

March 16, 2023, MB#32

**TOWN OF VALDESE
TOWN COUNCIL SPECIAL MEETING
March 16, 2023**

The Town of Valdese Town Council met on Thursday, March 16, 2023, at 11:00 a.m., in the Town Council Chambers at Town Hall, 102 Massel Avenue SW, Valdese, North Carolina. The following were present: Mayor Charles Watts, Councilwoman Frances Hildebran, Councilman Tim Skidmore, Councilman Tim Barus, and Councilman Paul Mears. Also present were: Town Attorney Tim Swanson, Town Manager Seth Eckard, Assistant Town Manager/CFO Bo Weichel, Town Clerk Jessica Lail, and various Department Heads.

Absent: Councilwoman Rexanna Lowman

A quorum was present.

Mayor Watts called the meeting to order at 11:00 a.m. He offered the invocation and led in the Pledge of Allegiance to the Flag. Town Manager Seth Eckard introduced Nicholas Lattanzi, Area Specialist/Community Programs with U.S. Department of Agriculture Rural Development(USDA).

USDA PRESENTATION – LETTER OF CONDITION PACKAGE: Nicholas Lattanzi shared that the official offer for the Town to consider is a loan amount of \$7,241,900, over a 30-year term, with a fixed interest rate of 3.75%. Mr. Lattanzi explained that the need for the special called meeting is due to interest rates increasing after April 1, 2023. Mr. Lattanzi presented the following Letter of Conditions for a Community Facilities Program Loan for the proposed Public Safety Facility.

USDA

United States Department of Agriculture

03/16/23

Town of Valdese
Seth Eckard — Town Manager
102 Massel Ave SW
Valdese, NC 28690

Subject: Letter of Conditions for a Community Facilities Program Loan to
Public Safety Facility

Dear Mr. Eckard:

This letter, with attachments, establishes conditions that must be understood and agreed to by the applicant before further consideration may be given to the application for Federal Assistance. The State and Area Office staff of USDA Rural Development (RD) will administer the loan and/or grant funds for this project on behalf of the Rural Housing Service. All parties may access information and regulations referenced in this letter at our website located at:

<https://www.rd.usda.gov/programs-services/community-facilities>. Any changes in project cost, source of funds, scope of services, or any other significant change (this includes significant changes in the

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Borrower's financial condition, operation, organizational structure or executive leadership) in the project or applicant must be reported to and approved by USDA Rural

Development by written amendment to this letter. Any changes not approved by USDA Rural Development will be cause for discontinuing processing of the application. If you do not meet the conditions of this letter, the Agency reserves the right to withdraw Agency funding.

This letter is not to be considered as loan approval or as representation to the availability of funds. The application can be processed on the basis of a USDA Rural Development loan not to exceed \$7,241,900.00. Funds for this project are provided by the Rural Housing Service (RI-IS).

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," and Form RD 1940-1, "Request for Obligation of Funds," within the next ten (10) days, if you desire that we give further consideration to your application. The execution of these and all other documents required by USDA Rural Development must be authorized by appropriate resolutions of the applicant's governing body.

The loan will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is mailed by USDA Rural Development. This is also the date that the interest rate is established. If the interest rate is lower at the time of loan closing, you must make a request in writing to receive the lower rate in effect.

The loan will be repayable over a period not to exceed 30 years from the date of loan closing at the market interest rate. The first interest installment will be due no later than one full year from the date of loan closing.

Project Budget—Based on Standard Form 424, "Application for Federal Assistance," the project cost and funding will be as follows:

a.

Development	Construction	\$6,742,170.00
Other	FF&E	\$350,000.00
Contingencies		\$400,000.00
Arch, Eng, & Planning	Interest	\$451,850.00
Other Professional Fees	Construction Loan Interest (18-months)	\$577,748.00
Other Professional Fees	Geotechnical	\$12,000.00
Land & Rights	Special Inspections	\$30,000.00
Legal Services	Site Purchase	\$98,132.00
		\$30,000.00
	Total	\$8,691,900.00

b.

<u>Source of Funds</u>	\$6,775,381.00
USDA Loan	
Applicant Contribution	\$950,000.00
NC State	\$500,000.00
TOTAL:	\$8,691,900.00

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the borrower may be necessary.

The applicant will ensure projects are completed in a timely, efficient, and economical manner. Section I of the attached conditions (Items 1—21) must be satisfied prior to interim loan closing or before construction

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begins, whichever occurs first, in either case not later than one (1) year from the date of this letter. In the event the project has not advanced to the point of construction within one (1) year, USDA Rural Development reserves the right to discontinue the processing of the application.

