchase Contract that must be executed at the loan closing.

Loan Resolution:

The applicant must formally adopt form RD 1942-47, Loan Resolution, at a proper meeting of the governing body. Adoption of this document should be made a part of the official minutes of the applicant. The applicant is to provide for, execute, and comply with Form RD 400-4, Assurance Agreement that must also be formally adopted on the same date or after the adoption of form RD 1942-47.

Project Funds/Applicant Contribution:

As proposed, the applicant is not providing contributing funds to this project; however, if because of bid overruns or changes in plans causing an increase in construction or other project costs, the applicant must be prepared to provide that additional funding from a source other than Rural Development.

Loan Payments and Terms:

If Rural Development provides this loan, the maximum term of the loan requested is forty years with annual payments due beginning one year from the date of loan closing. Your interest rate will be the lower of the "Intermediate Rate" or "Market Rate" in effect at the time of loan approval as stated in Rural Development Instruction 440.1 for Community Facilities Loans.

Disbursement of Funds:

The applicant/other contribution, including all sources of funding except the Rural Housing Service (RHS) Community Facilities Loan, will be the first funds expended. **No loan funds will be advanced until all other sources of funding are used to pay authorized project expenses.** After providing for all authorized costs, any remaining RHS Community Facilities funds will be considered RHS funds and will be refunded to Rural Development.

Accounting, Audits, and Reports:

- **Annual Audits:** Accounting and auditing will be established and maintained in accordance with requirements of Rural Development Instruction 1942-A, paragraph 1942.17(q), O.M. B. Circular 133, and the NC General Statutes.
- **Financial Accounting during Construction:** During the construction period, the applicant must provide monthly reports using form SF 269, Financial Status Report or Project Outlay Report. All disbursements must be documented with copies of invoices.
- **Quarterly Financial Reports:** Upon closing the Rural Development loan, quarterly financial status reports must be submitted by the following dates:
 - **Quarter Ending 3/31** Report due 4/15 of each year
 - **Quarter Ending 6/30** Report due 7/15 of each year
 - **Quarter Ending 9/30** Report due 10/15 of each year
 - **Quarter Ending 12/31** Report due 1/15 of each year
- **American Recovery and Reinvestment Act (ARRA) Reporting:** Recipients receiving project funding from ARRA (Stimulus) funding must submit quarterly reports to www.federalreporting.gov . Said reports are required beginning the quarter in which the project is funded and continue until the project is complete and funds fully disbursed. Additional reporting guidance can be found at <https://www.federalreporting.gov/federalreporting/downloads.do> . Reports are due in the month following the end of each quarter as follows:
 - **1st through 10th—Initial Input by Recipient**
 - **11th through 21st—Recipient Review for Complete and Accurate Report**
 - **22nd through 29th—Rural Development Data Quality Review**

Debarment Certification:

Prior to loan closing, the Applicant must certify that they are not debarred or suspended from Federal Non-procurement Program by use of Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions." Also, Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," must be executed by lower tier parties (builders, contractors, dealers, suppliers, manufacturers, and others) involved in transactions exceeding \$25,000.

Operating Budget:

An operating budget for the facility must be adopted by the applicant after approval by USDA, Rural Development.

Debt Collection Policies:

Prior to loan closing, the applicant will acknowledge receipt of debt collection policies by executing Form 1910-11, Applicant Certification, Federal Collection Policies for Commercial Debts.

Insurance and Bonding:

Insurance and bonding should be obtained in accordance with RD Instruction 1942.17(j)(3) and maintained after loan closing until the loan is paid-in-full. The following minimum amounts will be considered adequate:

- **Fidelity Bond:** Fidelity Bond coverage must be obtained and maintained for all officials entrusted with the receipt and disbursement of funds, and custody of valuable property. Minimum coverage must be at least in the amount of the annual payment estimated to be \$643,375
- **General Corporation Liability:** Liability coverage including vehicular liability should be obtained in amounts determined adequate by the corporation and its attorney.
- **Worker's Compensation:** Coverage should be maintained in accordance with State Law.
- **Fire, Theft, and Collision:** Coverage in an amount equal to the replacement value of the of the building and improvements as determined by the Rural Development appraisal which is to be completed prior to loan closing, or the loan amount of \$12,500,000, whichever is less.

The applicant must furnish a certificate of insurance and bonding to USDA, Rural Development prior to closing.

Buy American:

The project will be funded in whole or in part using funds from the American Recovery and Reinvestment Act (ARRA). Section 1605 of the ARRA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United States. All iron and steel manufacturing processes must take place in the United States, except for metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25.104(a) have been determined to be unavailable in the United States and if required for the project may be purchased from foreign sources. No unauthorized use of foreign iron, steel, and/or manufactured goods will be allowed on this project.

Davis-Bacon Wage Rates:

The contractor selected to act as General Contractor for this project must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts." These rates will be provided by USDA Rural Development when pre-bid documents are being compiled.

Procurement of Construction Services & Supplies / Equipment:

The project shall be formally advertised for bids in accordance with RD Instruction 1942-A, paragraph 1942.189 and state and local laws and regulations applicable to this type of procurement. Procurement by other than formal advertising may be used upon written concurrence by Rural Development in accordance with Rural Development Instruction 1942-A, paragraph 1942.18(k). Formal advertising may be used for any procurement, however, at the option of the applicant.

Contracts shall be awarded on the basis of the lowest bid of acceptable materials and equipment and in accordance with RD Instruction 1942.18. If contract award is proposed to other than the lowest bidder, documentation for such must be provided to Rural Development. The Rural Development State Engineer must provide written concurrence prior to the awarding of any contract by the Applicant.

Mitigation Measures:

The environmental assessment identified no specific environmental resources that must be protected through the use of mitigation measures because the project was determined to meet the Categorical Exclusion criteria. Should the project change in a manner that the environmental process must be modified, resulting in the need to require environmental mitigation measures, those measures must be adopted by the applicant's governing board by adoption of an amended letter of conditions.

Graduation:

The applicant will refinance the unpaid balance of its debt to the USDA – Rural Development, if at any time it should appear that the corporation is able to refinance its notes by obtaining a loan for such purposes from a responsible cooperative or private source at reasonable rates and terms.

Closing Instructions:

The loan will be closed in accordance with instructions issued by the Office of General Counsel and applicable USDA, Rural Development and State Procedures.

Processing Checklist:

All applicable items set out in form NC 1942-13, Processing Checklist (Community Facility-Public Body), apply to this project and become a part of this Letter of Conditions.

Pre-authorized Debit Payments:

Prior to loan closing, the applicant must complete US Dept. of Treasury Form SF 5510, "Authorized Agreement for Preauthorized Payments." This form will authorize the government to electronically debit your RD loan payment(s) from your specified bank account on a pre-determined day (date the payment is due). Preauthorized Debit is accomplished through the Automated Clearing House process providing for a cost effective, secure, reliable, and convenient payment method, thus eliminating the need to write a check for each payment, the expense of mailing the payment, and allows you the certainty of when your payment will be applied. This service is provided for only qualified borrowers.

Other Conditions:

- a. Compliance with Special Laws and Regulations.
- b. State Pollution Control or Environmental Protection Agency standards
- c. Consistency with other development plans
- d. State agency regulating water rights
- e. Civil Rights Act of 1964.
- f. Title IX of the Education Amendments of 1972
- g. Section 504 of the Rehabilitation Act of 1973
- h. Age Discrimination Act of 1975

Please feel free to contact me if you have any questions about any of the above conditions.

Sincerely,



Pamela H. Hysong,
Area Director