



U.S. DEPARTMENT OF COMMERCE
Economic Development Administration
CHICAGO REGIONAL OFFICE
111 N. CANAL ST., SUITE 855
CHICAGO, ILLINOIS 60606-7208

SEP 11 2009

In reply refer to:
Investment No.: 06-01-05479

Ms. Mary S. Nimm
Coordinator
Whitewater Community Development Authority
312 West Whitewater Street
Whitewater, Wisconsin 53190-0178

Mr. Kevin M. Brunner
City Manager
City of Whitewater
312 West Whitewater Street
Whitewater, Wisconsin 53190-0178

Ms. Denise Ehlen
Authorized Institutional Official for Grants and Contracts
University of Wisconsin - Whitewater
Research and Sponsored Programs, 2237 Anderson Library
800 West Main Street
Whitewater, Wisconsin 53190-0178

Dear Ms. Nimm, Mr. Brunner, and Ms. Ehlen:

We are pleased to inform you that the Economic Development Administration (EDA) has approved a Financial Assistance Award in an amount not to exceed \$4,740,809 in response to your application for public works assistance for construction of the Whitewater University Technology Park and Innovation Center.

The total Project cost is \$11,051,728 which is based on the line item estimates contained in Attachment No.1.

Enclosed are five signed copies of the Financial Assistance Award. Your agreement to the terms and conditions of the Award should be indicated by the signature of your principal officials on all five copies of the Award. Two of the executed copies should be returned to the Regional Director, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606-7208. If not signed and returned within 30 days of receipt, the Grants Officer may declare the Award null and void.

You are cautioned not to make any commitments in reliance on this Award, nor to enter into negotiations relative hereto, until you have carefully reviewed the terms and conditions and have determined that you are in compliance or that you can comply therewith. Any commitments or undertakings entered into prior to obtaining the approval of the Government in accordance with its regulations and requirements will be at your own risk.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Robert Sawyer".

C. Robert Sawyer
Regional Director

Enclosures

FINANCIAL ASSISTANCE AWARD

AWARD PERIOD
From Date of approval to 25 months
after approval

RECIPIENT NAME Whitewater Community Development Authority / City of Whitewater /
University of Wisconsin - Whitewater

AWARD NUMBER
060105479

STREET ADDRESS 312 W. Whitewater Street/312 W Whitewater Street / Research and
Sponsored Programs, 2237 Anderson Library

FEDERAL SHARE OF COST
\$ 4,740,809

CITY, STATE, ZIP CODE Whitewater, Wisconsin 53190-0178 / Whitewater, Wisconsin 53190-
0178 / Whitewater, Wisconsin 53190-0178

RECIPIENT SHARE OF COST
\$ 6,310,919

AUTHORITY Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*), as amended,
including the comprehensive amendments made by the Economic Development Administration Reauthorization
Act of 2004 (P.L. 108-373)

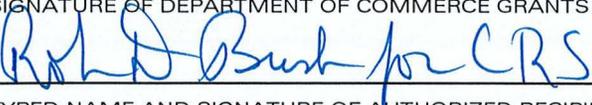
TOTAL ESTIMATED COST
\$11,051,728

CFDA NO. AND PROJECT TITLE 11.300 Whitewater University Technology Park and Innovation Center

BUREAU	FUND	FCFY	PROJECT-TASK	ORGANIZATION	OBJECT CLASS
EDA	40	09	0605479-00	06	41102200

This Award approved by the Grants Officer is issued in quintuplicate and constitutes an obligation of Federal funding. By signing the five documents, the Recipient agrees to comply with the Award provisions checked below and some of which are attached. The other applicable requirements are available from the Office of Management and Budget's, the Department of Commerce's and the Government Printing Office's websites. Upon acceptance by the Recipient, two signed Award documents shall be returned to the Grants Officer and three documents shall be retained by the Recipient. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally terminate this Award.

- Department of Commerce Financial Assistance Standard Terms and Conditions
- Special Award Conditions
- Line Item Budget
- 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations
- 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments
- OMB Circular A-21, Cost Principles for Educational Institutions
- OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- OMB Circular A-122, Cost Principles for Nonprofit Organizations
- 48 CFR Part 31, Contract Cost Principles and Procedures
- OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations
- Other(s): EDA Standard Terms and Conditions - Construction Program, dated October 2007, as amended on December 13, 2007

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER 	TITLE Regional Director	DATE 9/11/09
TYPED NAME AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL	TITLE	DATE
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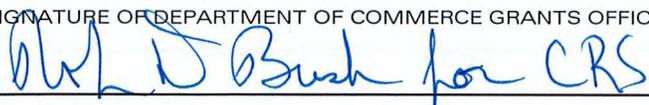
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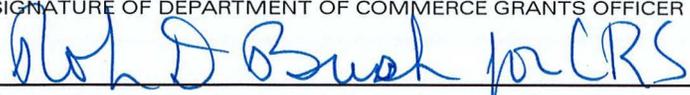
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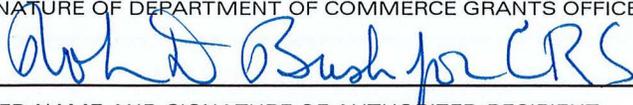
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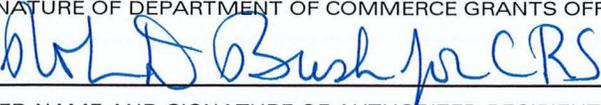
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DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE
CONTACTS AND INSTRUCTIONS

A. AWARD NUMBER AND PROJECT DESCRIPTION

This Award Number 06-01-05479, supports the work described in the Recipient's application for Public Works Assistance received by EDA on March 16, 2009, as amended. Where the terms of this award and the application differ, the terms of the award shall prevail.

B. AWARD CONTACTS

1. The Recipient Contact's name, address and telephone number are:

Whitewater Community Development Authority
312 West Whitewater Street
Whitewater, Wisconsin 53190-0178
Ms. Mary S. Nimm
(262) 473-0525

City of Whitewater
312 West Whitewater Street
Whitewater, Wisconsin 53190-0178
Ms. Mary S. Nimm
(262) 473-0525

University of Wisconsin - Whitewater
Research and Sponsored Programs, 2237 Anderson Library
800 West Main Street
Whitewater, Wisconsin 53190-0178
Ms. Mary S. Nimm
(262) 473-0525

2. The Federal Program Officer is responsible for the programmatic, technical and/or scientific aspects of this award. The Federal Program Officer's name, address and telephone number are:

Jack Price, Area Director, Northern Tier Team
Economic Development Administration
Chicago Regional Office
111 North Canal Street, Suite 855
Chicago, Illinois 60606-7208
(312) 353-1919, Ext. 159

3. The Grants Officer is responsible for all administrative aspects of this award and is authorized to award, amend, suspend, and terminate financial assistance awards. Grants Officer's name, address, and telephone number are:

C. Robert Sawyer, Regional Director
Economic Development Administration
Chicago Regional Office
111 North Canal Street, Suite 855
Chicago, Illinois 60606-7208
(312) 353-7706, Ext. 121

4. The Economic Development Specialist is responsible for administrative coordination and liaison with the Recipient. This individual receives appropriate material from the Federal Program Officer and/or the Recipient for administrative processing. The Economic Development Specialist's name, and telephone number are:

Wayne Schroeder
(312) 353-8580, Ext. 147

C. REFUND CHECKS

The Recipient shall submit all refund checks to the Department of Commerce (DoC) accounting office. Please contact the Economic Development Specialist identified above for specific details on how to process a refund check.

Form ED-508
(Rev. 4-94)

U. S. DEPARTMENT OF COMMERCE
Economic Development Administration
PUBLIC WORKS PROJECT COST CLASSIFICATIONS/
ECONOMIC ADJUSTMENT ASSISTANCE CONSTRUCTION COMPONENTS

Attachment No. 1

EDA AWARD No. 06-01-05479

State Wisconsin

COUNTY Walworth

<u>COST CLASSIFICATION</u>	<u>PROPOSED</u>	<u>APPROVED</u>
Administration and legal expenses	\$ 502,000	\$ 40,000
Land, structures, rights-of-way, appraisals, etc.		
Relocation expenses and payments		100
Architectural and engineering fees	516,147	623,103
Other architectural and engineering fees	454,155	53,929
Project inspection fees	454,360	146,059
Site Work	2,792,063	
Demolition and removal		
Construction	4,339,530	9,598,589
Equipment	319,000	85,120
Miscellaneous		25,000
Contingencies	331,852	479,828
TOTAL PROJECT COSTS	\$ 9,709,107	\$ 11,051,728

Remarks:

1. Admin & legal expenses reduced by removing non-construction costs
2. Relocation expenses and payments line established for costs incidental to transfer of title
3. Architectural and engineering fees, Other architectural and engineering fees, and project inspection fees adjusted per revised estimates.
4. Site work reclassified to construction per revised cost estimates.
5. Construction cost per revised cost estimates.
6. Miscellaneous line added for cost of LEED Certification.
7. Contingencies adjusted per revised cost estimates, reduced by \$100 for cost incidental to transfer of title.
8. Green Building related costs of \$442,260 included in construction line item, and \$51,800 in Other architectural and engineering fees.

U.S. DEPARTMENT OF COMMERCE
Economic Development Administration

Special Award Conditions of Financial Assistance Award
for Public Works and Development Facilities
and Economic Adjustment Assistance Construction Components
under Section 201 and 209 of the
Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*), as amended,
including the comprehensive amendments made by the
Economic Development Administration Reauthorization Act of 2004 (P.L. 108-373)

Award Number: 06-01-05479

Recipient: Whitewater Community Development Authority
Address: 312 West Whitewater Street
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Recipient: City of Whitewater
Address: 312 West Whitewater Street
Whitewater, Wisconsin 53190-0178

Recipient: University of Wisconsin - Whitewater
Address: Research and Sponsored Programs, 2237 Anderson Library
800 West Main Street
Whitewater, Wisconsin 53190-0178

1. PROJECT DESCRIPTION AND SCOPE: For purposes of this grant award, the Recipient acknowledges the following as the Project Description and Scope:

This investment will provide water, sewer, storm sewer and street improvements to serve the 125 acre Whitewater University Technology Park, a multi-use trail through the Park, extension of Starin Road to improve access between the University Campus and the Technology Park, and construction of a 37,200 square foot Innovation Center, which will serve as a training center and incubator. Both the Technology Park and the Innovation Center will be owned and operated by the Whitewater Community Development Authority. The design of the two story building will incorporate green design features leading to LEED certification.

2. PROJECT DEVELOPMENT TIME SCHEDULE: The Recipient agrees to the following Project development time schedule:

Time allowed from the date of approval of grant award for:

Start of Construction ----- 9 months
Construction Period -----12 months

Project Closeout - All Project closeout documents including final financial information and any required program reports shall be submitted to the Government not more than ninety days after the date the Recipient accepts the completed Project from the Contractor(s).

The Recipient shall pursue diligently the development of the Project so as to ensure completion of the Project and submission of closeout documents within this time schedule. The Recipient shall submit a detailed Project timeline at the construction management conference (CMC) or at such other time specified by the Government. The Project timeline, in such form and substance determined by the Government in accordance with information provided in the application for this Award, shall provide a specific time frame for the conduct of all activities in sufficient detail to ensure that construction will commence at or before the allowable time specified hereinabove. The Project timeline must be approved by EDA and agreed to by the Recipient at the CMC or at such alternate time as determined by EDA. Moreover, the Recipient shall notify the Government in writing of any event which could delay substantially the achievement of the Project within prescribed time limits. The Recipient further acknowledges that failure to meet the development time schedule may result in the Government's taking action to terminate the Award in accordance with the regulations set forth at 15 CFR 24.43 (53 Fed. Reg. 8048-9, 8102, March 11, 1988).

- 3. GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION: Department of Labor requirements set forth in 41 CFR 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all Federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 CFR 60-4 from contractors and subcontractors employed in the completion of this Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 CFR 60-4. The goal for the participation of women in each trade area shall be as follows:

From April 1, 1981, until further notice: 6.9 percent.

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 CFR 60-4.6, or any other successor regulations, shall hereafter be incorporated by reference into these Special Conditions.

The goal for the participation of minorities in the trade area shall be as follows until further notice: 7.0 percent.

Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall

include the "Standard Federal Equal Opportunity Construction Contract Specifications" (or cause them to be included, if appropriate) in all Federally assisted contracts and subcontracts of this Project. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 CFR 60-4.6.

4. **LOCAL SHARE:** In affirming this Award, the Recipient certifies that the non-federal share of Project costs is committed and is available as needed for the Project, that the non-federal share is from sources which can be used as match for the EDA Project, and that the non-federal share will not affect ownership of, or title to, the Project facilities. The Recipient further acknowledges that, prior to award of any construction contracts, it will be required to provide evidence satisfactory to the Government that all funds necessary to complete the Project are available.
5. **IMPLEMENTATION SCHEDULE:** In keeping with the need for prudent grant administration, the time permitted for full disbursement of the grant funds may not extend beyond five years from the date of award.
6. **EVIDENCE OF TITLE:** For purposes of Standard Term and Condition M.3.a., evidence of title to the property necessary for this Project shall be provided to EDA prior to advertising for bids for this Project. Such evidence must include evidence of title to the 125 acres being developed under this award.
7. **USEFUL LIFE:** The useful life of this Project for purposes including, but not limited to, establishing a first priority unsubordinated lien required by paragraph M.3.b. of the Standard Terms and Conditions, is hereby determined to be 20 years from the date of Project completion.
8. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act of 1993 (GPRA). Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA will advise Recipients in writing within a reasonable period prior to the time of submission of the reports, and in the event that there are any modifications in the performance measures.
9. **REAFFIRMATION OF APPLICATION:** Recipient(s) acknowledges that Recipient's application for this Award may have been submitted to the Government and signed by Recipient(s), or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient(s) submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, Recipient(s) hereby reaffirms and states that a) all data in said application and documents submitted with the application are true and correct as of the date of this Award

and were true and correct as of the date of said submission; b) said application was as of the date of this Award and as of the date of said application duly authorized as required by local law by the governing body of the Recipient(s); and c) Recipient(s) confirms that it will comply with the Assurances and Certifications submitted with or attached to said application. The term application includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of the initial application.

10. ENVIRONMENTAL: Prior to awarding of construction contracts for the EDA Project, the Recipient shall provide evidence satisfactory to the Government that it has obtained a Section 404 permit for this Project from the U.S. Army Corps of Engineers or that none is required. The Recipient shall comply with any conditions of said permit.
11. LIEN ON MACHINERY AND EQUIPMENT: The use and disposition of the machinery and equipment acquired in whole or in part with the funds made available through this Financial Assistance Award shall be in accordance with the Property Management Standards set forth in 15 CFR Part 24 or 15 CFR Part 14, as applicable.

Prior to disbursement of funds by EDA, the Recipient shall grant to EDA a first priority security interest in the machinery and equipment acquired in whole or in part with funds made available through this Award. This first priority security interest must be perfected in accordance with local law. The Government will, in its sole discretion determine whether the security interest which has been granted to the Government is satisfactory, and it may require an opinion of counsel for the Recipient to substantiate that the security interest has been properly recorded and a valid security interest has been created. The Recipient must maintain EDA's security interest in accordance with local law for the useful life of the machinery and equipment.

12. ARCHITECT/ENGINEER AGREEMENT: Prior to the disbursement of funds by EDA, the Recipient shall submit to the Government for approval an Architect/Engineer agreement that meets the requirements of Department of Commerce Regulations at 15 CFR 24.36 or 15 CFR 14, as applicable. The fees for basic Architect/Engineer services shall be a lump sum or an agreed maximum and no part of the fees for other services shall be based upon a cost-plus-a-percentage-of-cost or a cost using a multiplier.
13. EDA PROJECT SIGN: The Recipient must erect and maintain in good condition and repair, a sign or signs, in accordance with EDA's specifications. Prior to on-site construction, a reproducible photograph of the sign must be submitted to EDA along with evidence that the sign is located at the project site.
14. GLOBAL CLIMATE CHANGE MITIGATION INCENTIVE FUND-LEED Green Building: Before the final disbursement of Global Climate Change Mitigation Incentive

Fund financial assistance by the Government, the Recipient shall submit to the Government evidence of final Leadership in Energy and Environmental Design (LEED) certification from the United States Green Building Council (“USGBC”) and invoices from design and construction service providers clearly delineating costs related to obtaining LEED certification. Reimbursement also may be made for the cost of obtaining LEED certification by USGBC. The Recipient shall be reimbursed for actual costs incurred not to exceed the amount approved for LEED certification in the originally approved budget or amended investment budget.

15. **LEAD ENTITY AGREEMENT:** Prior to the initiation of any Project activities, the Recipient shall submit an agreement, satisfactory to the Government, that one Recipient has been designated the lead agent to act with full legal authority to bind the other Recipient and to act as official representative of the Recipients in connection with all actions necessary to complete the Project.

16. **INDIVIDUAL BACKGROUND SCREENING:**
 1. **Name Check Requirement; Exemptions.** An individual background screening will be performed by the OIG on key individuals of organizational units associated with the application at the beginning of the Award and at three year intervals thereafter for the life of the Award unless (a) the proposed Award amount is \$100,000 or less; (b) applicants are accredited colleges and universities; (c) applicants are units of a State or local government; (d) applicants are economic development districts designated by EDA, including those entities whose designations are pending, and councils of governments; or (e) the key individual(s) is/are elected officials of State and local governments who are serving in capacities other than their elected capacities when applying for assistance. In addition, if there is a change in the status of the organization and/or key individuals, or the program officer, OIG, or Grants Officer believes there is good reason to conduct a review sooner, a background screening may be required more frequently. Individual background screenings are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges (e.g., fraud, theft, perjury), or other matters which significantly reflect on the applicant’s business integrity, responsibility, or financial integrity. Key individuals of non-exempt organizations associated with this Award shall complete Form CD-346, “Applicant for Funding Assistance.” An original signature is required. The form is to be submitted to the Grants Specialist named in the Award document within 30 days of receipt of this Award.

 2. **Results of Individual Background Screening.** EDA reserves the right to take any of the actions described in section H.3. if any of the following occurs as a result of the individual background screening:
 - a. A key individual fails to submit the required Form CD-346, “Applicant for Funding Assistance,” within 30 days of receipt of this Award;

- b. A key individual makes a false statement or omits a material fact on the Form CD-346; or
- c. The individual background screening reveals significant adverse findings that reflect on the business integrity or responsibility of the Recipient and/or key individual.