If you have any questions, feel free to contact this office.

Sincerely,

Nick Lattanzi
Area Specialist

ATTACHMENT TO LETTER OF CONDITIONS

SECTION 1. CONDITIONS TO BE SATISFIED PRIOR TO LOAN CLOSING OR BEFORE CONSTRUCTION BEGINS, WHICHEVER OCCURS FIRST

- I. Reserves—The applicant will establish a separate debt service reserve account in an amount at least equal to an average annual loan installment. This reserve will be accumulated at the rate of at least one-tenth of the average annual installment each year until the required level is reached, which is one average annual loan installment. The reserve account balance must be reported annually to the State Office and included in the audit as a separate and identifiable line item as restricted.

For any fiscal year end in which the debt service reserve account balance is less than the required account total; the applicant will provide the Agency with a twelve-month budget and plan to correct the cash shortfall.

Additionally, the applicant will establish a capital asset replacement reserve in an amount adequate to replace short term assets with an annual contribution of \$10,000.00. The amount will be based on the condition of the existing facility and the economic life of the proposed improvements.

2. Disbursement of Funds

- a. Interim loan financing during construction will be required in accordance with 7 CFR 1942.17 (n)(3) for all construction loans over \$50,000. The applicant must provide Rural Development a copy of the proposed interim financing package prior to execution.
- b. The applicant will provide evidence that funds from other sources will be made available for the project cost in the amount of \$1 450,00.00. This evidence should include a copy of the loan/grant award that addresses how funds will be disbursed.
- c. The applicant's contribution of funds toward the project cost shall be considered the first funds expended and must be deposited in its project account before construction is started. Please provide Rural Development evidencing applicant's contribution.
- d. Agency funds will not be used to pre-finance funds committed to the project from other sources.
- e. The Debt Collection Improvement Act (DCIA) of 1996 requires that all Federal payments be made by Electronic Funds Transfer/Automated Clearing House (EFT/ACH). Borrowers receiving payments by EFT will have funds directly deposited to a specified account at a financial institution with funds being available to the recipient on the date of payment. The

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borrower should complete Form SF-3881, Electronic Funds Transfer Payment Enrollment Form, for each account where funds will be electronically received. The completed form(s) must be received by Rural Development at least forty-five (45) days prior to the first advance of funds. Failure to do so could delay loan closing.

3. Security Requirements

- a. At loan closing the applicant will execute the attached Form RD 1942-47, "Loan Resolution (Public Bodies)". Please note the refinancing provision in paragraph
2. Also, on page 3 there is a certification to be executed at loan closing.
- b. The security instrument and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or its authorizing law. In particular, there must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983. c. The applicant and the applicant's financial institution(s) will execute the USDA RHS Community Facility Program, Deposit Account Control Agreement. This is required on all account(s) the applicant has which the Agency will be taking a security interest in, including but not limited to, all primary accounts where the facilities operating and non-operating revenues are deposited and any accounts holding the debt service reserve(s) for the Agency loan(s). Please note the Termination of Agreement provision, item number 8.
 - d. The security for this project will be an Installment Purchase Contract and a Deed of Trust with 1st lien position on the property in which construction will be completed and a UCC-1 filed for all assets and equipment.

4. Appraisal Requirements

- a. Appraisal reports must be performed by a certified general real estate appraiser licensed in the state where the property is located. The appraiser must have the specific qualifications, experience, and competency necessary to appraise the type of facility being financed.
- b. For loans which include the purchase of an existing facility, the appraisal must report the "As Is" Market Value of the property. For loans which contain a construction component (new construction or rehabilitation), the initial appraisal must estimate the "As Is" Market Value and the "Prospective Market Value" as of the date of completion of construction pursuant to Uniform Standards of Professional Appraisal Practice (USPAP) and Agency appraisal requirements. [12 CFR, Chapter I, Subpart C, Part 34.420)].
- c. USDA Rural Development must be listed as an intended user of the appraisal report.
- d. The appraisal must determine that the value is equal to or exceeds the amount of the USDA loan(s), plus any other indebtedness against the security.
- e. The appraisal must be submitted and approved by USDA Rural Development prior to the start of construction or earlier if required.
- f. Once construction is complete and prior to closing the Agency direct loan(s), any appraisal more than two years from the estimated date of closing must be updated and submitted 90 days in advance of loan closing. The value of the appraisal must demonstrate that the Agency remains fully secured.
- g. Reports shall be in compliance with the reporting requirements of USPAP Standard Rule 2-2 for an Appraisal Report and with the Agency requirements.
- h. Appraisers must be prepared to discuss their analyses, opinions, and conclusions and provide additional written support, clarification, and a corrected electronic appraisal report, at no additional cost, if requested by a USDA Regional Appraisal Reviewer.

