



United States Department of Agriculture

November 4, 2022

Ann English Chairman Board of Supervisors
Cochise County
1415 West Melody Lane, Bldg. G
Bisbee, AZ 85603-3039

Subject: Letter of Conditions – Animal Shelter Project, Bisbee, AZ

Dear Ann English

This letter establishes conditions that must be understood and 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.

The actual agency that will make the grant and will provide the financial assistance is the United States Department of Agriculture Rural Housing Service (RHS). Cochise County, Arizona will herein be referred to as the "Applicant".

This letter is not considered as a grant approval or as a representation as to the availability of funds. The docket may be completed on the basis of an RHS grant not to exceed \$1,100,000.00 from Rural Development and commitment from the Applicant in the amount of at least \$1,981,250.00.

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

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.

All projects must be completed, and all funds disbursed within five years of obligation. 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 beyond your control.

Rural Development Phoenix Arizona Office
230 N 1st Street, Ste 206 • Phoenix, Arizona 85003
Voice 602.280.8761 • Fax 855.699.8036

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

a.	<u>Project Cost</u>	<u>Total</u>	<u>USDA Grant</u>	<u>Applicant Injection</u>
	Property Renovation	\$1,100,000	\$1,100,000.00	
	Applicant contribution	\$1,981,250.00		\$1,981,250.00
	<u>TOTAL</u>	<u>\$3,081,250.00</u>		

b.	<u>Source of Funds</u>	
	Applicant Injection (cost share):	\$1,981,250.00
	USDA Grant:	<u>\$1,100,000.00</u>
	TOTAL:	\$3,081,250.00

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.

Section I of the attached conditions (Items 1—11) must be satisfied prior to grant closing or before construction begins, whichever occurs first, in either case not later than twelve (12) months from the date of this letter. **In the event the project has not advanced to the point of construction within twelve (12) months, USDA Rural Development reserves the right to discontinue the processing of the application.**

In addition to the conditions in Sections I-III, the applicant must fully comply with all requirements on Form RD 3570-3, Community Facilities Grant Agreement. The Agency reserves the right to cancel funds if the applicant does not fully comply with all requirements as presented or subsequently modified, as needed.

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

Sincerely,

Name: Debra Stewart
Title: Program Director (Acting)

cc: Community Programs Director, USDA Rural Development
(Legal Counsel)
(Architect)

PROJECT FUNDING – The project funding is planned in the form of a Rural Development grant from the following sources and amounts.

<u>Project Funding Source</u>	<u>Funding Amount</u>
Agency Grant Renovations	\$1,100,000.00
Applicant Facility Development Costs	\$1,981,250.00 (Est.)
Total Project Funding (All Sources):	\$3,081,250.00 (Est.)

ATTACHMENT TO LETTER OF CONDITIONS

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

1. **Certifications Required for Obligation (if applicable)** – Rural Development has identified the following documents which must be executed prior to obligation:
 - a. Form SF-LLL, “Disclosure Form to Report Lobbying,” if applicable, link available here: <https://www.grants.gov/forms/sf-424-family.html>.
 - b. Form RD 400-1, “Equal Opportunity Agreement,” link available here: <https://forms.sc.egov.usda.gov>.
 - c. Form RD 400-4, “Assurance Agreement,” link available here: <https://forms.sc.egov.usda.gov>.

2. **Disbursement of Funds**
 - a. The applicant will provide evidence that funds from other sources will be made available for the project cost in the amount of \$1,981,250.00. This evidence should include a copy of the loan/grant award that addresses how funds will be disbursed.
 - b. 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. After providing for all authorized costs, any remaining RHS project funds will be considered RHS grant funds and refunded to RHS. For CF Direct Loan and Grant combination projects, if the amount of unused RHS project funds exceeds the RHS grant, that part would be RHS loan funds.
 - c. Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. Security Requirements

- a. The applicant will be required to complete and execute Form RD 3570-03, "Community Facilities Grant Agreement" before grant funds are disbursed.
- b. Prior to any disbursement of funds, a Notice of Federal Interest must be recorded in the official real property records for the jurisdiction where the facility is or will be located. The applicant must provide evidence of the recording. Federal interest cannot be defeated by a grantee's failure to file a Notice of Federal Interest.
- c. The grantee understands that any property improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 in effect at this time and as may be subsequently modified.
- d. The grantee understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 in effect at this time and as may be subsequently modified.
- e. In accordance with 2 CFR 200.330, the grantee understands that it must submit regular reports on the status of real property in which the Federal Government retains an interest. Reports shall be submitted annually for the first three years of the award and every five years thereafter on SF-429 Real Property Status Report, or similar format.