3. Action(s) Taken as a Result of Individual Background Screening. If any situation noted in H.2. occurs, the Department, at its discretion, may take one or more of the following actions:

- a. Consider suspension/termination of an Award immediately for cause;
- b. Require the removal of any key individual from association with management and/or implementation of the Award and require Grants Officer approval of personnel replacements;
- c. Require the Recipient to make other changes as appropriate; and/or
- d. Designate the Recipient as high risk and amend the Award to assign special award conditions, as appropriate, including making changes with respect to the method of payment and/or financial reporting requirements.

**U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

Title II
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components



OCTOBER 2007
(as amended on December 13, 2007)



**U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

**Title II
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components**

PREFACE	1
A. General Requirements and Responsibilities.....	2
1. Purpose	2
2. Authority and Policies	2
3. Definitions	3
4. Grant Recipient as Trustee	3
B. Financial Requirements.....	3
1. Financial Reports.....	3
2. Disbursement Requests.....	4
3. Federal and Non-Federal Cost Sharing.....	4
4. Budget Revisions and Transfers of Funds Among Budget Categories.....	5
5. Indirect Costs.....	6
6. Incurring Costs Prior to Award	7
7. Incurring Costs or Obligating Funds Beyond the Project Expiration Date.....	7
8. Time Extensions.....	8
9. Tax Refunds	8
10. Program Income	9
C. Programmatic Requirements.....	9
1. Quarterly Reporting.....	9
2. Interim Reporting	9
3. Government Performance and Results Act Reporting	10
4. Unsatisfactory Performance	10
5. Programmatic Changes.....	10
6. Other Federal Awards with Similar Programmatic Activities	10
7. Noncompliance with Award Provisions.....	10
8. Use by Beneficiary	11
9. Prohibition Against Assignment by the Recipient.....	11
10. Disclaimer Provisions; Hold Harmless Requirement.....	11

11. Prohibition on Use of Third Parties to Secure Award.....	12
12. Payment of Attorneys' or Consultants' Fees.....	12
13. Commencement of Construction.....	12
14. Efficient Administration of Project.....	12
15. Conflicts-of-Interest Rules.....	13
16. Record-Keeping Requirements.....	13
17. Termination Actions.....	14
18. Project Closeout Procedures.....	14
D. Additional Requirements Relating to Construction Projects.....	16
1. The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141-3144, 3146, 3147; 42 U.S.C. § 3212).....	16
2. The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701 – 3708)	16
3. The National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 <i>et seq.</i>), and the Advisory Council on Historic Preservation Guidelines.....	16
4. The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 <i>et seq.</i>).....	16
5. Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 <i>et seq.</i>).....	16
6. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 <i>et seq.</i>).....	16
7. The Energy Conservation and Production Act (42 U.S.C. § 6834 <i>et seq.</i>).....	16
8. Requirements for New Construction.....	17
E. Non-Discrimination Requirements.....	17
1. Statutory Provisions.....	17
2. Other Provisions.....	17
3. Title VII Exemption for Religious Organizations.....	18
F. Audits.....	18
1. Requirement to Have an OMB Circular A-133 Audit Performed; Organization-Wide, Program-Specific, and Project Audits.....	18
2. Requirement to Submit Audit to EDA.....	19
3. Audit Resolution Process.....	19
G. Debts.....	20
1. Payment of Debts Owed the Federal Government.....	20
2. Late Payment Charges.....	20
3. Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees.....	20
4. Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.....	21
H. Name Check Reviews.....	21
1. Name Check Requirement.....	21
2. Exemptions.....	21

3. Results of Name Checks.....	21
4. Action(s) Taken as a Result of Name Check Review	21
I. Governmentwide Debarment and Suspension (Non-procurement)	22
J. Drug-free Workplace.....	22
K. Lobbying Restrictions.	22
1. Statutory Provisions	22
2. Disclosure of Lobbying Activities	22
3. Special Provisions Relating to Indian Tribes	22
L. Codes of Conduct and Subaward, Contract, and Subcontract Provisions.....	22
1. Code of Conduct for Recipients	22
2. Applicability of Award Provisions to Subrecipients.....	23
3. Competition and Codes of Conduct for Subawards	23
4. Applicability of Provisions to Subawards, Contracts, and Subcontracts.....	24
5. Minority-Owned Business Enterprise	24
6. Subaward and/or Contract to a Federal Agency.....	25
7. EDA Contracting Provisions for Construction Projects.....	25
M. Property.....	25
1. Standards	25
2. Retention of Title.....	25
3. EDA's Interest in Award Property	25
4. Insurance and Bonding.....	27
5. Leasing Restrictions	27
6. Use of Eminent Domain Prohibited	27
7. Disposal of Real Property.....	28
N. Environmental Requirements.....	28
1. The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 <i>et seq.</i>)	28
2. Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371 – 4375)	29
3. Executive Order 12088, " <i>Federal Compliance with Pollution Control Standards,</i> " (43 Fed. Reg. 47707, October 13, 1978), as amended	29
4. Executive Order 11514, " <i>Protection and Enhancement of Environmental Quality,</i> " (35 Fed. Reg. 4247, March 5, 1970), as amended.....	29
5. Executive Order 11593, " <i>Protection and Enhancement of the Cultural Environment,</i> " (36 Fed. Reg. 8921, May 13, 1971), as amended.....	29
6. Clean Air Act, Clean Water Act, and Executive Order 11738.....	29
7. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f <i>et seq.</i>).....	29
8. Executive Order 11988, " <i>Floodplain Management,</i> " (42 Fed. Reg. 26951, May 24, 1977) and Executive Order 11990, " <i>Protection of Wetlands,</i> " (42 Fed. Reg. 26961, May 24, 1977).....	29

9. The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4002 <i>et seq.</i>), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration (“FEMA”) or by EDA	29
10. The Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 <i>et seq.</i>)	30
11. The Coastal Barrier Resources Act, as amended, (16 U.S.C. § 3501 <i>et seq.</i>).....	30
12. The Wild and Scenic Rivers Act, as amended, (16 U.S.C. § 1271 <i>et seq.</i>).....	30
13. The Fish and Wildlife Coordination Act, as amended, (16 U.S.C. § 661 <i>et seq.</i>)	30
14. The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 <i>et seq.</i>)	30
15. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”) (42 U.S.C. § 9601 <i>et seq.</i>), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9662 <i>et seq.</i>).....	30
16. The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901 <i>et seq.</i>)..	30
17. Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 Fed. Reg. 7629, February 11, 1994)	30
18. The Lead-Based Paint Poisoning Prevention Act, as amended, (42 U.S.C. § 4821 <i>et seq.</i>).....	30
19. The Farmland Protection Policy Act, as amended, (7 U.S.C. §§ 4201 – 4209).....	30
20. The Noise Control Act of 1972, as amended, (42 U.S.C. § 4901 <i>et seq.</i>).....	31
21. The Native American Graves Protection and Repatriation Act, as amended, (25 U.S.C. § 3001 <i>et seq.</i>)	31
O. Compliance with Environmental Requirements.....	31
P. Miscellaneous Requirements.....	31
1. Criminal and Prohibited Activities.....	31
2. Foreign Travel.....	31
3. American-Made Equipment and Products	32
4. Intellectual Property Rights.....	32
5. Increasing Seat Belt Use in the United States	34
6. Research Involving Human Subjects.....	34
7. Federal Employee Expenses.....	35
8. Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally-Funded Construction Projects.....	35
9. Minority Serving Institutions (“MSIs”) Initiative	35
10. Research Misconduct	35
11. Publications, Videos, and Acknowledgment of Sponsorship.....	36
12. Care and Use of Live Vertebrate Animals	36
13. Homeland Security Directive	36
14. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.....	37
APPENDIX	38

PREFACE

Terms and Conditions of the Award. This financial assistance award on Form CD-450 (this "Award"), executed by the Economic Development Administration ("EDA") and the Recipient, together with the EDA-approved project budget and scope of work, these construction standard terms and conditions, special award conditions, and all applicable federal statutory and regulatory requirements as incorporated by reference (e.g., all applicable statutes, regulations, Executive Orders, and Office of Management and Budget (OMB) Circulars), constitute the complete requirements, hereinafter referred to as the "Terms and Conditions," applicable to the EDA investment.

The Recipient and any subrecipient must, in addition to the assurances made as part of the application for investment assistance, comply with and require each of its contractors and subcontractors employed in the completion of the project to comply with the Terms and Conditions of this Award.

This Award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the Terms and Conditions specified in this Award will be resolved according to the following order of precedence: public laws, regulations (including applicable notices published in the *Federal Register*), Executive Orders, OMB Circulars, EDA's construction standard terms and conditions, and special award conditions. A special award condition may take precedence on a case-by-case basis over a construction standard term or condition when warranted by specific project circumstances.

Some of EDA's construction terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations published in the *Federal Register* or the *Code of Federal Regulations* ("C.F.R."), Executive Orders, OMB Circulars, or the assurances required of the Recipient (See Forms SF-424B and SF-424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, Executive Order, OMB Circular, or assurance.

ECONOMIC DEVELOPMENT ADMINISTRATION
STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS

Title II - Public Works and Economic Development Facilities
and
Title II - Economic Adjustment Construction Components

.....

A. **General Requirements and Responsibilities.**

1. **Purpose.** The Economic Development Administration's ("EDA") grants for (i) public works (42 U.S.C. § 3141) and (ii) economic adjustment (42 U.S.C. § 3149) projects are designed to enhance regional competitiveness and promote long-term economic development in regions experiencing substantial economic distress. EDA provides construction, design, and engineering grants to assist distressed communities and regions revitalize, expand, and upgrade their physical infrastructure to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investment. The requirements set forth in these construction standard terms and conditions (the "Construction Standard Terms and Conditions") are applicable to construction, design, and engineering projects funded in whole or in part by EDA. Any necessary modifications of these requirements will be addressed in special award conditions to accommodate individual projects. In addition, these Construction Standard Terms and Conditions apply to construction projects of revolving loan funds ("RLFs") awarded between 1975 and 1999 under EDA's Title IX Economic Adjustment Assistance Program, as well as to RLFs funded after February 11, 1999 under section 209 of PWEDA (42 U.S.C. § 3149).
2. **Authority and Policies.** EDA is a bureau within the U.S. Department of Commerce established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) ("PWEDA"). (*See also* 13 C.F.R. § 300.1.) As a federal agency, EDA is obligated to promulgate regulations and establish policies and procedures to:
 - a. Ensure compliance with applicable federal requirements;
 - b. Safeguard the public's interest in the grant assets; and
 - c. Promote the effective use of grant funds in accomplishing the purpose(s) for which they were awarded.

The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to this Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering this Award in a manner that is mutually beneficial to EDA and to the Recipient. The implementation of any such regulatory, administrative, or programmatic change in administering this Award must have prior EDA written approval.

EDA's policy is to administer all Awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA will consider requests for variances to the procedures set out in these Construction Standard Terms and Conditions if they do not conflict with applicable federal statutory and regulatory requirements, are consistent with the goals of EDA's programs, and make sound economic and financial sense.

3. **Definitions.** Whenever used in these Construction Standard Terms and Conditions, the following words and phrases shall have the following meanings:
- a. "Assistant Secretary" refers to the Assistant Secretary of Commerce for Economic Development;
 - b. "Award" – *see* the definition set out in the first paragraph of the *Preface* above;
 - c. "Closeout" or "Project Closeout" refers to the process by which the Grants Officer determines that all applicable administrative actions and all required work under the Award has been completed by the Recipient and EDA;
 - d. "Department" or "DOC" refers to the U.S. Department of Commerce;
 - e. "Government" or "Federal Government" refers to EDA;
 - f. "Grants Officer" refers to the Regional Director in the appropriate Regional Office;
 - g. "Project Officer," refers to the EDA official responsible for technical or other programmatic aspects of the Award. During the post-approval stage of the Award, EDA generally assigns this role to an EDA Engineer/Construction Manager.
 - h. "Project" refers to the activity for which the EDA grant was awarded;
 - i. "Recipient" refers to the undersigned grantee of U.S. government funds under the Award to which this document is made a part;
 - j. "Regional Office" refers to an EDA regional office;
 - k. "Subrecipient" or "Subgrantee" refers to the legal entity to which a subaward is made and which is accountable to the Recipient for the use of grant funds (this term does not include subcontractors with whom the Recipient enters into a contractual agreement); and
 - l. "Terms and Conditions of the Award" – *see* the definition set out in the first paragraph of the *Preface* above.

Capitalized terms used but not otherwise defined in these Construction Standard Terms and Conditions have the meanings ascribed to them in EDA's regulations at 13 C.F.R. §§ 300.3, 302.20, 307.8, and 314.1.

4. **Grant Recipient as Trustee.** The Recipient holds grant funds and any EDA-assisted Project property in trust for the purpose(s) for which the Award was made. The Recipient's obligation to the Federal Government continues for the estimated useful life of the Project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the "Federal Interest") in the property improved, in whole or in part, with the EDA investment. *See* 13 C.F.R. § 314.2.

If EDA determines that the Recipient fails or has failed to meet this obligation, the agency may exercise any rights or remedies with respect to its Federal Interest in the Project. However, EDA's forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

B. Financial Requirements.

1. Financial Reports.

- a. While EDA generally does not advance funds under an Award, the Recipient must submit Form SF-272, "*Report of Federal Cash Transactions*," for any Award where funds are to be advanced to the Recipient. Form SF-272 is due 15 working days following the end of each quarter for an Award under \$1 million, 15 working days following the end of each

month for an Award totaling \$1 million or more per year, or as otherwise specified in a special award condition. See 15 C.F.R. §§ 14.52(a)(2) or 24.41(c), as applicable.

- b. Any Recipient whose Award has not been fully disbursed is required to submit Form SF-269, "*Financial Status Report*" to EDA semi-annually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable Project expenses that have been incurred, but not claimed for reimbursement by the Recipient. The first report shall be as of March 30 of each year and shall be submitted to EDA no later than April 30 of each year, and the second report shall be of September 30 of each year and shall be submitted to EDA no later than October 30 of each year. Instructions for completing and submitting Form SF-269 will be furnished to the Recipient at least 60 days before the report is due.
- c. The Recipient must submit a final financial report using Form SF-269 within 90 days of the expiration date of the Award (or from the date the Recipient accepts the Project from the contractor, whichever occurs earlier).
- d. Noncompliance with these requirements will result in the suspension of disbursements under this Award.
- e. Financial reports are to be submitted to the Project Officer.

2. Disbursement Requests.

- a. *Method of Payment.* The Grants Officer determines the appropriate method of payment. Unless otherwise specified in a special award condition, the method of payment under this Award will be reimbursement. Payments will be made through electronic funds transfers directly to the Recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3720B *et seq.*). The Award number shall be included on all payment-related correspondence, information, and forms.
- b. *Disbursement Requests.* The Recipient shall use Form SF-271, "*Outlay Report and Request for Reimbursement for Construction Programs*," to request reimbursement under the Award. Substantiating invoices and/or vouchers also must be provided. Each request for the disbursement of funds shall be made to the Project Officer. Form SF-271 can be downloaded from OMB's website at www.whitehouse.gov/omb/grants/grants_forms.html.
- c. *Initial Disbursement Request.* For the initial disbursement only, the Recipient must complete and submit Form SF-3881, "*ACH Vendor/Miscellaneous Payment Enrollment Form*," along with Form SF-271, to the Project Officer.
- d. *Interim Disbursement Requests.* All requests for interim disbursement shall be submitted using Form SF-271 and include substantiating invoices and/or vouchers.

3. Federal and Non-Federal Cost Sharing.

- a. Awards that include the federal and non-federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the federal share and non-federal share, or "Matching Share," shall be calculated by applying the approved federal and non-federal cost share ratios to

actual allowable costs. *See also* 13 C.F.R. §§ 305.10 and 308.2. If actual allowable costs are greater than the total approved estimated budget, the federal share shall not exceed the total federal dollar amount authorized by this Award.

- b. The Matching Share, whether cash or in-kind, shall be paid out at the same rate as the federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the Recipient must meet its cost share commitment over the Award period.
 - c. The Recipient shall show that the Matching Share is committed to the Project, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 C.F.R. § 301.5.
4. **Budget Revisions and Transfers of Funds Among Budget Categories.** The EDA-approved budget is the budget plan for the Project. The Recipient must notify EDA of any deviation from the budget or program plans, including any change in scope of work or the objective of the Project (even if there is no associated budget revision requiring prior written approval). *See* 15 C.F.R. §§ 14.25 or 24.30, as applicable.
- a. Requests for budget revisions to the EDA-approved budget in accordance with the provisions provided below must be submitted to the Grants Officer, who shall make the final determination on such requests and notify the Recipient in writing.
 - b. Amendments to this Award require preparation of Form CD-451, "*Amendment to Financial Assistance Award*," for execution by both the Grants Officer and the Recipient. Form CD-451 is required for the following:
 - (i) Changes to the Project scope of work;
 - (ii) Budget revisions requiring additional EDA or non-EDA funds;
 - (iii) Budget revisions that result in cumulative transfer among direct cost categories in excess of 10 percent of the project cost and the federal share is greater than \$100,000;
 - (iv) The inclusion of costs for which EDA's prior approval is needed under the following OMB Circulars: Circular A-21, "*Cost Principles for Educational Institutions*" (2 C.F.R. part 220); Circular A-87, "*Cost Principles for State, Local, and Indian Tribal Governments*" (2 C.F.R. part 225); and Circular A-122, "*Cost Principles for Non-Profit Organizations*" (2 C.F.R. part 230), as applicable;
 - (v) Change of site location;
 - (vi) Change or addition of Recipient;
 - (vii) Time extensions; and
 - (viii) Modifications to the Terms and Conditions of the Award, other than time extensions.
 - c. When an Award supports both construction and non-construction work, the Recipient must obtain prior written approval from the Grants Officer before making any fund or budget transfer from non-construction to construction or vice versa. *See* 15 C.F.R. §§ 14.25(j) or 24.30(c)(3), as applicable.
 - d. Transfers shall not be permitted if such transfers would cause any federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget

unless the Grants Officer has provided prior written approval. In addition, this does not prohibit the Recipient from requesting the Grants Officer's approval for revisions to the budget. See 15 C.F.R. §§ 14.25(e) and (f) or 24.30(c), as applicable.

- e. The Recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.
- f. *Project Underrun Amounts.* Underrun amounts shall be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized activities under this Award. EDA may approve the use of underrun funds to increase the federal share of the Project or further improve the Project, as long as the improvements are approved by EDA and consistent with the original purpose of the approved EDA investment. See 13 C.F.R. § 308.1.
- g. *Additional EDA Funding in Case of Project Overrun Amounts.* In accepting the Award, the Recipient agrees to fund any overrun amounts. Additional EDA assistance for an approved Project may not be approved.