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5. Insurance and Bonding Requirements—The applicant must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage, in accordance with USDA Rural Development's regulations, must then be maintained for the life of the loan and evidence must be submitted to Rural Development annually. Evidence that coverage is being maintained must be provided annually thereafter. It is the responsibility of the applicant and not that of USDA Rural Development to assure that adequate insurance and fidelity bond coverage is maintained. Applicants are encouraged to review coverage amounts and deductible provisions with their attorney, consulting engineer, and/or insurance provider(s).
- a. Property Insurance—Fire and extended coverage will be required on all above-ground structures, including applicant-owned equipment and machinery housed therein. Provide USDA Rural Development with proof of coverage and attach Lender's Loss Payable Endorsement (438 BFU or equivalent) naming the UNITED STATES OF AMERICA as lender.
 - b. Corporate Liability Insurance - The Applicant will provide public liability, and property damage insurance in an amount to adequately protect the applicant from civil action arising from the function of the applicant relative to the project.
 - c. Workers' Compensation Insurance—The applicant will be required to carry workers' compensation insurance for all employees in accordance with the State law. Provide USDA Rural Development with proof of coverage.
 - d. General liability and vehicular coverage must be maintained—Provide USDA Rural Development with proof of coverage.
 - e. Fidelity Bond—Persons who have access to the funds and custody to any property will be covered by a fidelity bond or an adequate crime policy that protects the applicant from an employee crime. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of coverage required by USDA Rural Development will be sufficient to cover the total annual debt and
- reserve service requirements for the loan. The United States of America will be named as co-obligee on the bond. A certified power-of-attorney with effective date will be attached to each bond. Provide USDA Rural Development with a copy of the bond and the power of attorney.
6. Civil Rights & Equal Opportunity— The borrower has received an award of Federal funding and is required to comply with U.S. statutory and public policy requirements, including but not limited to:
- a. 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 Agency financial assistance. The Standard for compliance is the Architectural Barriers Act Accessibility Standards (ABAAS).
 - b. Civil Rights Act of 1964 — All recipients 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 7 CFR 1901, Subpart E, 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.

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- c. 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.
- d. 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.
- e. 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. The recipient must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information the recipient 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."
- f. Controlled Substances Act - Even though state law may allow some activities, as a recipient of Federal funding, you are subject to the Controlled Substances Act. Specific questions about the Controlled Substances Act should be directed to the Servicing Official who will contact the Office of General Counsel, as appropriate.

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. The recipient must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor the recipient's compliance with these requirements during regular compliance reviews.

As a recipient of Rural Development funding, you are required to post a copy of the NonDiscrimination Statement listed below in your office and include in full, on all materials produced for public information, public education, and public distribution both print and non-print.

Non-Discrimination Statement

"This institution is an equal opportunity provider and employer."

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at <https://www.ocio.usda.gov/document/ad-3027>, or at any USDA office, or call (866) 6329992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

If the material is too small to permit the full statement to be included, the material at a minimum includes the statement in print size no smaller than the text that "This institution is an equal opportunity provider and employer."

7. Written Agreements for Professional Services

- a. The legal service agreement submitted by Young, Morphis, Bach, & Taylor, LLP is satisfactory to USDA Rural Development.
- b. An Agreement for Architectural Services with CBSA Architects will have to be approved by USDA Rural Development.
- c. Agreement for Project Manager Services will have to be approved by USDA Rural

Development

9. Land and Rights-of-Way—The applicant must present satisfactory evidence that they have obtained, or can obtain, any and all lands, rights-of-way, easements, permits and franchises which are required by the architectural/engineering plan. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation and Real Property Acquisition Act. The following forms, copies of which are attached, may be used for these purposes:

o Form RD 442-21, "Right-of-Way Certificate" (with map attached) o Final as-built will be required

10. System Policies, Procedures, Contracts, and Agreements — The facility must be operated on a sound business plan which involves adopting policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system.