4. Insurance and Bonding Requirements

The applicant must provide evidence of adequate fidelity bond insurance by grant 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 grant. 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 architect, 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.
- b. Workers' Compensation Insurance—The applicant will be required to carry workers' compensation insurance for all employees in accordance with state law. Provide USDA Rural Development with proof of coverage.
- c. General liability and vehicular coverage must be maintained—Provide USDA Rural Development with proof of coverage.

5. **Civil Rights & Equal Opportunity**— The grantee 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. **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.
 - b. 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.
 - c. The applicant is subject to a post-grant closing civil rights compliance review by USDA Rural Development utilizing Form RD 400-8, “Compliance Review.”
 - d. As a recipient of Rural Development funding, you are required to post a copy of the Non-Discrimination 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) 632-9992 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.”

6. **Written Agreements for Professional Services**

- a. The legal service agreement submitted by (Legal Representative) is satisfactory to USDA Rural Development.
- b. An Agreement for Architectural Services with (Architect) will have to be approved by USDA Rural Development.

7. **Land and Rights-of-Way (if applicable)**—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 plan. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation and Real Property Acquisition Act. The following forms may be used for these purposes:
 - a. Form RD 442-20, "Right-of-Way Easement"
 - b. Form RD 442-21, "Right-of-Way Certificate" (with map attached)
 - c. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way"

8. **Permits (if applicable)**—All permits involving Federal, State, and local agencies must be obtained and evidence thereof provided to USDA Rural Development prior to bidding. (For Design/Build Projects - 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.)

9. **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 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.

10. **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 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 1942.9, 1942.18, and any additional requirements of state 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.
11. **Electronic Funds Transfer**—All grant funds will be transferred to grantees via Electronic Funds Transfer/Automated Clearinghouse Systems (EFT/ACH). Normal transfers will be ACH, with money being placed in the grantees 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 45 days prior to the date of grant closing. Failure to do so could delay grant closing.

SECTION II. GRANT CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

1. **Disbursement of Grant Funds**—USDA Rural Development funds will be disbursed as they are needed in the amount(s) necessary to cover the Rural Development proportionate share of obligation due and payable to the Grantee.
2. **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.
3. **Monthly Reporting**— The applicant must monitor and provide a monthly report to USDA Rural Development on actual performance for each project financed, or to be financed, in whole or in part with USDA Rural Development funds. For construction projects, include Forms RD 1924-18, "Partial Payment Estimate" or similar format.
4. **Final Inspection**—A final inspection will be made by USDA Rural Development on the component USDA is financing before final payment is made.
5. **Excess Funds**—Any remaining funds must be utilized for approved purposes within 120 days following the final inspection or the funds will be canceled without further notification from USDA Rural Development.

SECTION III. GRANT CONDITIONS TO BE SATISFIED AFTER PROJECT COMPLETION

1. **Financial Statements**—To be submitted on an annual basis in accordance with the following:

An annual audit under the Single Audit Act is required if the recipient expends \$750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

All audits are to be performed in accordance with 2 CFR Part 200, Subpart F, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law and must be submitted within 9 months of the recipients fiscal year end.

- a. For local governments and Indian tribes, an audit in accordance with State or local law or regulation or regulatory agency requirements must be submitted when you expend less than \$750,000 in Federal financial assistance per fiscal year. These audits shall be submitted to USDA no later than 150 days after the end of the borrower's fiscal year.
 - b. All borrowers exempt from USDA audit requirements and who do not otherwise have annual audits, will within 60 days following the end of the borrower's fiscal year furnish USDA with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expenses. The recipient may use Form RD 442-2, "Statement of Budget, Income and Equity," and 442-3, "Balance Sheet," or similar format to provide the financial information.
2. **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.