5. Indirect Costs.

- a. Indirect costs are generally not applicable under this Award.
- b. When indirect costs are applicable, they will not be allowable charges against the Award unless specifically included as a line item in the EDA-approved budget. For Recipients that are educational institutions, the term "indirect cost" has been replaced with the term "facilities and administrative cost" under OMB Circular A-21, "*Cost Principles for Educational Institutions*" (see 2 C.F.R. part 220).
- c. Excess indirect costs may not be used to offset unallowable direct costs.
- d. If the Recipient has not previously established an indirect cost rate with a federal agency, the negotiation and approval of a rate is subject to the procedures in applicable cost principles and the following subparagraphs:
 - (i) *State, local, and Indian Tribal Governments; Educational Institutions; and Non-Profit Organizations (Non-Commercial Organizations)*

For the above-listed organizations, "cognizant federal agency" is generally defined as the agency that provides the largest dollar amount of direct federal funding. For those organizations for which DOC is cognizant or has oversight, DOC or its designee will either negotiate a fixed rate with carry-forward provisions for the Recipient or, in some instances, will limit its review to evaluating the procedures described in the Recipient's cost allocation methodology plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

- (ii) Within 90 days of the Award start date, the Recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The Recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Acquisition Management
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W., Room # 6054
Washington, DC 20230

- (iii) The Recipient can use the fixed rate proposed in the indirect cost plan until such time as DOC provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating next year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. An organization that has previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of the Recipient's fiscal years.
 - e. When DOC is not the oversight or cognizant federal agency, the Recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight federal agency requesting a negotiated rate agreement.
 - f. If the Recipient fails to submit the required documentation to DOC within 90 days of the Award start date, the Grants Officer may amend the Award to preclude the recovery of any indirect costs under the Award. If the DOC, oversight, or cognizant federal agency determines there good and sufficient cause to excuse the Recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
 - g. Regardless of any approved indirect cost rate applicable to the Award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the Recipient shall be the lesser of:
 - (i) The line item amount for the federal share of indirect costs contained in the approved budget of the Award; or
 - (ii) The federal share of the total allocable indirect costs of the Award based on the indirect cost rate approved by a cognizant or oversight federal agency and current at the time the cost was incurred, provided the rate is approved on or before the Award end date.
6. **Incurring Costs Prior to Award.** Project activities carried out prior to EDA's approval of this Award shall be carried out at the sole risk of the Recipient. Such activity is subject to the rejection of the application, the disallowance of costs, or other adverse consequences as a result of noncompliance with EDA or federal law, including but not limited to procurement requirements, civil rights requirements, federal labor standards, or environmental and historic preservation requirements. Costs must be included in the EDA-approved budget and must be allowable costs under federal cost principles and under the Award. *See* 13 C.F.R. § 302.8.
7. **Incurring Costs or Obligating Funds Beyond the Project Expiration Date.**
- a. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the Project, program, or activities beyond the expiration date stipulated in this Award (or the

date of acceptance of the Project by the contractor, whichever occurs earlier), unless a written time extension of this Award is granted by the Grants Officer. The only costs that are authorized for a period of up to 90 days following that date are those strictly associated with Closeout activities. Closeout activities are generally limited to the preparation of final reports. See 15 C.F.R. §§ 14.71 or 24.50, as applicable.

- b. The Recipient shall adhere to the development time schedule and time limits set out in the Terms and Conditions of this Award. Any such Term or Condition supersedes the development time schedule and time limits set out in these Construction Standard Terms and Conditions.

8. Time Extensions.

- a. Unless otherwise authorized in 15 C.F.R. §§ 14.25(e)(2) or 24.30, as applicable, or a special award condition, any extension of the Project period can only be authorized by the Grants Officer in writing. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date.
- b. The Recipient is responsible for implementing the Project in accordance with the development time schedule contained in this Award. As soon as the Recipient becomes aware that it will not be possible to meet the development time schedule, the Recipient must notify the Grants Officer. The Recipient's notice to EDA must contain the following:
 - (i) An explanation of the Recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site, major re-engineering required in order to obtain State or federal approvals, unplanned environmental mitigation required);
 - (ii) A statement that no other changes to the Project are contemplated;
 - (iii) Documentation that demonstrates there is still a bona fide need for the Project; and
 - (iv) A statement that no further delay is anticipated and that the Project can be completed within the revised time schedule.

EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule. EDA reserves the right to suspend or terminate this Award if the Recipient fails to proceed with reasonable diligence to accomplish the Project as intended.

- c. EDA has no obligation to provide any additional prospective funding. Any amendment of this Award to increase funding or to extend the period of performance is at the sole discretion of EDA.
9. **Tax Refunds.** Refunds of Federal Insurance Contributions Act and Federal Unemployment Tax Act ("FICA/FUTA") taxes received by the Recipient during or after the Project period must be refunded or credited to DOC where the benefits were financed with federal funds under the Award. The Recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of this Award.

10. **Program Income.** For Projects that create long-term rental revenue (e.g., buildings or real property constructed or improved for the purpose of renting or leasing space), the Recipient agrees to use such income generated from the rental or lease of any Project facility in the following order of priority:

- a. Administration, operation, maintenance, and repair of Project facilities for their estimated useful life (as determined by EDA) in a manner consistent with good property management practice and in accordance with established building codes. This includes, where applicable, repayment of indebtedness resulting from any EDA-approved encumbrance (e.g., approved mortgage) on the EDA-assisted facility.
- b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA.

See 15 C.F.R. §§ 14.24 or 24.25, as applicable.

C. Programmatic Requirements.

1. Quarterly Reporting.

- a. Quarterly performance reports must be submitted in accordance with the procedures set out in 15 C.F.R. parts 14 or 24, as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under this Award; deferral of processing of new awards, amendments, or supplemental funding pending the receipt of the overdue report(s); or the establishment of an account receivable for the difference between the total federal share of outlays last reported and the amount disbursed. *See 13 C.F.R. § 302.18(a).*
- b. Unless otherwise specified in this Award, the quarterly performance report will contain the following information for each Project program, function, or activity:
 - (i) A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;
 - (ii) An explanation of any delays or failures to meet the Project timetable or Project goals; and
 - (iii) Any other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.
- c. Quarterly performance reports shall be submitted for each calendar quarter to the Project Officer. Each performance report will be due not later than January 15, April 15, July 15, and October 15 for the immediate previous quarter. The final Project performance report shall be submitted to EDA no more than 90 days after the Project Closeout date. This reporting requirement begins with the Recipient's acceptance of this Award and ends when EDA approves Project Closeout. *See 15 C.F.R. §§ 14.51 or 24.40, as applicable.*

The Recipient shall submit quarterly performance reports to the EDA Project Officer in hardcopy or electronically as specified in the special award conditions.

2. **Interim Reporting.** The Recipient must report any event that will or may have significant impact upon the Project, including delays or adverse conditions that materially may affect the

ability of the Recipient to attain Project objectives within established time periods or meet the development time schedule. The Recipient should report such events to the Project Officer in the most time-expedient way possible and then, if the initial report was not in writing, report the event to the Project Officer in writing. Such a report shall include a statement of the event or issue, a statement of the course of action contemplated to resolve the matter, and any federal assistance needed to resolve the situation. If budget changes are required, the Recipient must submit a written budget revision request. *See* 15 C.F.R. §§ 14.25(h) or 24.30(c)(2), as applicable.

3. **Government Performance and Results Act Reporting.** In addition to quarterly performance reports, EDA may require the Recipient to report on Project performance beyond the Project Closeout date for Government Performance and Results Act (GPRA) purposes. In no case shall the Recipient be required to submit any report more than ten years after the Project Closeout date. Data used by the Recipient in preparing reports shall be accurate and from independent sources whenever possible. *See* 13 C.F.R. § 302.16.
4. **Unsatisfactory Performance.** Failure to perform the work in accordance with the Terms and Conditions of the Award and maintain at least satisfactory performance at the discretion of EDA may result in the designation of the Recipient as high-risk and assignment of special award conditions or further action as specified in section C.7. of these Construction Standard Terms and Conditions. *See* 15 C.F.R. §§ 14.14 or 24.12, as applicable.
5. **Programmatic Changes.**
 - a. The Recipient must report to the Grants Officer, and request prior approval for any programmatic change to the Award, in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable.
 - b. The Recipient must obtain the Grants Officer's written approval for any programmatic changes to the Award. Any changes made to the Project without EDA's approval are made at the Recipient's risk of nonpayment of costs, suspension, termination, or other EDA action with respect to the Award. *See* 13 C.F.R. § 302.7(b).
 - c. *Contract Change Orders.* After construction contracts for the Project have been executed, it may become necessary to alter them. This requires a formal contract change order that must be issued by the Recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. Work on the Project may continue pending EDA review and approval of the change order, but all such work shall be at the Recipient's risk as to whether the cost of the work is eligible for EDA participation until the Recipient receives EDA approval for the change order. *See* 13 C.F.R. § 305.13.
6. **Other Federal Awards with Similar Programmatic Activities.** The Recipient shall immediately provide written notification to the Project Officer and the Grants Officer in the event that, subsequent to receipt of this Award, other financial assistance is received to support or fund any portion of the scope of work incorporated into this Award. EDA will not pay for costs that are funded by other sources.
7. **Noncompliance with Award Provisions.** Failure to comply with any or all of the Terms and Conditions of this Award may have a negative impact on the Recipient's ability to receive

future funding from the Department, including EDA, and may be considered grounds for any or all of the following actions: (a) the establishment of an account receivable; (b) withholding payments under any EDA or DOC Award(s) to the Recipient; (c) the imposition of additional special award conditions; (d) the suspension of any active DOC Awards; or (e) the termination of any active DOC Awards.

The Recipient hereby agrees that the Government may at its option withhold disbursement of any Award funds if the Government learns or has knowledge that the Recipient has failed to comply in any manner with any Term or Condition of the Award. *See* 13 C.F.R. § 302.18. The Government may withhold funds until the violation or violations have been corrected to the Government's satisfaction. The Recipient further agrees to reimburse the Government for any ineligible costs paid from Award funds, or if the Recipient fails to reimburse the Government, the Government shall have the right to offset the amount of such ineligible costs from any undisbursed award funds held by the Government. The Recipient agrees to repay the Government for all ineligible costs incurred in connection with the Project and paid from the Award including but not limited to those costs determined to be ineligible if the Government learns of any Award violations after all Award funds have been disbursed. *See* 15 C.F.R. §§ 14.72-14.73 or 24.51-24.52, as applicable.

8. **Use by Beneficiary.** In the event a beneficiary of the Project fails to comply in any manner with certifications, assurances, or agreements that such beneficiary has entered into in accordance with EDA's requirements, the Recipient will reimburse the Government the Award amount or an amount to be determined by the Government pursuant to 13 C.F.R. §§ 314.4 and 314.5. Where the Government determines that the failure of a beneficiary to comply with EDA requirements affects a portion of the property benefited by the Award, the Recipient will reimburse the Government proportionately.
9. **Prohibition Against Assignment by the Recipient.** Except as provided in a special award condition, the Recipient shall not transfer, pledge, mortgage, or otherwise assign the Award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions.
10. **Disclaimer Provisions; Hold Harmless Requirement.**
 - a. The United States expressly disclaims any and all responsibility or liability to the Recipient or third persons for the actions of the Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any subaward or subcontract under this Award.
 - b. The acceptance of this Award by the Recipient does not in any way constitute an agency relationship between the United States and the Recipient.
 - c. To the extent permitted by law, the Recipient agrees to indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an Award to assist, directly or indirectly, in the preparation of the Project site or construction, renovation, or repair of any facility on the Project site, to the extent that such liabilities are incurred because of toxic or hazardous contamination or groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Government or its agents) on the property.
See 13 C.F.R. § 302.19.

11. **Prohibition on Use of Third Parties to Secure Award.** Unless otherwise specified in the special award conditions to this Award, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this Award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of this warrant, the Government has the right to annul this Award without liability, or at its discretion, to deduct from the Award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
12. **Payment of Attorneys' or Consultants' Fees.** No Award funds shall be used, directly or indirectly, to reimburse attorneys' or consultants' fees incurred in connection with obtaining investment assistance under PWEDA, such as, for example, preparing the application for EDA investment assistance. However, ordinary and reasonable attorneys' and consultants' fees incurred for meeting Award requirements, such as, for example, conducting a title search or preparing plans and specifications, may be eligible Project costs and may be paid out of Award funds, provided such costs are otherwise eligible. *See* 13 C.F.R. § 302.10.
13. **Commencement of Construction.**
 - a. *Delayed Construction Starts.* If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. If significant construction has not been commenced within three years of the Award date, an extension must be approved by the Assistant Secretary.
 - b. *Early Construction Starts.* The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For Project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the Terms and Conditions of this Award. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA's review and concurrence. *See* 13 C.F.R. § 305.11.
 - c. *Project Sign.* The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. *See* 13 C.F.R. § 305.12.
14. **Efficient Administration of Project.** The Recipient agrees to properly and efficiently administer, operate, and maintain the Project for its estimated useful life, as required by section 504 of PWEDA (42 U.S.C. § 3194). If the Government determines, at any time during the estimated useful life of the facility, that the Project is not being properly and efficiently

administered, operated, and maintained, the Government may terminate this Award and require the Recipient to repay the Federal Share. See 13 C.F.R. §§ 302.12, 302.18, and 314.2-314.5.

15. Conflicts-of-Interest Rules.

- a. An "Interested Party" is defined in 13 C.F.R. § 300.3 as "any officer, employee, or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants, or shareholders." An Interested Party includes the Interested Party's "Immediate Family" (defined in 13 C.F.R. § 300.3 as a person's spouse, parents, grandparents, siblings, children, and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person) and other persons directly connected to the Interested Party by law or through a business organization. In addition, "Immediate Family" includes an Interested Party's "significant other" or partner.
- b. The Recipient must establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain. See 13 C.F.R. § 302.17(a) and (b), 15 C.F.R. §§ 14.42 or 24.36(b)(3), as applicable, and Forms SF-424B ("*Assurances – Non-Construction Projects*") and SF-424D ("*Assurances – Construction Projects*").
- c. An Interested Party must not receive any direct or indirect financial or personal benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. See 13 C.F.R. § 302.17(b).

16. Record-Keeping Requirements.

- a. *Records.* The Recipient must maintain records that document compliance with the Terms and Conditions of this Award. At a minimum, the Recipient's records must fully disclose:
 - (i) The amount and disposition of EDA investment assistance;
 - (ii) All Project expenditures and procurement actions;
 - (iii) The total cost of the Project that the Award funds;
 - (iv) The amount and nature of the portion of Project costs provided by non- EDA sources;
 - (v) Contractor compliance with applicable federal requirements; and
 - (vi) Such other records as EDA determines will facilitate an effective audit.

b. *Records Retention.*

In general, all records pertinent to this Award must be kept retained for a period of three years from the date of submission of the final project expenditure report (the final Form SF-271 for disbursement). The only exceptions are the following:

- (i) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final actions taken.
- (ii) Records for real property and equipment acquired with federal funds must be retained for three years after final disposition.
- (iii) When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the Recipient.

Records relating to indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations on the rate at which a particular group of costs is chargeable are subject to different retention requirements. See 15 C.F.R. §§ 14.53 or 24.42, as applicable.

The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer in case records are not retained for the general retention periods noted above. See 13 C.F.R. § 302.14 and 15 C.F.R. §§ 14.50-14.53 or §§ 24.40-24.42, as applicable.

17. Termination Actions.

- a. *Termination for Cause.* If the Recipient materially fails to comply with any of the Terms and Conditions of this Award, EDA has the right to terminate for cause all or any part of its obligation hereunder, including if:
 - (i) Any representation made by the Recipient to the Government in connection with the application for Government assistance is incorrect or incomplete in any material respect;
 - (ii) The intent and purpose and/or the economic feasibility of the Project is changed substantially so as to affect significantly the accomplishment of the Project as intended (including an unauthorized use of property as provided in 13 C.F.R. § 314.4);
 - (iii) The Recipient has violated commitments it made in its application and supporting documents or has violated any of the Terms and Conditions of this Award;
 - (iv) The conflicts-of-interest rules in 13 C.F.R. § 302.17 are violated; or
 - (v) The Recipient fails to report immediately to the Government any change of authorized representative(s) acting in lieu of or on behalf of the Recipient.

In addition, EDA may take one or more of the actions set out in 15 C.F.R. §§ 14.62(a) or 24.43(a), as applicable.

- b. *Termination for Convenience.* The Recipient may request at any time termination for convenience of this Award upon sending to the Grants Officer written notification in a form acceptable to EDA setting forth the reasons for requesting the termination and the effective date of such termination. See 15 C.F.R. §§ 14.61 or 24.44, as applicable.

- 18. **Project Closeout Procedures.** After construction is completed and the Project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate, and maintain the Project for its estimated useful life (as determined by EDA) in accordance with its original purpose. See 13 C.F.R. § 302.12. The Recipient must comply with all Award

requirements and maintain records to document such compliance, which shall be made available for inspection by EDA or other Government officials as required.

- a. *Final Disbursement.* When Project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the Project from the contractor, the Recipient can begin the Closeout process by submitting the following documentation to EDA:
- (i) A request for final disbursement on an executed Form SF-271;
 - (ii) A written certification that all costs claimed are for eligible activities under this Award, for which there is documentation in the Recipient's records;
 - (iii) An executed certificate of final acceptance signed by the Recipient and the Recipient's architect/engineer;
 - (iv) The Recipient's certification that its currently valid single or program-specific audit in accordance with OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*," if applicable, does not contain any material findings (if the Recipient's currently valid OMB Circular A-133 audit does contain material findings, the Recipient shall submit the applicable audit in hardcopy to the Grants Officer);
 - (v) The Recipient's certification that its currently valid audit (in accordance with OMB Circular A-133), if applicable, has been submitted to the Federal Audit Clearinghouse; and
 - (vi) Other documentation as may be required by EDA.

EDA shall advise the Recipient of costs determined to be eligible and ineligible. If a balance of this Award is due to the Recipient, the balance will be paid by wire transfer. If the Recipient has received an amount in excess of the amount due the Recipient, the Recipient must refund the excess to EDA. The Recipient shall contact the Project Officer for refund instructions.

As noted above, if the Recipient's currently valid OMB Circular A-133 audit contains material findings, the Recipient shall submit the audit in hardcopy to the Grants Officer before final disbursement.