- a. Conflict of Interest Policy — Prior to obligation of funds, you must certify in writing that your organization has in place up-to-date written standards of conduct covering conflict of interest. The standards of conduct must include disciplinary actions in the event of a violation by officers, employees, or agents of the borrower. The standards identified herein apply to any parent, affiliate or subsidiary organization of the borrower that is not a state or local government, or Indian Tribe. Policies and accompanying documents shall be furnished to Rural Development upon request.

You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure in the same format is required if no conflicts are anticipated.

Sample conflict of interest policies may be found at the National Council of Nonprofits website, <https://www.councilofnonprofits.org/tools-resources/conflict-ofinterest> or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at <http://www.irs.gov/pub/irs-pdf/i1023.pdf>. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

Assistance in developing a conflict of interest policy is available through Agency contracted technical assistance providers if desired,

- b) Contracts for Other Services/Lease Agreement — Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.

11. Permits—All permits involving Federal, State, and local agencies must be obtained and evidence thereof provided to USDA Rural Development prior to bidding. All permits involving Federal, State, and local agencies must be obtained and evidence thereof provided to USDA Rural Development prior to the start of the construction phase of the project.

12. Environmental Reviews— The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and or permits may apply or be required. During any stage of project development, including construction, should environmental issues develop which require mitigation measures, USDA Rural Development applicants are required to notify USDA Rural Development and comply with such mitigation measures. Failure by an applicant to implement mitigation measures may disqualify the project from Agency funding. Mitigation measures identified or prepared as part of the State Environmental Act if applicable and NEPA environmental process must be implemented. If the project or any project element deviates from or is modified from the originally approved project, additional environmental review may be required.

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- Mitigation Measure #1 — Historic Preservation: The contractor must follow and maintain a copy of the Agency's inadvertent discovery plan (attached) onsite for review as a condition of obligation in order to address any historic properties inadvertently discovered or affected during construction. Any excavation by the contractor that uncovers a historical or archaeological artifact or human remains shall be immediately reported to the owner and a representative of the Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the State Historic Preservation Officer (SHPO). During the ground disturbance phase of the project, the Catawba Indian Nation and Cherokee Nation must be notified if Native American artifacts and /or human remains are located.
- Mitigation Measure #2 — Threatened and Endangered Species/Biological Resources: In order for this project to not adversely impact species listed as Threatened or Endangered, the following measures must be taken:
 - To protect the northern long-eared bat (*Myotis septentrionalis*)'s summer roosting habitat, all tree-clearing activities must occur between October 15th and April 1st. To protect the dwarf-flowered heartleaf (*Hexastylis naniflora*), the contractor must flag areas of suitable habitat prior to construction activities and all such activities must avoid those areas. Sediment and erosion control measures will also be implemented to prevent surface run-off and sedimentation in off-site areas.
 - If the tricolored bat (*Perimyotis subflavus*) is listed as Endangered before the completion of this project, the applicant will contact the USFWS (and copy the Agency) before the effective date of the listing (typically 30 days after the listing is posted in the Federal Register) for further consultation.
 - The contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of contractor, the contractor will
 - immediately report this evidence to Owner and a representative of Agency.
 - Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the USFWS.
- Mitigation Measure #3 — Wetlands: When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert wetlands. A formal wetland delineation of the proposed project area has been completed.
- Mitigation Measure #4 — Floodplains: When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert 100-year floodplain areas (Standard Flood Hazard Area) delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, e.g., alluvial soils on NRCS Soil Survey Maps.
- Mitigation Measure #5 -- Environmental Risk Management: The proposed project does not include any land disturbing activities within the existing abandoned mill facility and storage building property (2743038327). All existing structures, grassed areas, paved parking areas, concrete building pads, or other engineered barriers will be left in place. No soils from this area are planned to be transported off-site or relocated on-site because of the proposed project. Groundwater use, either through drinking water wells or irrigation wells, is not planned for the proposed project. All water requirements for the property will be made available by the Town of Valdese public water system.