- b. The Recipient shall submit, within 90 calendar days after the Project Closeout date, all financial, performance, and other reports as required by the Terms and Conditions of this Award. Additional GPRA reporting requirements also may apply.
- c. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations incurred under this Award no later than 90 calendar days after acceptance of the Project from the contractor or before the expiration date of this Award, whichever occurs earlier.
- d. The Closeout of this Award does not affect any of the following:
- (i) Audit requirements per OMB Circular A-133 and the related "*Compliance Supplement*;"
 - (ii) The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;
 - (iii) The Recipient's obligation to return any funds due as a result of later corrections or other transactions; and

- (iv) Requirements for property management, records retention, and performance measurement reports.

D. Additional Requirements Relating to Construction Projects.

The Recipient and any subrecipient(s) must, in addition to other statutory and regulatory requirements detailed in these Construction Standard Terms and Conditions and the assurances made to EDA in connection with the Award, comply and require each of its contractors and subcontractors employed in the completion of the Project to comply with all applicable federal, State, territorial, and local laws, and in particular, the following federal public laws (and the regulations issued thereunder), Executive Orders, OMB Circulars, and local law requirements.

1. **The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141-3144, 3146, 3147; 42 U.S.C. § 3212)**
Requiring minimum wages for mechanics and laborers employed on Federal Government public works projects to be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the Project is to be performed, or in the District of Columbia if the Project is to be performed there.
2. **The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701 – 3708)**
Providing work hour standards for every laborer and mechanic employed by any contractor or subcontractor in the performance of a federal public works project.
3. **The National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 *et seq.*), and the Advisory Council on Historic Preservation Guidelines**
Requiring projects involving federal funds to follow the requirements of the National Historic Preservation Act, which requires stewardship of historic properties.
4. **The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 *et seq.*)**
Requiring appropriate surveys and preservation efforts if a federally-licensed project may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data.
5. **Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*), and the regulations issued thereunder, which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.**
6. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), and implementing regulations issued at 49 C.F.R. part 24, which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a Project financed wholly or in part with federal financial assistance.**
7. **The Energy Conservation and Production Act (42 U.S.C. § 6834 *et seq.*)**
Establishing energy efficiency performance standards for the construction of new residential and commercial structures undertaken with federal financial assistance.

8. **Requirements for New Construction.** For new building construction projects, the Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

E. **Non-Discrimination Requirements.** No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. The Recipient agrees to comply with the following non-discrimination requirements.

1. **Statutory Provisions.**

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. part 8, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), which prohibits discrimination on the basis of sex under federally-assisted education programs or activities;
- c. Pub. L. No. 92-65, 42 U.S.C. § 3123, which proscribes discrimination on the basis of sex in EDA assistance provided under PWEDA; Pub. L. No. 94-369, 42 U.S.C. § 6709, which proscribes discrimination on the basis of sex under the Local Public Works Program; and the Department's implementing regulations at 15 C.F.R. §§ 8.7-8.15;
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. part 8b, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;
- e. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) and DOC implementing regulations published at 15 C.F.R. part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
- f. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; and
- g. Other applicable federal statutes, regulations, and Executive Orders.

2. **Other Provisions.**

- a. Parts II and III of Executive Order 11246 (30 Fed. Reg. 12319, 1965), as amended by Executive Order 11375 (32 Fed. Reg. 14303, 1967) and 12086 (43 Fed. Reg. 46501, 1978), requiring federally-assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order. 11246 (41 C.F.R. § 60-1.4(b), 1991).

- b. Executive Order 13166 (August 11, 2000), "*Improving Access to Services for Persons With Limited English Proficiency*," and DOC policy guidance issued on March 24, 2003 (68 Fed. Reg. 14180) to federal financial assistance Recipients on the Title VI prohibition against national origin discrimination affecting Limited English Proficient ("LEP") persons.

3. Title VII Exemption for Religious Organizations.

Generally, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*), provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

F. Audits.

Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), an audit of the Award may be conducted at any time. The Department's Inspector General ("OIG"), or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. When the OIG requires a program audit on a DOC Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other federal, State, or local audit entity.

1. Requirement to Have an OMB Circular A-133 Audit Performed; Organization-Wide, Program-Specific, and Project Audits.

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*," and the related "*Compliance Supplement*." Recipients that expend federal awards of \$500,000 or more in a fiscal year shall have an audit conducted for that year in accordance with the requirements contained in OMB Circular A-133. A copy of the audit shall be submitted to the Bureau of the Census, which has been designated by OMB as a central clearinghouse. The address is:

Federal Audit Clearinghouse
1201 E. 10th Street
Jeffersonville, IN 47132

- b. In accordance with 15 C.F.R. § 14.26 (c) and (d), for-profit hospitals, commercial, and other organizations not covered by the audit provisions of OMB Circular A-133 that expend federal awards of \$500,000 or more in a fiscal year, are required to have a program-specific audit performed at the conclusion of the Project, but no less than once every five years. Some DOC programs have specific audit guidelines that will be incorporated into

the Award. If DOC does not have a program-specific audit guide available for the program, the auditor should follow *Generally Accepted Government Auditing Standards* and the requirements for a program-specific audit as described in OMB Circular A-133 § ___.235. A copy of the program-specific audit shall be submitted to the OIG at the following address with a copy of the transmittal letter to the Grants Officer:

Office of Inspector General
U.S. Department of Commerce
Atlanta Regional Office of Audits
401 West Peachtree Street, N.W., Suite 2742
Atlanta, GA 30308

2. **Requirement to Submit Audit to EDA.** If the Recipient's currently valid audit required under OMB Circular A-133 contains materials findings, the Recipient must submit the audit in hardcopy to the Grants Officer. *See also* section C.18.a. of these Construction Standard Terms and Conditions.
3. **Audit Resolution Process.**
 - a. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
 - b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 Fed. Reg. 4053), a Recipient whose Award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 - (i) Unless the OIG determines otherwise, the Recipient has 30 days from the date of the transmittal of the "Draft Audit Report" to submit written comments and documentary evidence.
 - (ii) The Recipient has 30 days from the date of the transmittal of the "Final Audit Report" to submit written comments and documentary evidence. There shall be no extension of this deadline.
 - (iii) EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an "Audit Resolution Determination Letter." The Recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There shall be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.
 - (iv) An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

EDA shall review the Recipient's appeal and notify the Recipient of the results in an Appeal Determination Letter. After the opportunity to appeal has expired or after the

Appeal Determination Letter has been rendered, EDA will not accept any further documentary evidence from the Recipient. No other administrative appeals are available in the Department.

G. Debts.

1. Payment of Debts Owed the Federal Government.

Any debt determined to be owed to the Federal Government must be paid promptly by the Recipient. In accordance with 15 C.F.R. § 21.4, a debt will be considered delinquent if it is not paid within 15 days of the established due date or, if there is no due date, within 30 days of the billing date. Failure to pay a debt by the due date or, if there is no due date, within 30 days of the billing date, shall result in the imposition of late payment charges as noted below. In addition, failure to pay the debt or establish a repayment agreement by the due date or, if there is no due date, within 30 days of the billing date, will also result in the referral of the debt for collection action, including referral to the Treasury Offset Program (31 C.F.R. § 285.5) and may result in EDA taking further action as specified in section C.7. of these Construction Standard Terms and Conditions. The Recipient also may be suspended or debarred from further federal financial and non-financial assistance and benefits, as provided in 2 C.F.R. part 1326, "*Nonprocurement Debarment and Suspension*" until the debt has been paid in full or until a repayment agreement has been approved and payments are made in accordance with the repayment agreement. Payment of a debt may not come from other federally-sponsored programs. Verification that other federal funds have not been used will be made during future program visits and audits.

2. Late Payment Charges.

- a. An interest charge shall be assessed on the delinquent debt as established by the Debt Collection Act of 1982, as amended (31 U.S.C. § 3701 *et seq.*). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's "Current Value of Funds Rate" ("CVFR"). See www.fms.treas.gov/cvfr/index.html. The U.S. Department of Treasury annually publishes the CVFR in the *Federal Register*. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. A penalty charge will be assessed on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent.
- c. An administrative charge will be assessed to cover processing and handling the amount due.

3. Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees.

Pursuant to 31 U.S.C. § 3720B, unless waived, the Department is not permitted to extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person delinquent on a non-tax debt owed to a federal agency. This prohibition does not apply to disaster loans.

4. **Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.**

Pursuant to 28 U.S.C. § 3201(e), unless waived by DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the U.S. or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

H. **Name Check Reviews.**

1. **Name Check Requirement.** A name check review will be performed by the OIG on key individuals associated with nonprofit organization applicants, unless: (a) the proposed award amount is \$100,000 or less; (b) the applicant has been a Recipient of financial assistance from the Department for three or more consecutive years without any adverse programmatic or audit finding; or (c) the applicant is a unit of a State or local government. See "*Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*" (69 Fed. Reg. 78389, December 30, 2004).
2. **Exemptions.** The following individuals who are acting on behalf of their respective entities in applying for assistance are exempt from the name check review process:
 - a. Officials of State and local governments;
 - b. Officials of accredited colleges and universities; and
 - c. Officials of economic development districts designated by EDA, including those entities whose designations are pending.
3. **Results of Name Checks.** EDA reserves the right to take any of the actions described in section H.4. below if any of the following occurs as a result of the name check review:
 - a. A key individual fails to submit the required Form CD-346, "*Applicant for Funding Assistance*;"
 - b. A key individual makes an incorrect statement or omits a material fact on Form CD-346; or
 - c. The name check reveals significant adverse findings that reflect on the business integrity or responsibility of the applicant and/or key individual.
4. **Action(s) Taken as a Result of Name Check Review.** If any situation listed in section H.3. above occurs, the Department, at its discretion, may take one or more of the following actions:
 - a. Consider suspension or termination of the Award;
 - b. Require the removal of any key individual from association with the management or implementation of the Award; or
 - c. Make appropriate provisions or revisions as needed (in the special award conditions to the Award) with respect to the method of payment and/or financial reporting requirements.

- I. **Governmentwide Debarment and Suspension (Non-procurement).** The Recipient shall comply with the provisions of subpart C of 2 C.F.R. part 1326, "*Non-Procurement Debarment and Suspension,*" which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in federal non-procurement transactions either through primary or lower-tier covered transactions.
- J. **Drug-free Workplace.** The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 702), and the Department's implementing regulations found at 15 C.F.R. part 29, "*Government-wide Requirements for Drug-Free Workplace (Financial Assistance,*)" which require that the Recipient take steps to provide a drug-free workplace.
- K. **Lobbying Restrictions.**
1. **Statutory Provisions.** The Recipient must comply with the provisions of 31 U.S.C. § 1352 and the Department's implementing regulations published at 15 C.F.R. part 28, "*New Restrictions on Lobbying.*" These provisions generally prohibit the use of federal funds for lobbying the executive or legislative branches of the United States government in connection with the Award and require the disclosure of the use of non-federal funds for lobbying.
 2. **Disclosure of Lobbying Activities.** A Recipient receiving in excess of \$100,000 in federal funding must submit a completed Form SF-LLL, "*Disclosure of Lobbying Activities,*" regarding the use of non-federal funds for lobbying. The Form SF-LLL must be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Recipient must submit Form SF-LLL from all applicable parties, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.
 3. **Special Provisions Relating to Indian Tribes.** As set out in 31 U.S.C. § 1352, there are special provisions applicable to Indian Tribes, tribal organizations, or other Indian organizations eligible to receive federal contracts, grants, loans, or cooperative agreements. In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, firing, and the payment of a TERO fee generally are allowable provisions under federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.
- L. **Codes of Conduct and Subaward, Contract, and Subcontract Provisions.**
1. **Code of Conduct for Recipients.** Pursuant to the certification in Form SF-424B, paragraph 3, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or personal gain in the administration of this Award.

2. Applicability of Award Provisions to Subrecipients.

- a. The Recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of this Award, including applicable cost principles, administrative, and audit requirements.
- b. A Recipient is responsible for subrecipient monitoring, including the following:
 - (i) *Award Identification* – At the time of the Award, identifying to the subrecipient the federal award information (e.g., *Catalog of Federal Domestic Assistance* (“CFDA”) title and number, name of the federal agency, and the Award number) and applicable compliance requirements.
 - (ii) *During-the-Award Monitoring* – Monitoring the subrecipient’s use of federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
 - (iii) *Subrecipient Audits* – Ensuring that a subrecipient expending federal awards of \$500,000 or more during the subrecipient’s fiscal year has met the audit requirements of OMB Circular A-133 and that the required audits are completed within nine months of the end of the subrecipient’s audit period. In addition, the Recipient is required to issue a management decision on audit findings within six months after receipt of the subrecipient’s audit report and ensure that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of a subrecipient’s continued inability or unwillingness to have the required audits, the pass-through entity shall take appropriate action using sanctions.

3. Competition and Codes of Conduct for Subawards.

- a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the Award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by federal funds if a real or apparent conflict-of-interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the Recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary

actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.

- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

4. Applicability of Provisions to Subawards, Contracts, and Subcontracts.

- a. The Recipient shall include the following notice in each request for applications or bids:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to 2 C.F.R. part 1326, subpart C, "*Governmentwide Debarment and Suspension (Nonprocurement)*." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of federal funds at any tier are subject to 15 C.F.R. part 28, "*New Restrictions on Lobbying*." Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, "*Certification Regarding Lobbying—Lower Tier Covered Transactions*," completed without modification.

- b. The Recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the Award is subject to subpart C of 2 C.F.R. part 1326, "*Governmentwide Debarment and Suspension (Nonprocurement)*."
- c. The Recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C § 1352, as implemented at 15 C.F.R. part 28, regarding new restrictions on lobbying. The Recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed Form SF-LLL, "*Disclosure of Lobbying Activities*," regarding the use of non-federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

5. **Minority-Owned Business Enterprise.** DOC encourages Recipients to utilize minority- and women-owned firms and enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist Recipients in matching qualified minority owned enterprises with contract opportunities. For further information contact:

U.S. Department of Commerce
Minority Business Development Agency
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Website: www.mbda.gov/

6. Subaward and/or Contract to a Federal Agency.

The Recipient, subrecipient, contractor and/or subcontractor shall not subgrant or subcontract any part of the approved Project to any agency or employee of DOC or other federal department, agency, or instrumentality without the prior written approval of the Grants Officer.

Requests for approval of such action must be submitted to the Project Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify the Recipient in writing of the final determination.

- 7. EDA Contracting Provisions for Construction Projects.** The Recipient shall use the “*EDA Contracting Provisions for Construction Projects*” as guidance in developing all construction contracts. The “*EDA Contracting Provisions for Construction Projects*” lists applicable EDA and other federal requirements for construction contracts.

M. Property.

1. **Standards.** With respect to any property acquired or improved in whole or in part with EDA investment assistance under this Award, the Recipient shall comply with the property management standards found in EDA’s regulations at 13 C.F.R. part 314. Property acquired or improved in whole or in part by the Recipient under this Award may consist of real personal property, including intangible property such as money, notes, and security interests. Any inventory listings stipulated under the applicable uniform administrative requirements must be submitted to the Grants Officer on Form CD-281, “*Report of Government Property in Possession of Contractor.*”
2. **Retention of Title.**
 - a. The Government shall determine who retains title to all nonexpendable personal property in accordance with 15 C.F.R. parts 14 or 24, as applicable. Use, management, and the disposition of such property will be in accordance with the requirements set out at 15 C.F.R. parts 14 or 24, as applicable, and EDA’s regulations at 13 C.F.R. part 314.
 - b. Title to real property (whether acquired partly or wholly with federal funds) will vest with the Recipient subject to the condition that the Recipient uses the real property for the authorized purpose of the Project.
3. **EDA’s Interest in Award Property.**
 - a. *Evidence of Title.* Prior to the advertisement of bids or at such other time as EDA requires, the Recipient must furnish evidence, satisfactory in form or substance to the Government, that title to real property required for the Project (other than property of the United States

and as provided in 13 C.F.R. § 314.7(c)) is vested in the Recipient and that such easements, rights-of-way, State or local government permits, long-term leases, or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by the Government. All liens, mortgages, other encumbrances, reservations, reversionary interests, or other restrictions on title or the Recipient's interest in the property must be disclosed to EDA. With limited exceptions set forth in 13 C.F.R. § 314.6(b) or as otherwise authorized by EDA, Recipient-owned property acquired or improved in whole or in part with EDA investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered. *See* 13 C.F.R. § 314.6.

b. *Recording EDA's Interest in Property.*

- (i) For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute and furnish to the Government, prior to initial Award disbursement, a lien, covenant, or other statement, satisfactory to EDA in form and substance, of EDA's interest in the property acquired or improved in whole or in part with the funds made available under this Award. EDA may require such statement after initial Award disbursement in the event that grant funds are being used to acquire such property. The statement must specify the estimated useful life of the Project and shall include but not be limited to the disposition, encumbrance, and the Federal Share compensation requirements. *See* 13 C.F.R. §§ 314.1 and 314.8(a).
 - (ii) This lien, covenant, or other statement of the Government's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with applicable law. EDA shall require an opinion of counsel for the Recipient to substantiate that the document has been properly recorded. *See* 13 C.F.R. § 314.8(b).
 - (iii) Facilities in which the EDA investment is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs M.3.b.(i) and (ii) above. *See* 13 C.F.R. § 314.8(c).
- c. The Recipient acknowledges that the Government retains an undivided equitable reversionary interest in the property acquired or improved in whole or in part with grant funds made available through this Award throughout the estimated useful life (as determined by EDA) of the Project, except in applicable instances set forth in 13 C.F.R. § 314.7(c). *See also* 13 C.F.R. § 314.2(a).
- d. The Recipient agrees that in the event that any interest in property acquired or improved in whole or in part with EDA investment assistance is disposed of, encumbered or alienated in any manner, or no longer used for the authorized purpose(s) of the Award during the Project's estimated useful life without EDA's written approval, the Government will be entitled to recover the Federal Share, as defined at 13 C.F.R. § 314.5. If, during the Project's estimated useful life, the property is no longer needed for the purpose(s) of the Award, as determined by EDA, EDA may permit its use for other acceptable purposes consistent with those authorized by PWEDA and 13 C.F.R. chapter III. *See* 13 C.F.R. § 314.3(b).

- e. For purposes of any lien or security interest, the amount of the Federal Share shall be the portion of the current fair market value of any property (after deducting any actual and reasonable selling and repair expenses incurred to put the property into marketable condition) attributable to EDA's participation in the Project. *See* 13 C.F.R. § 314.5.
- f. The alienation of Award property includes sale or other conveyance of the Recipient's interest, leasing or mortgaging the property, or granting an option for any of the foregoing.