13. Architectural and Construction

- a. USDA Rural Development must approve any agreements or modifications to agreements for professional planning and design services. AIA Document "Standard Form of Agreement

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Between owner and Architect," may be used when appropriate or other Agency approved forms of agreement

- b. All construction will be completed under contract. The planning, bidding, contracting, and construction must comply with 7 CFR 1942, Subpart A, and any additional requirements of the State's law and the requirements of other County, State, or Federal agencies.
- c. The following must be reviewed and approved by USDA Rural Development in the sequence indicated:
 - i. Preliminary Architectural Report
 - ii. Agreement for Architectural Services
 - iii. Final Plans and Specifications for the project
 - iv. Draft/Construction Bid Documents, prior to Going Out to Bid
 - v. Bid Award Information.
 - vi. Executed Contract Documents
- d. Affirmative steps should be taken to assure that small, minority and/or women-owned businesses are utilized as source of supplies, equipment, construction, and services.
- e. The Plans & Specifications must be reviewed and approved, when applicable, by any regulatory or other agencies that are required to review these documents.
- f. A representative of USDA Rural Development will attend all pre-construction conferences in connection with this project. These conferences must be held prior to the issuance of the Notice to Proceed to the contractors. The applicant's architect will conduct the conference and document the discussions and agreements.

14. BUILD AMERICA, BUY AMERICA ACT (BABAA)

The borrower must comply with the provisions of the Build America, Buy America Act (the "Act"). Pub. L. No. 117-58, §§ 70901-52, enacted on November 15, 2021. The Act requires that "none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." Borrowers of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- a. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

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The BABAA requirement applies to the entirety of an infrastructure project, even if only a portion of the project is funded by Federal funds. The requirement applies to each product, manufactured good, or construction material incorporated in the project.

14.1. Definitions

Construction Materials—include an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass); • lumber; or • drywall.

Domestic Content Procurement Preference—means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

Infrastructure—includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure also includes structures, facilities, and equipment that generate, transport, and distribute energy, including electric vehicle (EV) charging stations. "Infrastructure" has a broad interpretation and the definition provided is illustrative and not exhaustive.

Manufactured Product—Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

Manufacturer's Certification—Documentation provided by a manufacturer, certifying that the items provided by manufacturer meet the domestic preference requirements of the Act.

Project—means the construction, alteration, maintenance, or repair of infrastructure in the United States.

14.2. Compliance

The borrower must comply with the provisions of the Build America, Buy America Act (BABAA). Pub. L. No. 117-58, 70901-52, enacted on November 15, 2021.

By accepting these conditions, the borrower attests that they or their designee(s) will maintain documentation for BABAA provisions to indicate compliance.

Minimum records include certifications from manufacturers, the architect/engineers, and the prime contractor. Supporting documentation includes purchasing records and notes and photos taken by the Resident Project Representative (RPR)/ Resident Inspector (RI). Documentation must be available and reviewable upon request.

14.3. Evidence Standards

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For each item to which BABAA applies (every item permanently installed on the project, except for aggregate and aggregate binding materials), a manufacturer's certification letter or other document demonstrating compliance is required. It must, at a minimum, identify the item being certified (short written description as well as part number, if applicable) and affirm that the item complies with BABAA. This document must be signed by an authorized company representative. The manufacturer may submit a letter on letterhead or provide other evidence acceptable to the Agency.

Architects and Engineers WE.)

The need to comply with BABAA will be spelled out in agreements for ME services, construction contracts, and procurement contracts. Generally, the A/E contract will include, as a basic service, obtaining and maintaining all BABAA documentation (particularly manufacturers' certifications) during construction, which shall be transferred to the borrower upon substantial completion of the project. The architect or engineer should certify in writing to the completeness and accuracy of the manufacturers' certifications.

Resident project representative (RPR) / Resident inspector (RI)

As part of their duties, RPR/RI will be instructed to verify items delivered to the site and installed are accompanied by documentation of compliance with BABAA. They will photograph items as appropriate. RPR/RI daily logs and photographs will become part of the construction record and can be used as supporting information during audits, providing evidence for items that are buried or otherwise inaccessible.

Contractors

The construction contract(s) will include a requirement to procure and install only items that comply with BABAA or are subject to a waiver approved by the Secretary of Agriculture or designee. The contractors are to provide manufacturers' certifications for all BABAA compliant items to the architect/engineer no later than with applications for payment. At substantial completion, the contractor will be required to certify that all items used on the contract complied with BABAA and that all manufacturers' certifications were provided to the architect/engineer.

14.4. Obtaining Waivers under the BABA Act

The Secretary of Agriculture or a designee may grant waivers to the procurement requirements under the following conditions:

- (1) Nonavailability. The Secretary of Agriculture or delegate determines that the iron, steel or relevant manufactured goods or construction materials are not produced or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (2) Unreasonable cost. The Secretary of Agriculture or delegate determines that the inclusion of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25%.
- (3) Inconsistent with public interest. The Secretary of Agriculture or delegate determines that the application of these restrictions would be inconsistent with the public interest.