4. **Insurance and Bonding.**

- a. *Recipients that are Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations.* The Recipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with federal funds as provided to property owned by the Recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award. *See* 15 C.F.R. § 14.31.
- b. *Recipients that are State and Local Governments.* If the Award exceeds the simplified acquisition threshold, EDA may accept the Recipient's or subrecipient's bonding policy and requirements if EDA determines that the Federal Interest is adequately protected. If not, the following minimum requirements shall apply:
 - (i) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the proffered bid, execute such contractual documents as may be required within the time specified;
 - (ii) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
 - (iii) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. *See* 15 C.F.R. § 24.36(h)

5. **Leasing Restrictions.** Leasing or renting of facilities or property is prohibited unless specifically authorized by EDA. The Recipient agrees that any leasing or renting of any facilities or property involved in this Project will be subject to the following:

- a. That said lease arrangement is consistent with the authorized general and special purpose of the Award;
- b. That said lease arrangement is for adequate consideration; and
- c. That said lease arrangement is consistent with applicable EDA requirements concerning but not limited to nondiscrimination and environmental compliance.

6. **Use of Eminent Domain Prohibited.** The Recipient will use funds solely for the authorized use of the Project. Pursuant to Executive Order 13406, "*Protecting the Property Rights of the American People,*" the Recipient agrees:

- a. Not to use any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties; and
- b. Not to accept title to land, easements, or other interests in land acquired by the use of any power of eminent domain for use in connection with the Project for such purposes.

The Recipient agrees that any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the Project without prior written consent of EDA is an unauthorized use of the Project. If the Recipient puts the Project to an unauthorized use, the Recipient shall compensate EDA for its fair share in accordance with 13 C.F.R. §§ 314.4 and 314.5, as same may be amended from time to time.

7. Disposal of Real Property.

- a. If EDA and the Recipient determine that property acquired or improved in whole or in part with EDA investment assistance is no longer needed for the original purpose(s) of this Award, the Recipient must obtain approval from the Government to use the property in other federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 C.F.R. chapter III. *See* 13 C.F.R. § 314.3(b).
- b. When property is not disposed of as provided in section M.7.a. above, the Government shall determine final disposition and must be compensated by the Recipient for the Federal Share of the value of the property, plus costs and interest, as provided in 13 C.F.R. § 314.4.

N. Environmental Requirements.

Environmental impacts must be considered by federal decision-makers in their decisions whether or not to: (i) approve a proposal for federal assistance; (ii) approve the proposal with mitigation; or (iii) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with early consideration of potential environmental impacts that Project(s) funded with federal assistance may have on the environment. The Recipient and any subrecipients shall comply with all environmental standards, to include those prescribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the Award may have on the environment. In some cases, the Grants Officer can withhold Award funds under a special award condition requiring the Recipient to submit additional environmental compliance information sufficient to enable the Department to make an assessment on any impacts that a Project may have on the environment.

1. The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*)

The National Environmental Policy Act ("NEPA") and the Council on Environmental Quality ("CEQ") implementing regulations (40 C.F.R. parts 1500 – 1508) require that an environmental analysis be completed for all major federal actions significantly affecting the environment. NEPA applies to the actions of federal agencies and may include a federal agency's decision to fund non-federal projects under grants and cooperative agreements. Recipients of federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment and assist the agency to comply with NEPA. Recipients may also be requested to assist EDA in drafting an environmental

assessment if EDA determines an assessment is required. If additional information is required during the period of the Award, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit additional environmental compliance information sufficient to enable EDA to make an assessment on any impacts that the Project may have on the environment.

2. **Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371 – 4375)**
Federally-supported public works facilities and activities that affect the environment shall be implemented in compliance with policies established under existing law.
3. **Executive Order 12088, “Federal Compliance with Pollution Control Standards,” (43 Fed. Reg. 47707, October 13, 1978), as amended**
All necessary actions shall be taken for the prevention, control, and abatement of environmental pollution with respect to federally-supported facilities and activities
4. **Executive Order 11514, “Protection and Enhancement of Environmental Quality,” (35 Fed. Reg. 4247, March 5, 1970), as amended**
Federally-supported facilities and activities shall be maintained and directed to meet national environmental goals.
5. **Executive Order 11593, “Protection and Enhancement of the Cultural Environment,” (36 Fed. Reg. 8921, May 13, 1971), as amended**
Federally-owned sites, structures, and objects of historical, architectural, or archaeological significance shall be preserved, restored, and maintained.
6. **Clean Air Act, Clean Water Act, and Executive Order 11738**
Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Clean Water Act (42 U.S.C. § 1251 *et seq.*), and Executive Order 11738, and shall not use a facility on the Environmental Protection Agency’s (“EPA”) *List of Violating Facilities* in performing any Award that is nonexempt under 2 C.F.R. § 1532, and shall notify the EDA Project Officer in writing if it intends to use a facility that is on EPA’s *List of Violating Facilities* or knows that the facility has been recommended to be placed on the List.
7. **The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f *et seq.*)**
This Act precludes federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.
8. **Executive Order 11988, “Floodplain Management,” (42 Fed. Reg. 26951, May 24, 1977) and Executive Order 11990, “Protection of Wetlands,” (42 Fed. Reg. 26961, May 24, 1977)**
Recipients must identify proposed actions in federally-defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.
9. **The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4002 *et seq.*), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration (“FEMA”) or by EDA**
Flood insurance, when available, is required for federally-assisted construction or acquisition in flood-prone areas.

10. **The Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 *et seq.*)**
Funded projects must be consistent with a coastal State's approved management plan for the coastal zone.
11. **The Coastal Barrier Resources Act, as amended, (16 U.S.C. § 3501 *et seq.*)**
Restrictions are placed on federal funding for actions within a Coastal Barrier System.
12. **The Wild and Scenic Rivers Act, as amended, (16 U.S.C. § 1271 *et seq.*)**
This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.
13. **The Fish and Wildlife Coordination Act, as amended, (16 U.S.C. § 661 *et seq.*)**
Requiring the evaluation the impacts to fish and wildlife from federally-assisted proposed water resource development projects.
14. **The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 *et seq.*)**
The Recipient must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that federal awards do not adversely affect protected species or habitats and must conduct the required reviews under the Endangered Species Act.
15. **The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (42 U.S.C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9662 *et seq.*)**
These requirements address responsibilities of hazardous substance releases, threatened releases, and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards.
16. **The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901 *et seq.*)**
This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Recipients of federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.
17. **Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 Fed. Reg. 7629, February 11, 1994)**
This Order identifies and addresses adverse human health or environmental effects of programs, policies, and activities on low-income and minority populations.
18. **The Lead-Based Paint Poisoning Prevention Act, as amended, (42 U.S.C. § 4821 *et seq.*)**
Use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with federal assistance is prohibited.
19. **The Farmland Protection Policy Act, as amended, (7 U.S.C. §§ 4201 – 4209)**
Projects are subject to review under this Act if they may irreversibly directly or indirectly convert farmland, including forest land, pastureland, cropland, or other land, to nonagricultural use.

20. **The Noise Control Act of 1972, as amended, (42 U.S.C. § 4901 *et seq.*)**
Federally-supported facilities and activities shall comply with federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.

21. **The Native American Graves Protection and Repatriation Act, as amended, (25 U.S.C. § 3001 *et seq.*)**
This Act provides a process for returning certain Native American cultural items to lineal descendants, culturally affiliated Indian Tribes, and Native Hawaiian organizations.

O. **Compliance with Environmental Requirements.** The Recipient agrees to notify the Grants Officer of any environmental requirement or restriction, regulatory or otherwise, with which it must comply. Before Project Closeout and final disbursement of Award funds, the Recipient further agrees to provide evidence satisfactory to the Grants Officer that any required environmental remediation has been completed: (1) in compliance with all applicable federal, State and local regulations; and (2) as set forth in the applicable Lease, Finding of Suitability to Lease ("FOSL"), Lease in Furtherance of Conveyance, Quitclaim Deed, or other conveyance instrument and any amendments, supplements, or succeeding documents. Compliance with said laws or restrictions shall be included in any contract documents for Project construction. The Recipient must certify compliance before final disbursement of grant funds.

P. **Miscellaneous Requirements.**

1. **Criminal and Prohibited Activities.**

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including grants, loans, or other benefits).
- b. The Criminal False Claims Act and the False Statements Act (18 U.S.C. §§ 287 and 1001) provide for criminal prosecution of a person who knowingly makes or presents any false, fictitious, or fraudulent statements or representations or claims against the United States. Such person shall be subject to imprisonment of not more than five years and shall be subject to a fine.
- c. The Civil False Claims Act (31 U.S.C. § 3729) provides that suits under this Act can be brought by the Federal Government, or a person on behalf of the Federal Government, for false claims under federal assistance programs.
- d. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a federally-supported Project from enticing an employee working on the Project from giving up a part of his compensation under an employment contract.

2. **Foreign Travel.**

- a. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 – 301-10.143.

- b. The Fly America Act requires that federal travelers and others performing federal government-financed foreign air travel must use United States flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a United States flag air carrier is unavailable, or use of United States flag air carrier service will not accomplish the agency's mission.
 - c. Use of foreign air carriers may also be used only if bilateral agreements permit such travel pursuant to 49 U.S.C. § 40118(b). The Department is not aware of any bilateral agreements that meet these requirements. Therefore, it is the responsibility of the Recipient to provide the Grants Officer with a copy of the applicable bilateral agreement if use of a foreign carrier under a bilateral agreement is anticipated.
 - d. If a foreign air carrier is anticipated to be used, the Recipient must receive prior approval from the Grants Officer. When requesting such approval in accordance with the guidance provided by 41 C.F.R. § 301-10.142, the Recipient must provide a "certification" the Grants Officer with the following: (i) his or her name; (ii) dates of travel; (iii) the origin and destination of travel; (iv) a detailed itinerary of travel; (v) the name of the air carrier and flight number for each leg of the trip; (vi) and a statement explaining why the Recipient meets one of the exceptions to the applicable regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the Recipient not being reimbursed for any transportation costs for which the Recipient improperly used a foreign air carrier.
3. **American-Made Equipment and Products.** Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.
4. **Intellectual Property Rights.**
- a. **Inventions.** The intellectual property rights to any invention made by a Recipient under a DOC Award are determined by the Bayh-Dole Act, as amended (Pub. L. No. 96-517), and codified in 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 C.F.R. part 401, and in the particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this Award.
 - (i) *Ownership.*
 - (a) **Recipient.** The Recipient has the right to own any invention it makes (conceived or first reduced to practice) or that is made by its employees. The Recipient may not assign its rights to a third party without the permission of the Department unless it is to a patent management organization (i.e., a university's research foundation.) The Recipient's ownership rights are subject to the Federal Government's nonexclusive paid-up license and other rights.
 - (b) **Department.** If the Recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, the Department may request an assignment of all rights, which is

normally subject to a limited royalty free non-exclusive license for the Recipient. The Department owns any invention made solely by its employees, but may license the Recipient in accordance with the procedures in 37 C.F.R. part 404.

- (c) **Inventor/Employee.** If neither the Recipient nor the Department is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the Department's Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.
 - (d) **Joint Inventions.** Inventions made jointly by a Recipient and a Department employee will be owned jointly by the Recipient and DOC. However, the Department may transfer its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the Recipient is willing to patent and license the invention in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Recipient and Department employee). The agreement will be prepared by the Department's Patent Counsel and may include other provisions, such as a royalty free license to the Federal Government and certain other entities. The Recipient also is authorized to transfer its rights to the Federal Government, which can agree to share royalties similarly as described above (35 U.S.C. § 202(e)).
 - (ii) **Responsibilities –iEdison.** The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The Recipient is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. part 401. Recipients of DOC Awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. The Recipient may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.
- b. **Patent Notification Procedures.** Pursuant to Executive Order 12889, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer:
- However, this notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.
- c. **Data, Databases, and Software.** The rights to any work produced or purchased under a DOC Award are determined by 15 C.F.R. §§ 14.36 or 24.34, as applicable. Such works may include data, databases, or software. The Recipient owns any work produced or purchased under a DOC Award subject to the Department's right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the data for Federal Government purposes.

d. **Copyright.** The Recipient may copyright any work produced under a DOC Award subject to the Department's royalty-free, non-exclusive, and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Federal Government purposes. Works jointly authored by the Department and Recipient employees may be copyrighted, but only the part authored by the Recipient is protected under 17 U.S.C. § 105, which provides that works produced by Federal Government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. On occasion, the Department may ask the Recipient to transfer to the Department its copyright in a particular work when the Department is undertaking the primary dissemination of the work. Ownership of copyright by the Federal Government through assignment is permitted under 17 U.S.C. § 105.

5. **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

6. **Research Involving Human Subjects.**

- a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27, "*Protection of Human Subjects*." No research involving human subjects is permitted under this Award unless expressly authorized by special award condition or otherwise authorized in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. The Department's regulations at 15 C.F.R. part 27 require that Recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in carrying out the purpose(s) of this Award, the Recipient shall submit appropriate documentation to the Project Officer for approval. This documentation may include:
 - (i) Documentation establishing approval of the Project by an institutional review board ("IRB") approved for government-wide use under Department of Health and Human Services guidelines (*see* 15 C.F.R. § 27.103);
 - (ii) Documentation to support an exemption for the Project under 15 C.F.R. § 27.101(b);
 - (iii) Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118; or
 - (iv) Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred or charged for human subjects research until the appropriate documentation is approved in

writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred or charged to the Project for protocol or instrument development related to human subjects research.

7. **Federal Employee Expenses.** Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any federal employee unless specifically approved in the terms of the Award. Use of Award funds (federal or non-federal) or the Recipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for federal employees, from Recipients or applicants regardless of the source.
8. **Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally-Funded Construction Projects.** Pursuant to Executive Order 13202, "*Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally-Funded Construction Projects*," as amended by Executive Order 13208, unless the Project is exempted under section 5(c) of the Order, bid specifications, Project-related agreements, or other controlling documents for construction contracts awarded by Recipients or any construction manager acting on their behalf, shall not:
 - a. Include any requirement or prohibition on bidders, offerors, contractors, or subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction Project(s); or
 - b. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction Project(s).
9. **Minority Serving Institutions ("MSIs") Initiative.** Pursuant to Executive Orders 13256, "*President's Board of Advisors on Historically Black Colleges and Universities*," 13230 "*President's Advisory Commission on Educational Excellence for Hispanic Americans*," and 13270, "*Tribal Colleges and Universities*," the Department is strongly committed to broadening the participation of MSIs in its financial assistance programs. The Department's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from federal financial assistance programs. The Department encourages all applicants and Recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the U.S. Department of Education's website.
10. **Research Misconduct.** Scientific or research misconduct refers to the fabrication, falsification or plagiarism in proposing, performing, or reviewing research, or in reporting research results. It does not include honest errors or differences of opinion. The Recipient organization has the primary responsibility to investigate allegations and provide reports to the Federal Government. Funds expended on an activity that is determined to be invalid or unreliable because of scientific misconduct may result in a disallowance of costs for which the institution may be liable for repayment to the awarding agency. The Office of Science and Technology Policy at the White House published in the *Federal Register* on December 6,

2000 a final policy that addressed research misconduct (65 Fed. Reg. 76260). The policy was developed by the National Science and Technology Council. The Department requires that any allegation be submitted to the Grants Officer, who also will notify the OIG of such allegation. Generally, the Recipient organization shall investigate the allegation and submit its findings to the Grants Officer. The Department may accept the Recipient's findings or proceed with its own investigation. The Grants Officer shall inform the Recipient of the Department's final determination.

11. **Publications, Videos, and Acknowledgment of Sponsorship.** Publication of the results or findings of a research Project in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting scientific information. It is also a constructive means to expand access to federally-funded research. The Recipient is required to submit a copy to the funding agency and when releasing information related to a funded Project include a statement that the Project or effort undertaken was or is sponsored by DOC. The Recipient also is responsible for ensuring that every publication of material (including Internet sites and videos) based on or developed under an Award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "This [report/video] was prepared by [Recipient name] under [Award number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce." This disclaimer also applies to videos produced under DOC Awards.
12. **Care and Use of Live Vertebrate Animals.** Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. § 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and the implementing regulations at 9 C.F.R. parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); the Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Non-indigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by federal financial assistance. No research involving vertebrate animals is permitted under any DOC Award unless authorized by the Grants Officer.
13. **Homeland Security Directive.** If the performance of this Award requires the Recipient to have physical access to federal premises for more than 180 days or access to a federal information system, personal identity verification procedures must be implemented. Any items or services delivered under this Award shall comply with the Department's personal identity verification procedures that implement Homeland Security Presidential Directive – 12, FIPS PUB 201, and OMB Memorandum M-05-24. The Recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a federally-controlled facility or access to a federal information system.

14. **Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.**

- a. This clause applies to the extent that this Award involves access to export-controlled information or technology.
- b. In performing this Award, the Recipient may gain access to export-controlled information or technology. The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The Recipient shall establish and maintain throughout performance of this Award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.
- c. *Definitions.*
 - (i) *Deemed Export.* The Export Administration Regulations ("EAR") define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is "deemed" to be an export to the home country of the foreign national. See 15 C.F.R. § 734.2(b)(2)(ii).
 - (ii) *Export-controlled information and technology.* Export-controlled information and technology subject to the EAR (15 C.F.R. §§ 730-774), implemented by the Department's Bureau of Industry and Security, or the "*International Traffic In Arms Regulations*" ("ITAR") (22 C.F.R. §§ 120-130), implemented by the Department of State, respectively. This includes but is not limited to dual-use items, defense articles and any related assistance, services, software, or technical data as defined in the EAR and ITAR.
- d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access is restricted, or licensed, as required by applicable federal laws, Executive Orders, or regulations.
- e. Nothing in the Terms and Conditions of this Award is intended to change, supersede or waive the requirements of applicable federal laws, Executive Orders, or regulations.
- f. The Recipient shall include this subsection entitled "*Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations,*" including this subparagraph (f), in all lower-tier transactions (sub-awards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.

APPENDIX

THE FOLLOWING REFERENCE MATERIALS AND FORMS ARE AVAILABLE ONLINE:

1. 2 C.F.R. part 220 (codifying OMB Circular A-21, "Cost Principles for Educational Institutions")
2. 2 C.F.R. part 225 (codifying OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments")
3. 2 C.F.R. part 230 (codifying OMB Circular A-122, "Cost Principles for Nonprofit Organizations")
4. 2 C.F.R. part 1326, "Non-Procurement Debarment and Suspension"
5. 13 C.F.R. chapter III (EDA's regulations)
6. 15 C.F.R. part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations" (codifying OMB Circular A-110)
7. 15 C.F.R. part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
8. 15 C.F.R. part 4, "Disclosure of Government Information"
9. 15 C.F.R. part 27, "Protection of Human Subjects"
10. 15 C.F.R. part 28, "New Restrictions on Lobbying"
11. 15 C.F.R. part 29, "Government-wide Requirements for Drug-Free Workplace (Financial Assistance)"
12. 48 C.F.R. part 31, "Contract Cost Principles and Procedures"
13. OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments"
14. OMB Circular A-133, "Audits of States, Local Governments and Nonprofit Organizations," and the related *Compliance Supplement*

To access EDA's regulations, visit EDA's Internet website at www.eda.gov/InvestmentsGrants/Lawsreg.xml.

To access the Code of Federal Regulations (C.F.R.), visit the Government Printing Office's Internet website at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>.

To access the OMB Circulars, visit OMB's Internet website at www.whitehouse.gov/omb/circulars/index.html.

To access the Davis Bacon wage rate determinations, visit the Department of Labor's Internet website at www.wdol.gov/.

EDA FORMS:

1. Form CD-281, "Report of Government Property in Possession of Contractor"
2. Form CD-451, "Amendment to Financial Assistance Award"
3. Form CD-346, "Identification - Applicant for Funding Assistance"
4. Form SF-269, "Financial Status Report"
5. Form SF-270, "Request for Advance or Reimbursement" (with Instructions)
6. Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"
7. Form SF-272, "Federal Cash Transaction Report"
8. Form SF-LLL, "Disclosure of Lobbying Activities"

To access Department of Commerce forms ("CD"), visit the Department's Internet website at http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic_Forms/index.htm.

To access the Standard Forms ("SF"), visit the General Services Administration's Internet website at www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF.



**UNITED STATES DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

SUMMARY OF EDA CONSTRUCTION STANDARDS

A REFERENCE TOOL FOR CONSTRUCTION INVESTMENTS
MADE UNDER SECTIONS 201 OR 209 OF THE
PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965,
AS AMENDED (42 U.S.C. § 3121 *ET SEQ.*)

OCTOBER 2007
(as amended on November 28, 2007)

TABLE OF CONTENTS

I.	PURPOSE AND SCOPE OF THIS SUMMARY	1
A.	PURPOSE.....	1
B.	SCOPE.....	1
II.	DEPARTMENT OF COMMERCE AND EDA POLICIES	2
III.	REQUIREMENTS APPLICABLE TO EDA INVESTMENTS	2
A.	GRANT RECIPIENT AS TRUSTEE.....	2
B.	THE RECIPIENT'S RESPONSIBILITIES.....	2
C.	EMINENT DOMAIN.....	3
D.	RECORD-KEEPING REQUIREMENTS.....	4
E.	THE FINANCIAL ASSISTANCE AWARD.....	4
F.	FINANCIAL REPORTING	4
G.	MONITORING AND REPORTING PROJECT PROGRESS	5
IV.	PRE-CONSTRUCTION REQUIREMENTS.....	6
A.	ENVIRONMENTAL COMPLIANCE.....	6
B.	CIVIL RIGHTS COMPLIANCE	6
C.	START OF CONSTRUCTION.....	7
D.	PROJECT MANAGEMENT CONFERENCE.....	7
E.	ARCHITECT/ENGINEER SERVICES	7
F.	SERVICES PERFORMED BY RECIPIENT'S OWN FORCES	8
G.	TRIBAL EMPLOYMENT RIGHTS ORDINANCES	8
H.	LAND, EASEMENTS AND RIGHTS OF WAY	9
I.	RELOCATION ASSISTANCE.....	9
J.	EDA REVIEW OF PLANS AND SPECIFICATIONS.....	9
K.	NON-EDA WORK.....	10
L.	ALTERNATE CONSTRUCTION PROCUREMENT METHODS.....	11
M.	OVERRUN AT THE BID OPENING.....	11
N.	PROTEST PROCEDURES	11
V.	REQUIREMENTS DURING CONSTRUCTION	11
A.	THE RECIPIENT'S RESPONSIBILITIES.....	11
B.	CONTRACT CHANGE ORDERS.....	13
C.	SPECIFIC REQUIREMENTS FOR SUBCONTRACTORS.....	14
D.	CONTRACTING STANDARDS.....	14
E.	COMPETITIVE PROCUREMENT REQUIREMENTS	15
VI.	DISBURSEMENT OF GRANT FUNDS AND FINANCIAL ADMINISTRATION	18
A.	PRE-DISBURSEMENT REQUIREMENTS	18
B.	INTERIM DISBURSEMENTS.....	19
C.	FINAL DISBURSEMENT	19

VII. AWARD AMENDMENTS, APPROVALS, AND NOTIFICATIONS 20
A. AMENDMENTS 20
B. TIME SCHEDULE EXTENSIONS 20
C. BUDGET REVISIONS 21
D. ADDITIONAL EDA FUNDING 21
E. ADMINISTRATIVE APPROVALS AND NOTIFICATIONS 22
F. TERMINATION OF INVESTMENT ASSISTANCE 22

VIII. POST-CONSTRUCTION REQUIREMENTS 23
A. OMB CIRCULAR A-133 AUDIT REQUIREMENTS 23
B. DEPARTMENTAL AUDIT RESOLUTION PROCESS 24
C. PROPERTY MANAGEMENT 25
D. CLOSEOUT PROCEDURES 25

IX. APPENDIX 28

I. PURPOSE AND SCOPE OF THIS SUMMARY

A. PURPOSE

1. This "*Summary of EDA Construction Standards*" (hereinafter referred to as "Summary") describes the procedures for compliance, reporting, and record-keeping, and administrative requirements that apply to construction investments made by the Economic Development Administration ("EDA") under sections 201 or 209 (42 U.S.C. §§ 3141 and 3149) of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) ("PWEDA").
2. *Terms and Conditions*. Form CD-450, "*Financial Assistance Award*," (the "Award"), executed by EDA and the recipient, together with the EDA-approved project budget and scope of work, standard terms and conditions, special award conditions, and all applicable federal statutory and regulatory requirements as incorporated by reference, constitute the complete requirements, hereinafter referred to as the "Terms and Conditions," applicable to the EDA investment. This Summary is designed to help clarify these requirements. In the event that any term or provision in this Summary conflicts with or is inconsistent with any provision contained in the Terms and Conditions, the provisions of the Terms and Conditions are controlling.

B. SCOPE

1. This Summary applies to all Awards for construction projects and is based on the Office of Management and Budget's ("OMB") administrative and programmatic requirements for federal grants as set forth in applicable OMB Circulars, and in the following regulations published in the *Code of Federal Regulations* ("C.F.R."):
 - (a) 13 C.F.R. chapter III (*Economic Development Administration, Department of Commerce*);
 - (b) 15 C.F.R. part 14 (*Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations*);
 - (c) 15 C.F.R. part 24 (*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*);
 - (d) 2 C.F.R. part 220 (OMB Circular A-21, *Cost Principles for Educational Institutions*);
 - (e) 2 C.F.R. part 225 (OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*); and
 - (f) 2 C.F.R. part 230 (OMB Circular A-122, *Cost Principles for Nonprofit Organizations*), each as amended from time to time.
2. This Summary supplements the requirements set out in PWEDA, EDA's regulations at 13 C.F.R. chapter III, the Terms and Conditions of the Award, and the applicable OMB Circulars listed in the Appendix to this Summary and the hyperlinks set out therein (*see* section IX.). This Summary should be used as a reference tool to implement various requirements that apply to EDA construction investments made under sections 201 or 209 of PWEDA (42 U.S.C. §§ 3141 and 3149). This Summary is not a comprehensive source of information. In addition to PWEDA, a list of primary sources of legal requirements is set out above in section I.B.1. *See also* section IX. (Appendix) of this Summary.

II. DEPARTMENT OF COMMERCE AND EDA POLICIES

- A.** As a federal agency, EDA is obligated to promulgate regulations and establish policies and procedures applicable to recipients of EDA investments to:
1. Ensure compliance with applicable federal requirements;
 2. Safeguard the public's interest in the grant assets; and
 3. Promote the effective use of grant funds in accomplishing the purpose(s) for which they were awarded.
- B.** EDA or the Department of Commerce (the "Department" or "Departmental") may issue changes from time to time to EDA's regulations and other requirements and policies that apply to the Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering the Award. The implementation of any such regulatory, administrative or programmatic change in administering the Award must have prior EDA written approval.
- C.** EDA's policy is to administer all Awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA may consider requests for variances to the procedures set out in this Summary if they do not conflict with applicable federal statutory and regulatory requirements, are consistent with the goals of EDA's programs, and make sound economic and financial sense.

III. REQUIREMENTS APPLICABLE TO EDA INVESTMENTS

A. GRANT RECIPIENT AS TRUSTEE

The recipient of an EDA investment holds grant funds and any EDA-funded project property in trust for the purpose(s) for which the Award was made. The recipient's obligation to the Federal government continues for the estimated useful life of the project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the "Federal Interest") in the property improved, in whole or in part, with the EDA investment. *See* 13 C.F.R. § 314.2.

If EDA determines that the recipient fails or has failed to meet this obligation, the agency may exercise any rights or remedies with respect to its Federal Interest in the project. However, EDA's forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

B. THE RECIPIENT'S RESPONSIBILITIES

1. The recipient is responsible for complying with all federal laws (and the regulations issued thereunder), federal, Departmental and EDA policies, Executive Orders, and OMB Circulars, as referenced in the Terms and Conditions, each as may be amended from time to time. These statutes, regulations, policies, Executive Orders and OMB Circulars may include administrative and audit requirements, federal cost principles, programmatic requirements, financial requirements, and property management requirements. *See* 13 C.F.R. § 302.6. The recipient is responsible for the design, bidding, construction, and operation of the project to ensure compliance with all grant requirements, including those set out at 13 C.F.R. part 305.

2. In order to facilitate timely implementation, EDA may accept the recipient's certification, accompanied by evidence satisfactory to EDA, that it meets the requirements for receiving the Award and that it will comply with its Terms and Conditions. *See* 13 C.F.R. § 302.15. EDA also may require the recipient submit specific certifications for critical issues, such as major procurement and costs claimed in requests for disbursement of grant funds. EDA will monitor project progress and compliance with the Terms and Conditions through the:
 - (a) Recipient's written reports;
 - (b) Review of the recipient's records during EDA visits to the project site;
 - (c) Department's Office of Inspector General audits; and
 - (d) Single or program-specific audit conducted in accordance with OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*," and the related *Compliance Supplement*. *See* section VIII.A. of this Summary.
3. During the construction period, the recipient is responsible for:
 - (a) Monitoring project progress and reporting progress to EDA;
 - (b) Providing for adequate construction inspection;
 - (c) Paying costs incurred for the project promptly; and
 - (d) Monitoring contractors' compliance with applicable local, State and federal requirements.
4. After construction is completed, the recipient is responsible for submitting close-out documentation and properly administering, operating and maintaining the project for its estimated useful life, as determined by EDA and as set forth in the Terms and Conditions. *See* 13 C.F.R. § 302.12.
5. Failure to satisfy any Term or Condition may result in disallowance of costs, or suspension or termination of the Award and recovery of grant funds. In addition, such failure may have a negative impact on the recipient's ability to receive future funding from the Department. *See* 13 C.F.R. § 302.18. In particular, the project development time schedule, a Term of the Award, can be extended only through the recipient's written request for an amendment to the Award and written approval by EDA. *See* 13 C.F.R. § 302.7. The Terms and Conditions of the Award place the recipient on notice that the grant may be suspended for not proceeding in accordance with the EDA-approved time schedule set out in the Award. No disbursement of EDA funds is permitted when a project has exceeded the EDA-approved time schedule, unless EDA has given written approval to a time schedule extension. *See* 13 C.F.R. § 305.9 regarding project phasing and investment disbursement.

C. EMINENT DOMAIN

In making a discretionary award for a construction project, EDA considers the policy on eminent domain set out in Executive Order 13406, "*Protecting the Property Rights of the American People*." The Terms and Conditions of the Award include appropriate provisions to ensure that the recipient has agreed:

1. Not to use any power of eminent domain available to the recipient (including the commencement of eminent domain proceedings) for use in connection with the project for the purpose of advancing the economic interests of private parties;
2. Not to accept title to land, easements or other interests in land acquired by the use of any power of eminent domain for use in connection with the project for such purposes; and

3. Any use of the power of eminent domain to acquire land, easements, or other interests in land, whether by the recipient or any other entity that has the power of eminent domain, in connection with the project without prior written consent of EDA is an unauthorized use of the project. If the recipient puts the project to an unauthorized use, the recipient will be required to compensate EDA for its fair share in accord with 13 C.F.R. §§ 314.4 and 314.5, and 15 C.F.R. §§ 14.32 or 24.31, as applicable.

D. RECORD-KEEPING REQUIREMENTS

The recipient is responsible for maintaining records that document compliance with the Terms and Conditions of the Award. At a minimum, the recipient's records must contain documentation that fully discloses:

1. The amount and disposition of the EDA investment assistance;
2. All project expenditures and procurement actions;
3. The total cost of the project that the Award funds;
4. The amount and nature of the portion of project costs provided by non-EDA sources;
5. Contractor compliance with applicable federal requirements; and
6. Such other records as EDA determines will facilitate an effective audit.

The recipient is responsible for retaining records for the time frame specified in the Terms and Conditions. See 13 C.F.R. § 302.14. See also 15 C.F.R. §§ 14.50-14.53 or §§ 24.40-24.42, as applicable.

E. THE FINANCIAL ASSISTANCE AWARD

The recipient should pay particular attention to the following provisions of the Award:

1. *Description of Project.* The description of the project in the Award, together with more detailed information provided in the Award application, determines and defines the scope(s) of work to be funded under the Award.
2. *Federal Requirements.* The listed federal requirements describe applicable administrative or programmatic obligations for which the recipient is responsible. Critical documents are listed in section IX. (Appendix) of this Summary. These publications provide important information on requirements regarding procurement, record-keeping, eligible project costs and other administrative or programmatic issues.
3. *Standard Terms and Conditions.* The standard terms and conditions are applicable to all EDA-assisted construction projects.
4. *Special Award Conditions.* The special award conditions may contain conditions that must be satisfied prior to advertisement for bids, start of construction, or disbursement of Award funds, as well as conditions unique to the Award that are ongoing for the estimated useful life of the project.

F. FINANCIAL REPORTING

1. *Semiannual financial reports.* Any recipient whose Award has not been fully disbursed is required to submit Form SF-269, "Financial Status Report" to EDA semiannually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable project expenses that have been incurred, but not claimed for reimbursement by the recipient. The first report shall be as of March 30 of each year and shall be submitted to EDA no later than April 30 of each year, and the second report shall be of September 30 of each year and shall be submitted to EDA no later than October 30

of each year. Instructions for completing and submitting Form SF-269 will be furnished to the recipient at least 60 days before the report is due.

2. *Final financial report.* The recipient must submit a final financial report using Form SF-269 within 90 days of the expiration date of the Award (or from the date the recipient accepts the project from the contractor, whichever occurs earlier).
3. *Noncompliance with financial reporting requirements.* Noncompliance with these requirements will result in the suspension of disbursements under the Award. Financial reports are to be submitted to the Project Officer.

G. MONITORING AND REPORTING PROJECT PROGRESS

1. *Quarterly performance reports.*

- (a) Quarterly performance reports must be submitted in accordance with the procedures set out in 15 C.F.R. parts 14 or 24, as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under the Award; deferral of processing of new awards, amendments or supplemental funding pending the receipt of the overdue report(s); or the establishment of an account receivable for the difference between the total federal share of outlays last reported and the amount disbursed.
See 13 C.F.R. § 302.18(a)
- (b) Unless otherwise specified in the Award, the quarterly performance report will contain the following information for each project program, function, or activity:
 - (i) A comparison of planned and actual accomplishments according to the timetable or list of project objectives in the Award;
 - (ii) An explanation of any delays or failures to meet the project timetable or project goals; and
 - (iii) Any other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.
- (c) Quarterly performance reports shall be submitted for each calendar quarter to the Project Officer. Each performance report will be due not later than January 15, April 15, July 15, and October 15 for the immediate previous quarter. The final project performance report shall be submitted to EDA no more than 90 days after the project closeout date. This reporting requirement begins with the recipient's acceptance of the Award and ends when EDA approves project closeout.
See 15 C.F.R. §§ 14.51 or 24.40, as applicable.

The recipient shall submit quarterly performance reports to the Project Officer in hardcopy or electronically as specified in the special award conditions.

See 15 C.F.R. §§ 14.51 or 24.40, as applicable.

2. *Interim performance reporting.* Events may occur that have significant impact upon the project, including delays or adverse conditions that may materially affect the ability of the recipient to attain project objectives within established time periods or meet the project development time schedule. The recipient must disclose such problems to EDA in the most expedient way possible and then, if initial notification was not made in writing, report the event in writing, including a statement of the action contemplated, and any federal assistance needed to resolve the situation. If budget changes are required, the

recipient must submit a written budget revision request. See 15 C.F.R. §§ 14.25(h) or 24.30(c)(2), as applicable. Any changes made to the project without EDA's prior approval are made at the recipient's risk of nonpayment of costs, suspension, termination, or other applicable EDA action. See 13 C.F.R. § 302.7.

3. *Government Performance and Results Act reporting.* In addition to quarterly performance reports, EDA may require the recipient to report on project performance beyond the project closeout date for Government Performance and Results Act (GPRA) purposes. In no case shall the recipient be required to submit any report more than 10 years after the project closeout date. Data used by the recipient in preparing reports shall be accurate and from independent sources whenever possible. See 13 C.F.R. § 302.16.

IV. PRE-CONSTRUCTION REQUIREMENTS

A. ENVIRONMENTAL COMPLIANCE

EDA undertakes environmental reviews of projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. No. 91-190; 42 U.S.C. § 4321 *et seq.*, as implemented under 40 C.F.R. chapter V) ("NEPA"), and all other federal environmental statutes, regulations and Executive Orders, as listed in the Terms and Conditions of the Award. These authorities include the implementing regulations of NEPA, which require EDA to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 C.F.R. § 1506.6(b). The recipient must pay special attention to and comply with any special environmental conditions in the Award. See 13 C.F.R. § 302.1.