14.5. BABAA Waivers for Rural Development

A waiver of the domestic procurement requirement for a specific product in a specific infrastructure project may be obtained upon a satisfactory showing of evidence that the waiver is warranted by a borrower and a recommendation by the Agency. Waivers of the procurement requirement are granted by the Secretary of Agriculture or by a designee of the Secretary. The requirements are posted publicly at the USDA OCFO website: USDA Buy America Waivers for Federal Financial Assistance | USDA located at <https://www.usda.gov/ocfo/federal-financial-assistancepolicy/USDABuyAmericaWaiver>

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Before submitting a request for waiver, borrower should determine whether they qualify for agency-wide public interest waivers that have already been approved by USDA. One such public interest waiver is referred to as the "De Minimis, Small Grants, and Minor Components" waiver, which has three parts. De Minimis is intended to prevent restrictions on the procurement of materials and products that represent a small portion of an infrastructure project, specifically no more than 5% of the project costs up to a maximum of \$1 from hindering the overall project. Small Grants exempts projects below the Federal Simplified Acquisition Threshold of \$250,000 (the grant section also applies to small loans and loan guarantees). The Minor Components provision of the waiver exempts miscellaneous components of iron and steel that make up no more than 5% of the total cost of an iron or steel product used in a project.

15. Electronic Funds Transfer—All loan funds will be transferred to borrowers via Electronic Funds Transfer/Automated Clearinghouse Systems (EFT/ACH). Normal transfers will be ACH, with money being placed in Borrower's account two business days after the USDA processing office approves the pay request. The applicant must submit the Electronic Funds Transfer Form containing the banking (ACH) information to the USDA Servicing Office at least 90 days prior to the date of loan closing. Failure to do so could delay loan closing.
16. Automatic Payments —The applicant is required to participate in the Pre-Authorized Debit (PAD) payment process for all new and existing indebtedness to USDA Rural Development. It will allow for the applicant's payment to be electronically debited from its account on the date their payment is due. Form RD 3550-28, "Authorization Agreement for Pre-Authorized Payments," is attached. Please fill out and sign your "Individual/Company Information" section, then have your financial institution/bank fill out the bottom portion prior to submitting the form to the USDA Rural Development service office.
17. Loan Closing—The permanent loan will be closed in accordance with USDA Rural Development instructions, the legal requirements of the USDA Office of General Counsel, and this Letter of Conditions. All applicable closing documents, including draft security documents, must be submitted to USDA Rural Development at least 90 days prior to the planned closing date. Prior to loan closing, a request for reimbursement must be submitted to USDA with all the supporting invoices.
18. Operating Budget— Prior to loan closing, USDA Rural Development must review the applicant's approved operating budget. The budget must balance and include the proposed USDA debt service and reserve obligations. Each year the USDA loan is outstanding, the applicant will adopt an annual budget which provides for the annual debt service and reserve payments.
19. System for Award Management Registration and Unique Entity ID—You as the recipient must maintain the currency of your information in the System for Award Management (SAM) until you submit the final financial report required under this award and all grant funds under this award have been disbursed or de-obligated, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term. Recipients can register on-line at (<https://www.sam.gov>) You as the recipient may not make a sub-award to an entity unless the entity has provided its Unique Entity ID from SAM.gov to you.
20. Suspension and Debarment Screening — You will be asked to provide information on the principals of your organization. Agency staff must conduct screening for suspension and debarment of the entity, as well as its principals through the Do Not Pay Portal.
 - a. Principal —
 - i. An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
 - ii. A consultant or other person, whether or not employed by the participant or paid with federal funds, who —
 1. Is in a position to handle federal funds;
 2. Is in a position to influence or control the use of those funds; or,

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Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction. (2 CFR §180.995)

21. Litigation. You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.

SECTION 11. LOAN CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

- I. Inspections— A full-time resident inspector/project manager is required during construction unless a written exception is made by the Agency upon your written request. This service is to be provided by the consulting architect or other arrangements as approved by the Agency. Prior to the pre-construction conference, a resume of qualifications of the resident inspector(s) will be submitted to the owner and Agency for review and approval. The owner will provide a letter of acceptance for all proposed observers to the architect and Agency. The inspection reports must be available to USDA, Rural Development for review at any time. These reports must be kept at the project site or borrower's office, if nearby.
2. Monthly Reporting—The applicant must monitor and provide a monthly report to USDA Rural Development on actual performance during construction for each project financed, or to be financed, in whole or in part with USDA Rural Development funds, to include Forms RD 1924-18, "Partial Payment Estimate"; RD 1924-7, "Contract Change Order"; SF-270, "Request for Advance or Reimbursement" (non-construction); SF-271 , "Outlay Report and Request for Reimbursement for Construction Programs"; and Project Daily Inspection Reports.
3. Final Inspection—A final inspection will be made by USDA Rural Development on the component USDA is financing before final payment is made.
4. Excess Funds—Any remaining funds must be utilized for approved purposes within 60 days following the final inspection or the funds will be canceled without further notification from USDA Rural Development.