B. CIVIL RIGHTS COMPLIANCE

In accordance with the following authorities, discrimination is prohibited by a recipient or "Other Party" (as defined in 15 C.F.R. § 8.3(1) and 13 C.F.R. § 302.20(b)) with respect to a project receiving EDA investment assistance under PWEDA:

1. Title VI of the Civil Rights Act of 1964, as amended (Pub. L. No. 88-352, 42 U.S.C. § 2000d *et seq.*), and the Department's implementing regulations at 15 C.F.R. part 8;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*) prohibiting discrimination on the basis of sex under federally-assisted education programs or activities;
3. Pub. L. No. 92-65, 42 U.S.C. § 3123 (proscribing discrimination on the basis of sex in EDA assistance provided under PWEDA) and Pub. L. No. 94-369, 42 U.S.C. § 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department's implementing regulations at 15 C.F.R. §§ 8.7-8.15;
4. Section 504 of the Rehabilitation Act of 1973, as amended (Pub. L. No. 93-112, 29 U.S.C. § 794), and the Department's implementing regulations at 15 C.F.R. part 8b;
5. The Age Discrimination Act of 1975, as amended (Title III of Pub. L. No. 94-135, 42 U.S.C. § 6101 *et seq.*), and the Department's implementing regulations found at 15 C.F.R. part 20;
6. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; and

7. Other federal statutes, regulations and Executive Orders, as applicable. *See generally* 13 C.F.R. § 302.20.

Consistent with 15 C.F.R. §§ 14.44(b) or 24.36(e), as applicable, the recipient and any subrecipient will take all necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

C. START OF CONSTRUCTION

1. *Early construction starts.* The recipient must make a written request to EDA for early construction start permission. In order for project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the project facilities is in compliance with the Terms and Conditions. If construction commences prior to EDA's determination, the recipient proceeds at its own risk until EDA's review and concurrence. *See* 13 C.F.R. § 305.11.
2. *Delayed construction starts.* The following requirement is applicable to all EDA-assisted construction projects: If significant construction (as determined by EDA) is not commenced within two years of the approval of the project or by the date estimated for start of construction in the grant Award (or the expiration of any extension granted in writing by EDA), whichever is later, the EDA grant will be automatically suspended and may be terminated if EDA determines, after consultation with the recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. *See also* sections VII.B. and F. of this Summary.

D. PROJECT MANAGEMENT CONFERENCE

1. Shortly after approval of the Award, EDA may contact the recipient to arrange a project management conference. The purpose of the project management conference is to explain to the recipient its post-approval responsibilities for administration of the Award and applicable federal requirements.
2. Whenever practicable, the project management conference should be held when and where appropriate EDA regional office personnel will be available. The recipient's authorized representative, architect/engineer, attorney and possibly the recipient's financial representative should attend.

E. ARCHITECT/ENGINEER SERVICES

1. The architect/engineer agreement shall provide for all services required by the recipient for the design and engineering phases of the project. Appropriate standards or guidance developed by professional organizations, such as the American Consulting Engineers Council ("ACEC"), American Society of Civil Engineers ("ASCE"), National Society of Professional Engineers ("NSPE"), or the American Institute of Architects ("AIA"), may be used where the recipient does not have standard procurement or contracting documents.
2. The architect/engineer agreement shall cover all services necessary for the successful execution of the project including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram ("CPM/PERT") where applicable, and incidental costs. Regardless of who furnishes the construction inspector, the architect/engineer shall be held responsible for making sufficient visits to the project site

to ensure that the work proceeds in accordance with the approved plans and specifications.

3. The recipient must select the architect/engineer in accordance with the procurement standards set forth in 15 C.F.R. parts 14 or 24, as applicable. Unless EDA has approved a different type of award, the compensation to the architect/engineer for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on EDA's determination (subject to audit) that the compensation is reasonable. The "cost-plus-a-percentage-of-cost" and "percentage of construction cost" methods of contracting are specifically prohibited. See 15 C.F.R. §§ 14.44(c) or 24.36(f)(4), as applicable.
4. All architect/engineer contracts awarded by recipients shall include a provision to the effect that the recipient, EDA, the Comptroller General of the United States, the Departmental Inspector General, or any of their duly authorized representatives, shall have access to any paper or electronic documents, books, correspondence, and records of the architect/engineer (which are pertinent to the Award) to verify the recipient's compliance with Award requirements. See 13 C.F.R. § 302.14.
5. The recipient must require the architect/engineer to maintain all records for at least three (3) years after the recipient makes final payment and all pending matters are closed. See 15 C.F.R. §§ 14.53(b) or 24.36(i)(11), as applicable.

F. SERVICES PERFORMED BY RECIPIENT'S OWN FORCES

The recipient may have a portion or all of the design, construction, inspection, legal services, or other work or services in connection with the project performed by personnel who are employed by the recipient either full-time or part-time ("force account construction"). See 13 C.F.R. § 305.7.

EDA may approve the use of "force account construction" subject to the following conditions:

1. The services are routinely performed by the recipient for all construction projects performed by the recipient;
2. The recipient has a special skill required for the construction of the project;
3. The recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors such as the remoteness of the project site or an overabundance of construction work in the region; or
4. The recipient demonstrates substantial cost savings.

"Force account construction" may be considered an eligible cost for EDA reimbursement if the work or services performed are in conformance with OMB Circulars A-122 ("*Cost Principles for Nonprofit Organizations*"), A-21 ("*Cost Principles for Educational Institutions*"), or A-87 ("*Cost Principles for State, Local and Indian Tribal Governments*"), as applicable. See 2 C.F.R. parts 230, 220, or 225, as applicable.

G. TRIBAL EMPLOYMENT RIGHTS ORDINANCES

In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference(s) in contracting, hiring, and firing and the payment of a TERO fee generally are allowable

provisions under federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

H. LAND, EASEMENTS AND RIGHTS OF WAY

1. Except as provided in 13 C.F.R. § 314.6(b) or as otherwise authorized by EDA, recipient-owned property acquired or improved in whole or in part with investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered.
2. The recipient must disclose to EDA all encumbrances. EDA will not accept any encumbrance that interferes with the construction, intended use, operation or maintenance of the project during its estimated useful life. See 13 C.F.R. § 314.7. Prior to the advertisement of bids or at such other time as EDA requires, the recipient must furnish evidence, satisfactory in form and substance to EDA, that title to real property needed for the project is vested in the recipient and that it has obtained any rights-of-way, easements, State or local government permits, long-term leases or other property interests required for the project.

I. RELOCATION ASSISTANCE

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. No. 91-646, 42 U.S.C. § 4601 *et seq.*) (the "Uniform Act"), apply to all recipients of EDA investment assistance.

The Uniform Act provides assistance to persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with federal assistance funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition. Recipients are required to comply fully with the intent of the Uniform Act and to provide evidence of such compliance if requested. See 13 C.F.R. § 302.5.

J. EDA REVIEW OF PLANS AND SPECIFICATIONS

1. The recipient (with the assistance of its architect/engineer) is responsible for the accuracy and completeness of the design, dimensions, details, proper selection of materials, compliance with local building codes or ordinances, and is expected to use the "*EDA Contracting Provisions for Construction Projects*," which provides a list of applicable EDA and other federal requirements as guidance in developing all construction contracts.
2. Plans, specifications, and related documents must be submitted for EDA review and concurrence prior to advertising for bids. EDA's review is to ensure compliance with the Terms and Conditions of the Award and does not attest to the accuracy of design, dimensions, details, proper selection of materials, nor compliance with local building codes or ordinances. This responsibility rests with the recipient.

EDA's review is intended to confirm that:

- (a) The project as designed complies with the scope of work as described in the project application and in the Award;

- (b) Deductive alternates, if used, are taken in a specific order as shown in the bid documents;
 - (c) Any non-EDA funded work, if included, is identified so separate project progress and separate project costs can be determined; and
 - (d) The EDA project number and applicable EDA participation appears on the cover of all contract drawings and on the face sheet of the specification document(s).
3. EDA also will review for acceptability after advertising but before award of the contract if:
- (a) The procurement is expected to exceed the simplified acquisition threshold (currently set at \$100,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation;
 - (b) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;
 - (c) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold;
 - (d) The recipient's procurement procedures or operations fail to comply with the procurement standards set out in the Award; or
 - (e) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "name brand" product.
4. Until EDA has reviewed and concurred with the recipient's proposed contracts and related documents and determined they comply with the Terms and Conditions, the recipient will be proceeding at its own risk regarding the eligibility of any costs incurred. *See* 13 C.F.R. § 305.11.

K. NON-EDA WORK

If the recipient plans to include both EDA-funded and non-EDA-funded work in a single contract, the following requirements apply:

- 1. The plans and specifications must clearly define and separate costs included in the EDA project scope of work from other costs;
- 2. The recipient may offer for bid and award work in addition to the EDA project, *provided* the:
 - (a) recipient understands that EDA will participate only in the EDA-approved project; and
 - (b) additional work does not adversely affect the original intent or economic impact of the EDA-approved project;
- 3. Plans and specifications must be drawn so that the EDA project is clearly identifiable at all times during construction; and
- 4. Bid underruns cannot be applied to fund work that is not a part of the EDA project. It is the responsibility of the recipient to pay in full for all additional work beyond the scope of the EDA project. *See* 13 C.F.R. § 305.10.

Where a proposed contract includes EDA-funded and non-EDA-funded scope(s) of work, the contract will normally be awarded to the lowest bidder on all the work. EDA's participation will be determined based on the bid price for the lowest qualified bid for the EDA-funded scope of work. The recipient must include pertinent information with the contract award documentation prior to submitting it for EDA concurrence.

L. ALTERNATE CONSTRUCTION PROCUREMENT METHODS

1. Recipients may use alternate construction procurement methods to the traditional design/bid/build procedure (including lump sum or unit price-type construction contracts). These methods include but are not limited to construction management at-risk and force account. If an alternate method is used, the recipient shall submit to EDA for approval a construction services procurement plan and the recipient must use a design professional to oversee the process. *See* 13 C.F.R. § 305.6.
2. If the recipient elects to use the force account method, EDA will furnish specific guidance to the recipient to determine if the cost for such work is eligible for EDA reimbursement. *See* section IV.F. of this Summary.

M. OVERRUN AT THE BID OPENING

If there is an overrun at bid opening, the recipient may:

1. Take deductive alternatives to eliminate certain project elements in case of insufficient funds – if provided for in the bid documents – in the exact order shown on the invitation for bid until at least one of the responsive bids, less deductive alternative(s), results in a price within the budget for that item of work. It should be noted that the use of deductive alternates may result in a new low bidder. Therefore, care must be taken that the above procedure is followed exactly when deductive alternates are used to determine the lowest bid within the funds available.
2. Reject all bids and re-advertise. There should be a rational basis for believing that re-advertising will result in a lower bid (i.e., the recipient will have the project redesigned or there will be wider advertising).
3. Augment the recipient's share by an amount sufficient to cover the excess cost. If the recipient intends to finance the overrun from its own funds, it must furnish a letter to EDA identifying the source of the additional funds. The funds must be from an acceptable source and cannot include conditions that may negatively affect the project.
4. Request additional EDA financial assistance as a last resort. EDA may not approve the request for additional funds, which may require the termination of the project. *See* sections VII.C. and D. of this Summary.

N. PROTEST PROCEDURES

No protest or complaint regarding a contractor selection action shall be accepted by EDA until all administrative remedies at the recipient level have been exhausted. EDA's review will be limited in accordance with the regulations set out at 15 C.F.R. §§ 14.41 or 24.36(11) and (12), as applicable.

V. REQUIREMENTS DURING CONSTRUCTION

A. THE RECIPIENT'S RESPONSIBILITIES

1. *General.* The recipient (with the assistance of the architect/engineer) is responsible for:
 - (a) ensuring project completion in accordance with approved plans and specifications;
 - (b) monitoring project progress;
 - (c) keeping EDA advised of project progress;
 - (d) providing for adequate construction inspection;
 - (e) paying costs incurred for the

project promptly; and (f) monitoring the contractors' compliance with local, State and federal requirements. *See also* section III.B. of this Summary.

2. *EDA construction sign.* The recipient is responsible for constructing, erecting and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the project site indicating that the Federal government is participating in the project. EDA may require more than one sign if site conditions so warrant. The EDA regional office will provide specifications for the sign. If the EDA-recommended sign specifications conflict with State or local law, the recipient may modify such recommended specifications so as to comply with the State or local law. *See* 13 C.F.R. § 305.12.
3. *Inspection of construction.* The recipient must provide competent project inspection during the construction period. The inspector may be an employee of the recipient, an employee of the architect/engineer, or a person(s) under contract with the recipient. EDA must review and concur with the extent of the inspection and the selection of the inspector.
4. *Occupancy prior to completion.* If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the recipient must:
 - (a) follow the requirements of local or State law;
 - (b) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;
 - (c) secure the written consent of the contractor;
 - (d) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and
 - (e) secure permanent fire and extended coverage insurance and, where applicable, grant the contractor a permit to complete construction. *See* 13 C.F.R. § 305.14.
5. *Labor standards.* All contractors on EDA-assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by U.S. Department of Labor's regulations (29 C.F.R. part 5). The recipient or its architect/engineer should periodically check the contractor's compliance. The recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA-assisted project.
6. *Inspection for final acceptance.* The recipient will schedule a final inspection when all construction has been completed, the architect/engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed. Representatives of the recipient, the architect/engineer and the contractor(s) will make the final inspection. EDA must be notified in advance of the final inspection so that an EDA representative also may have the opportunity to participate.
7. *Contractor payrolls.* The recipient must require each contractor and subcontractor to maintain weekly payroll records. EDA may require that copies of payroll records be furnished to the applicable regional office.
8. *Equal employment opportunities.* The regulations at 41 C.F.R. § 60-1.7 issued pursuant to Executive Order 11246, "*Equal Employment Opportunity*", as amended, require all "prime contractors" and "subcontractors," as those terms are defined in 41 C.F.R. § 60-1.3, to submit compliance reports regarding equal employment opportunities. The purpose of the regulations at 41 C.F.R. part 60-1 is to achieve the aims of parts II, III and

IV of Executive Order 11246, as amended, for promoting and ensuring equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with Federal government contractors or with contractors performing under federally-assisted construction contracts.

B. CONTRACT CHANGE ORDERS

1. After the construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. *See* 13 C.F.R. § 305.13.
2. The work on the project may continue pending EDA review and concurrence with the change order but the recipient should be aware that all such work is at the recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.
3. The recipient (or its architect/engineer) shall perform a cost or price analysis in connection with every change order that affects the contract price. Generally, change orders should be submitted to EDA for review and concurrence as such changes occur. The recipient will prepare proposed contract change orders in sufficient quantity so that one (1) copy can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications and plans should be attached. Before submission to the EDA regional office, the change order must be signed by the recipient, the architect/engineer and the contractor. The recipient will be notified in writing of EDA's concurrence if the change order is acceptable to EDA.
4. EDA will not allow changes to the authorized purpose and intent of the project. Change orders that add minimally or incidentally to the cost of the project but do not alter the project scope may be allowed by EDA, *provided*, that either:
 - (a) The recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or
 - (b) There are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.
5. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA-approved project budget. EDA will concur with a change order if the work in the change order is within the project scope and is necessary for the proper implementation of the project.
6. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. Variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity that will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract. A change order also may be required at project completion to establish final quantities for unit price contracts.

C. SPECIFIC REQUIREMENTS FOR SUBCONTRACTORS

1. The recipient is responsible for ensuring that the contractor causes applicable provisions to be inserted in all subcontracts to bind subcontractors to EDA and Departmental requirements as contained in the Terms and Conditions of the Award and in 15 C.F.R. parts 14 or 24, as appropriate.
2. Each subcontractor must agree to comply with all applicable federal, State, and local requirements.
3. As required by 15 C.F.R. §§ 14.44(d) and 24.35, as appropriate, the recipient (or subrecipient) must not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." The recipient may access the *Excluded Parties List System* ("EPLS"), maintained by the General Services Administration, at www.epls.gov/. See also 2 C.F.R. part 1326.
4. The Terms and Conditions of the Award may impose additional requirements, which the recipient will be required to have the prime contractor impose on any subcontractor(s).

D. CONTRACTING STANDARDS

1. *States.* If a State is the recipient of EDA investment assistance, the State will follow the same policies and procedures it uses for procurements from its non-federal funds, *provided* those policies and procedures conform to applicable federal law and standards found in 15 C.F.R. § 24.36. The State must ensure that every purchase order or other contract includes clauses required by federal statutes and Executive Orders and their implementing regulations. For reimbursable cost determinations, OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," is applicable. See 2 C.F.R. part 225.
2. *Recipients other than States.* Consistent with the requirements of 15 C.F.R. §§ 14.40 or 24.36, as applicable, a recipient of EDA investment assistance other than a State will use its own procurement procedures which reflect applicable State and local laws and regulations; provided that the procedures conform to applicable federal law and the standards identified in 15 C.F.R. §§ 14.40-14.48 or 24.36(b) – (i), as applicable. A State or local government or Indian tribal government recipient may request EDA to review its procurement system to determine whether its system meets these standards. See 15 C.F.R. § 24.36(g)(3)(i).

Additionally, the recipient or subrecipient may self-certify its procurement system. Under a self-certification procedure, EDA may rely on written assurances from the recipient or subrecipient that it is complying with the standards in 15 C.F.R. § 24.36(b) – (i). The recipient or subrecipient must cite specific procedures, regulations, and standards as being in compliance with 15 C.F.R. § 24.36(b) – (i), and have its system available for EDA to review. In the absence of written procurement procedures and policies provided by the recipient that meet EDA and other federal requirements, applicable federal procurement standards will govern the project. For reimbursable cost determinations, OMB Circulars A-122, *Cost Principles for Nonprofit Organizations*, or A-21, *Cost Principles for Educational Institutions*, are applicable as appropriate. See 2 C.F.R. parts 220 and 230. See also section IV.G. for special provisions applicable to certain Indian tribal recipients.

3. *Standards of conduct.* Recipients shall maintain a written code of conduct, which shall govern the actions of any Interested Party (as defined in 13 C.F.R. § 300.3) engaged in the award and administration of contracts supported by EDA funds. No Interested Party shall participate in selection or in the award or administration of a contract supported by EDA funds if a conflict of interest, real or apparent, is or could be involved. A conflict may arise when any Interested Party has a financial or personal interest in the firms selected for award. A conflict also may exist where there is an appearance that an Interested Party's objectivity in performing his or her duties is impaired. *See* 13 C.F.R. § 302.17.
4. *Awards to responsible contractors.* Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.
5. *Maintenance of records.* Recipients will maintain records sufficient to detail the history of each procurement transaction related to the EDA project. These records will include but are not necessarily limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for concluding the contract price.
6. *Settlement of issues.* Recipients alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues (e.g., source evaluation, protests, disputes and claims) arising out of procurements. EDA will not substitute its judgment for that of the recipient unless the matter, as determined in EDA's sole discretion, primarily involves a federal issue.
7. *Wage rate requirements.* Wage rates paid for labor must not be less than the prevailing area wages, as determined by the U.S. Secretary of Labor and must be embodied in the construction contract pursuant to the requirements of the Davis-Bacon Act, as amended (40 U.S.C. § 276a *et seq.*). *See also* section IX. (Appendix) of this Summary.