SECTION 111. LOAN CONDITIONS TO BE SATISFIED AFTER PROJECT COMPLETION

- I. Financial Statements—To be submitted on an annual basis in accordance with the following:
 - a. 2 CFR Part 200, Subpart F establishes audit requirements that borrowers and grantees must follow. Borrowers and grantees who expend \$750,000 or more in Federal awards in their fiscal year, have CF loan balances totaling \$750,000 or more, or a combination of the two must submit an audit in accordance with 2 CFR 200, Subpart F.

Federal funds expended during a borrowers fiscal year: 2 CFR Part 200, Subpart F requires a borrower that expends \$750,000 or more in Federal awards in their fiscal year to submit a single or program-specific audit. A CF direct loan, guaranteed loan, and/or grant, or any combination thereof, are considered Federal awards.

Grantees: Grantees that expend \$750,000 or more in a year in Federal awards must have an audit conducted in accordance with 2 CFR Part 200, Subpart F except when the grantee elects to have a program specific audit conducted.

Prior loan and loan guarantees: 2 CFR Part 200, §200.502(b) establishes the basis for including loan and loan guarantees (loans) on the Schedule of Expenditures of Federal Awards (SEFA). The value of new loans made or received during the audit period plus the beginning of the audit

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period balance of loans from previous years for which the Federal Government imposes continuing compliance requirements must be reported on the SEFA. CF Program loans require its borrowers to meet continuing compliance requirements. Continuing compliance requirements that CF borrowers must meet include, but are not limited to, funding reserves, maintaining insurance, deposit funds in Federally insured banks, meet financial covenants, maintain sufficient debt service ratios, comply with civil rights requirements, and comply with additional requirements established as part of the loan approval process.

Borrowers and grantees must submit audits within nine months from the end of the borrower's fiscal year or 30 days after receipt from the auditor, whichever is earlier. The audited financial statements must be submitted to the Federal Audit Clearinghouse.

- b. All borrowers exempt from the audit requirements cited in I (a) above, and who do not otherwise have annual audits, will within 60 days following the end of the borrower's fiscal year furnish Rural Development with annual financial statements, consisting of a verification of the organizations, balance sheet and statement of income and expenses.

Grantees exempt from the audit requirements cited in I (a) above, and who do not otherwise have annual audits, will within 60 days following the end of the fiscal year in which any grant funds were expended furnish Rural Development with annual financial statements consisting of a verification of the organizations, balance sheet and statement of income and expenses.

The borrower/grantee may use Forms RD 442-2 "Statement of Budget, Income and Equity" and 442-3 "Balance Sheet", or similar format to provide the financial information. For borrowers using Form RD 442-2, the dual purpose of fourth quarter management reports, when required, and annual statements of income will be met with this one submission.

2. Quarterly Reports—A quarterly management report will be required for the first year for new borrowers and for all borrowers experiencing financial or management problems for one year from the date problems were noted. If the borrower's account is current at the end of the year, the processing office may waive the required reports. The recipient may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter's end.
3. Audit agreement—If you are required to obtain the services of a licensed Certified Public Accountant (CPA), you must enter into a written audit agreement with the auditor. The audit agreement may include terms and conditions that you and auditor deem appropriate.
4. Limitations of Additional Debt- You will not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the Facility, exclusive of normal maintenance, without obtaining the prior written consent of the Agency.
5. Compliance Reviews—Rural Development will be required to periodically conduct a compliance review of this facility and operation. Compliance reviews will be completed one year after loan closing and every three years thereafter. You will need to provide the local office the statistical information as requested.

The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1 191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the 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 that the recipient provides, the recipient 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.

6. Continuation of Financing Statement- At the time of renewal (every 5 years) the borrower must provide a \$10.00 (or applicable filing fee) check payable to the Secretary of State (fee subject to

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change based on current Secretary of State fee schedule) for the continuation of the Financing Statement until the loan is paid in full.

7. Security Inspections—Rural Development is required to conduct an inspection of the facility a minimum of once every three years. The recipient must participate in these inspections and provide the required information.
8. Graduation—You may be required to refinance (graduate) the unpaid balance of the RD loan, in whole or in part, if at any time RD determines your entity is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time, the recipient will be requested to refinance. The ability to refinance will be assessed every other year for those loans that are five years old or older.
9. Prepayment and Extra Payments - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

Prepayments of scheduled installments, or any portion thereof may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.

10. Financial Covenants

- a) Beginning in the First Full Year of 2026, a debt service coverage ratio (DSCR) of a least 1.10 will be maintained with debt service to include the loan payments plus all required reserves. If the DSCR drops below 1.10 for any audited year, or quarterly financial report, then an independent management consultant shall be engaged at the expense of the Applicant to prepare a fiscal strategy report that documents how the debt service requirement will be met. This must be provided to the Agency no later than 90 days after any quarter in which the DSCR drops below 1.10.

Debt service coverage is defined as net income plus depreciation and amortization expense plus interest expense on structured debt divided by the sum of all structured debt payments including required reserve payments still due.

DISCUSSION: Councilwoman Hildebran asked what the timeline would be for the loan closing. Mr. Lattanzi estimates an 18-24 month process for construction. After the construction is completed, the USDA will officially close the loan, pay off the construction loan, and then the permanent loan with USDA begins. Mr. Lattanzi explained that the first payment would not be due until one year after the loan's closing date. Councilman Mears asked if the interest rates would possibly go down. Mr. Lattanzi explained that USDA looks at the interest rate twice, one now in the process and the second at the closing. If the rate does go down at the time of closing, the Town Manager will have to write a letter to the USDA asking for the lower rate. Mr. Lattanzi shared that accepting this letter does not obligate the Town; the official approval would not be until construction was done at the closing. Councilwoman Hildebran noticed that everything is American-made and wondered if that was new. Mr. Lattanzi shared that a new regulation was passed about two years ago but was delayed until February 2023. Councilwoman Hildebran is pleased that the Town great staff in place to work through this process. Town Manager Seth Eckard will provide Council weekly/biweekly updates once the project starts. Mr. Lattanzi noted that all Town business would be filtered through the Town Manager.

APPROVED LOAN RESOLUTION: Mr. Lattanzi asked Mayor Watts to read the Loan Resolution to Council.

BE IT RESOLVED

That the Town Counsel of the Town of Valdese accepts the conditions set forth in a Letter of Conditions dated March 16, 2023, and the "Loan Resolution" dated March 16, 2023; that the Town Council adopt the Operating Budget for the Town of Valdese that will meet all budgeted operations, replacement, and debt service expenses associated with the ~~Singer Park Project~~ Public Safety Project.

That the Town Manager and Town Clerk be authorized to execute all forms necessary to obtain a loan from Rural Development, but not limited to the following forms:

- Form RD 1942-46 Letter of Intent to Meet Conditions
- Form RD 1940-1 Request For Obligations of Funds
- Form RD 1942-47 Loan Resolution
- Form RD 400-1 Equal Opportunity Agreement
- Form RD 400-4 Assurance Agreement
- Form RD 442-7 Operating Budget

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

That the Town Manager 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.

The Town Manager 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 Town Council meeting held on March 16, 2023

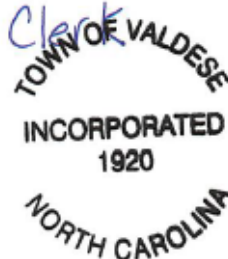
MOTION MADE BY: Timothy Barus and
SECONDED BY: Timothy Skidmore THAT THE RESOLUTION
BE APPROVED.

MOTION PASSED 4 FOR AND 0 AGAINST.

BY: Town of Valdese

Attest: Jessica Lail
(Date) 3/16/2023

BY: Jessica Lail Town Clerk
(TYPE NAME AND TITLE)



Councilman Barus made a motion to accept the resolution, seconded by Councilman Skidmore. The vote was unanimous.

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After a brief discussion on the condition of the current public safety building, the special called meeting was adjourned.

ADJOURNMENT: At 11:24 a.m., Councilwoman Hildebran made a motion to adjourn, seconded by Councilman Barus. The vote was unanimous.

The next meeting is a regularly scheduled meeting on Monday, April 3, 2023, at 6:00 p.m., Valdese Town Hall.

Town Clerk

Mayor

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