E. COMPETITIVE PROCUREMENT REQUIREMENTS

1. *General.* All procurement transactions in relation to the EDA project must be conducted in a manner providing full and open competition consistent with applicable federal requirements. *See* 15 C.F.R. parts 14 or 24, as applicable.
2. *Geographic preferences.* Recipients must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this guidance preempts State licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion, provided its application leaves an appropriate number of qualified firms (given the nature and size of the project) to compete for the contract.
3. *Written selection procedures.* Recipients must have written selection procedures for procurement actions. These procedures must ensure that all solicitations:
 - (a) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such descriptions shall not contain

language that unduly restricts competition. The description may include a statement of the qualitative nature of the material, product or service, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform. Detailed product specifications should be avoided if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of the material, product or service. The specific features of a name brand which must be met by offerors must be clearly stated; and

- (b) Identify all requirements which offerors must fulfill and all factors to be used in evaluating bids or proposals.

4. *Bids submitted for alternative materials.*

- (a) Should the recipient, acting upon the advice of his/her consultant architect/engineer, desire to obtain competitive prices for differing materials, such bids should be requested on the basis of "alternate bids." As used herein, this term refers to the method used to obtain bids on more than one material to be used for the same purpose. For example, for 2,000 linear feet of sewer line, Bid A might call for the pipe material to be cast iron. Bid B might call for the pipe material to be ductile iron. Bid C might call for the material to be asbestos cement.
- (b) If bids are asked for on the basis of two or more alternate bids, the bid documents must clearly state that the contract will be awarded to the bidder having the lowest responsible bid price based upon the availability of funds.
- (c) If the recipient wishes to use a material that will result in increased cost, EDA may permit the use of such material, but the amount of EDA's participation in the project must remain based on the lowest bid from a responsible bidder.

5. *Allowable methods of procurement and related requirements.*

- (a) *Procurement by sealed bids (formal advertising).* Bids are to be publicly solicited and a firm fixed-price contract (lump sum or unit price) is to be awarded to the bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction services. The following requirements apply to sealed bids:
 - (i) The invitation for bids is publicly advertised and solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids;
 - (ii) The invitation for bids includes applicable specifications and pertinent attachments and adequately defines the items or services, in order for the bidder to properly respond;
 - (iii) All bids are publicly opened at the time and place prescribed in the invitation for bids;
 - (iv) A firm fixed-price contract award will be made in writing to the lowest responsive responsible bidder; and
 - (v) Any or all bids may be rejected if there is a sound and properly documented reason. See 15 C.F.R. § 24.36(d)(2).

The advertising process for inviting bids should be in compliance with applicable State or local requirements where the project will be constructed. In the absence of State or local requirements, the advertisement should appear in publications of general circulation a minimum of four (4) times within a 30-day period prior to the opening of bids. Generally, a minimum of thirty (30) days should be allowed for submission of bids.

- (b) *Procurement by competitive proposals.* Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. This method generally is used when conditions are not appropriate for the use of sealed bids. The following requirements apply to competitive proposals:
- (i) Requests for proposals are publicized and identify all evaluation factors; any response to a request for proposals must be considered to the maximum extent practical;
 - (ii) Proposals are solicited from an adequate number of qualified sources (generally, EDA requires responses from at least three responsible firms);
 - (iii) Recipients have a method for conducting technical evaluations of the proposals received and for selecting awardees;
 - (iv) Awards are made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered, as appropriate; and
 - (v) Recipients may use competitive proposal procedures for qualification-based procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not a selection factor, can be used only for procuring architectural/engineering professional services. See 15 C.F.R. § 24.36(d)(3).
- (c) *Procurement by noncompetitive proposals.* This technique requires EDA's prior written concurrence and is conducted by solicitation of a proposal from only one source. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and when one of the following circumstances applies:
- (i) The item is available only from a single source;
 - (ii) The public exigency or emergency will not permit a delay resulting from competitive solicitation; or
 - (iii) After soliciting a number of sources, competition is determined inadequate. See 15 C.F.R. § 24.36(d)(4).
- (d) *Contract cost analysis.*
- (i) The recipient must perform a cost or price analysis in connection with every procurement action, including contract modifications. See 15 C.F.R. § 24.36(f).
 - (ii) Costs based on estimated costs for contracts under grants will be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (see section VI.A.3. of this Summary). The recipient may reference its own cost principles that comply with applicable federal cost principles.

- (e) *Bonding and insurance requirements.* For construction or facility improvement contracts or for subcontracts exceeding \$100,000, the following minimum requirements apply:
- (i) The bonding company selected must be listed in the U.S. Treasury Department's Circular 570, "*Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.*"
 - (ii) A bid guarantee must be obtained from each bidder equivalent to five (5) percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will upon acceptance of the bid execute such contractual documents as may be required.
 - (iii) A performance bond must be required from the contractor for one hundred (100) percent of the contract price.
 - (iv) A payment bond must be required from the contractor for one hundred (100) percent of the contract provisions.

The recipient shall require each construction contractor and all subcontractors to maintain, during the life of its contract, Workmen's Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by applicable State or local law. Where appropriate, the recipient shall require the prime contractor to provide Builder's Risk Insurance as part of the construction contract. In all cases, the recipient is responsible for seeing that coverage is obtained and kept in force. When obtained by the recipient directly, such coverage is an eligible project cost.

VI. DISBURSEMENT OF GRANT FUNDS AND FINANCIAL ADMINISTRATION

A. PRE-DISBURSEMENT REQUIREMENTS

1. *General.* Eligible cost reimbursement is EDA's preferred method of grant disbursement. Disbursements of grant funds must be made by electronic transfer based on the recipient's actual rate of expenditure. EDA will make disbursements based on the percentage of EDA participation, but in no event for more than the total sum stated in the Award. The initial disbursement will be made only after the following conditions have been met:
 - (a) EDA determines that the recipient has satisfied all applicable Terms and Conditions of the Award (*see* 13 C.F.R. § 305.9(b));
 - (b) The recipient has requested disbursement by submitting Form SF-271, "*Outlay Report and Request for Reimbursement for Construction Programs*" (OMB Control No. 0348-0002), for incurred costs that are itemized and eligible;
 - (c) The recipient certifies that its proportionate share of funds (including overruns) is on deposit; and
 - (d) The recipient meets such other requirements as EDA may establish.

Recipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds (*see* paragraph A.2. below) before requesting additional grant disbursements.

2. *Interest earned on advances.* Under OMB Circular A-102, recipients and subrecipients may retain \$100 per year of interest earned on federal advances for administrative

expenses. Under OMB Circular A-110, recipients may retain interest amounts up to \$250 per year for administrative expenses. While these are general provisions regarding interest earned on grant funds, *see* 15 C.F.R. §§ 14.22(l) or 24.21(i), as applicable, for specific requirements.

3. *Allowable costs.* EDA allowable costs are determined by reference to the following OMB Circulars: Circular A-122 titled "*Cost Principles for Nonprofit Organizations*" (2 C.F.R. part 230); Circular A-21 titled "*Cost Principles for Educational Institutions*" (2 C.F.R. part 220); and Circular A-87 titled "*Cost Principles for State, Local and Indian Tribal Governments*" (2 C.F.R. part 225). Generally, costs that are allowable include salaries, supplies and other expenses that are reasonable and necessary for the completion of the scope of work. Allowable costs must be determined in accordance with the cost principles applicable to the organization incurring the costs.
4. *Acceptable costs and contributions.* In determining the amount of the non-federal share of the cost of a project, EDA may provide credit towards the non-federal share of all contributions both in cash and in-kind, fairly evaluated, including contributions of space, equipment, assumptions of debt, and services. *See* section 204(b) of PWEDA (42 U.S.C. § 3144).

The matching share may include funds from other federal agencies only if authorized by statute that allows such use, which may be determined by EDA's reasonable interpretation of such authority. *See* 13 C.F.R. § 300.3.

Neither cash nor the value of in-kind contributions may count towards satisfying a cost-sharing requirement of a grant agreement if it has been or will be counted towards satisfying a cost-sharing requirement of another federal grant agreement, a federal procurement contract, or any other award of federal funds. The eligible applicant must show that the matching share is committed to the EDA project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Award. *See* 13 C.F.R. § 301.5.

B. INTERIM DISBURSEMENTS

After the initial disbursement has been made, the recipient may request interim disbursements by submitting Form SF-271, as required for reimbursement of EDA's share of eligible project costs. Interim disbursements will normally continue until ninety (90) percent of the grant funds have been disbursed, with the remaining ten (10) percent normally held pending final disbursement and project close-out.

C. FINAL DISBURSEMENT

When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient can begin the close-out process by submitting the following documentation to EDA:

1. A request for final disbursement on an executed Form SF-271;
2. A written certification that all costs claimed are for eligible activities under the grant agreement, for which there is documentation included in the recipient's records;
3. A final acceptance report;

4. A certification signed by the authorized representative of the recipient that the recipient's currently valid OMB Circular A-133 audit has been or will be transmitted to the Federal Audit Clearinghouse and that if the audit contains any material findings, a copy of the audit in its entirety has been submitted to EDA; and
5. Other documentation as may be required by EDA.

The recipient will be advised by EDA of costs found eligible, costs found ineligible and the reasons for findings of ineligibility. If a balance of the grant is due to the recipient, the balance will be paid by wire transfer. If the recipient has received a grant amount in excess of the amount due the recipient, the recipient must refund the excess to EDA, payable to the U.S. Treasury.

VII. AWARD AMENDMENTS, APPROVALS, AND NOTIFICATIONS

Between approval and closeout of an EDA construction project, modifications to the Terms and Conditions may be necessary to resolve unforeseen problems. In most instances, the proposed modification can be accomplished only if EDA agrees to a formal amendment to the Award.

A. AMENDMENTS

In order to amend the Award, the Project Officer shall prepare Form CD-451, "*Amendment to Financial Assistance Award*," for execution by both the Regional Director and the recipient's authorized representative. Form CD-451 is required for any of the following amendments to an Award:

1. Changes to project scope of work;
2. Budget revisions requiring additional EDA or non-EDA sources of funds;
3. Budget revisions that result in cumulative transfers among direct cost categories in excess of 10 percent of the total project cost when the federal share exceeds \$100,000;
4. The inclusion of certain costs for which EDA's prior approval is needed under the following OMB Circulars: Circular A-21, "*Cost Principles for Educational Institutions*" (2 C.F.R. part 220); Circular A-87, "*Cost Principles for State, Local, and Indian Tribal Governments*" (2 C.F.R. part 225); and Circular A-122, "*Cost Principles for Non-Profit Organizations*" (2 C.F.R. part 230), as applicable;
5. Change of site location;
6. Change to or addition of recipient;
7. Time extensions; and
8. Modifications to the Terms and Conditions of the Award, other than time extensions.

When Form CD-451 is required, the recipient must submit a request for amendment in writing to the EDA regional office. If the request is approved, the EDA regional office completes and transmits the Form CD-451 to the recipient. The recipient's authorized representative must execute the Form CD-451 and return it to the EDA regional office.

B. TIME SCHEDULE EXTENSIONS

1. The recipient is responsible for implementing the project in accordance with the project development time schedule contained in the Award. As soon as the recipient becomes aware that it will not be possible to meet the project development time schedule, it must notify the EDA regional office. Grant disbursements cannot be made if the recipient is not in compliance with the time schedule. The recipient's notice to EDA should contain the following information:

- (a) An explanation of the reason for the recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain State or federal approvals; unplanned environmental mitigation required);
 - (b) A statement that no other changes to the project are contemplated;
 - (c) Documentation that demonstrates there is still a bona fide need for the project; and
 - (d) Confirmation that no further delay is anticipated and that the project can be completed within the revised time schedule.
2. EDA will perform a mandatory review of the project's progress for any project that is not under construction within two (2) years of the grant award date. In accordance with EDA policy, the maximum construction start time extension that any region can grant is restricted to a date three (3) years from the grant award date. Any extension beyond that limit must be approved by the Assistant Secretary of Commerce for Economic Development.
 3. EDA reserves the right to suspend or terminate an Award if the recipient fails to proceed with reasonable diligence to accomplish the project as intended.
See also sections VII.B. and F. of this Summary.

C. BUDGET REVISIONS

1. The tabulation of estimated project costs contained in the Award is the controlling budget plan for the project. Recipients shall request EDA's prior written approval for any anticipated budget revision in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable. The recipient must notify EDA of any proposed deviation from the budget or program plans, including changes in scope or the objective of the project (even if there is no associated budget revision requiring prior written approval).
See 15 C.F.R. §§ 14.25 and 24.30.
2. The transfer of funds from line items other than the contingencies line item may be permitted, *provided* there will be no significant adverse effect on the objective of the line item from which the transfer is to be made.
3. The construction line item will be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts will be transferred to the contingencies line item. Recipients are reminded that contingency funds are to be used to cover situations resulting from unknown conditions and changes required for the fulfillment of authorized project activities under the Award. Underrun funds may be used to further improve the project, as long as the improvements are consistent with the original purpose of the approved-EDA investment and with prior approval from EDA. *See 13 C.F.R. § 305.10.*

D. ADDITIONAL EDA FUNDING

1. In accepting financial assistance from EDA, the recipient agreed to fund any overrun(s). Additional EDA assistance for an approved project is unlikely to be approved. To be considered for approval, it must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, before EDA will consider a formal request for additional EDA funds, it is necessary for the recipient to furnish the following documentation:

- (a) A written statement from the recipient's architect/engineer, giving reasons for his professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and
 - (b) A written statement from the administrative head of the recipient's organization justifying why the recipient cannot furnish the additional funds required, why non-EDA sources of funds cannot be secured, and certifying that the recipient's borrowing capacity has been exhausted.
2. EDA's consideration of a request for additional EDA assistance does not indicate approval.

E. ADMINISTRATIVE APPROVALS AND NOTIFICATIONS

1. EDA shall issue a written administrative approval for budget revisions that result in the cumulative transfer among direct cost categories of *less than 10 percent* of the total project cost and to approve budget revisions that result in the transfer of funds between direct and indirect cost categories, as long as those transfers are also *less than 10 percent* of the total project cost.
2. EDA shall issue a written administrative notification upon EDA's approval and acceptance of the recipient's documentation of compliance with special award conditions (for example, compliance with environmental or State historic preservation law requirements) and upon EDA's change in the Project Officer or other administrative official assigned to the recipient's project, if applicable.

F. TERMINATION OF INVESTMENT ASSISTANCE

1. *Termination for cause.*

- (a) If a recipient materially fails to comply with any Term or Condition of the Award, EDA may take one or more of the actions set out in 15 C.F.R. §§ 14.62(a) or 24.43(a), as applicable.
- (b) In taking an enforcement action, EDA will provide the recipient an opportunity to appeal if the recipient is entitled to an appeal under any statute or regulation applicable to the action involved. *See* 15 C.F.R. §§ 14.62(b) or 24.43(b), as applicable.
- (c) Costs resulting from obligations incurred by the recipient after notice by EDA of suspension or termination of the Award are not allowable unless EDA expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other costs incurred by the recipient during suspension or after termination that are necessary and not reasonably avoidable are allowable if:
 - (i) The costs result from obligations that were properly incurred by the recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are non-cancellable; and
 - (ii) The costs would be allowable if the Award were not suspended or expired normally at the end of the funding period in which the termination takes effect. *See* 15 C.F.R. §§ 14.62(c) or 24.43(c), as applicable.

- (d) The enforcement remedies identified in 15 C.F.R. §§ 14.62 or 24.43, as applicable, including suspension and termination, do not preclude the recipient from being subject to debarment or suspension under Executive Orders 12549 and 12689 and the Department's implementing regulations at 2 C.F.R. part 1326.
2. *Termination for convenience.* The recipient may request at any time termination for convenience of the Award upon sending to the Grants Officer written notification in a form acceptable to EDA setting forth the reasons and effective date of such termination. See 15 C.F.R. §§ 14.61 or 24.44, as applicable.

VIII. POST-CONSTRUCTION REQUIREMENTS

A. OMB CIRCULAR A-133 AUDIT REQUIREMENTS

1. *Requirement to have an A-133 audit performed.* The recipient is subject to the requirements contained in OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*" and the related *Compliance Supplement* (Appendix B to OMB Circular A-133), each as revised from time to time. OMB Circular A-133 is issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156, 31 U.S.C. §§ 7501-7507). OMB Circular A-133 requires any non-federal entity (i.e., non-profit organizations, including non-profit institutions of higher education and hospitals, States, local governments and Indian tribes) that expends federal awards of \$500,000 or more in one fiscal year to conduct a single or program-specific audit in accordance with the requirements set out in the Circular.
2. *Requirement to submit audit to Federal Audit Clearinghouse.* A recipient expending federal awards of \$500,000 or more in a fiscal year and therefore, having a single or program-specific audit for that year conducted in accordance with OMB Circular A-133, must submit a copy of the single or program-specific audit to the Bureau of the Census, designated by OMB as a central clearinghouse, at the following address:

Federal Audit Clearinghouse
1201 E. 10th Street
Jeffersonville, IN 47132

The recipient may contact the Federal Audit Clearinghouse by email, phone or fax:

Email: govs.fac@census.gov
Telephone: (301) 763-1551
(800) 253-0696 (toll free)
Fax: (301) 457-1592

The Federal Audit Clearinghouse operates on behalf of OMB to disseminate audit information to federal agencies and to the public, and to help auditors and auditees minimize the reporting burden of complying with Circular A-133 requirements. For more information, access the website at <http://harvester.census.gov/fac/>.

The audit will be considered "on time" if it is received by the Federal Audit Clearinghouse no later than thirty (30) days after the recipient receives the auditor's report or nine (9) months after the end of the recipient's fiscal year. The Federal Audit Clearinghouse also offers an online entry system for submission of Form SF-SAC at <http://harvester.census.gov/fac/collect/ddeindex.html>.

3. *Requirement to submit audit to EDA.* If the recipient's currently valid OMB Circular A-133 audit contains material findings, the recipient shall submit the audit in hard copy to the regional office.

B. DEPARTMENTAL AUDIT RESOLUTION PROCESS

1. Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), EDA or the Department's Office of the Inspector General ("OIG") may conduct an audit of the Award at any time. The recipient will be notified in advance if it is selected for an audit. The recipient must permit EDA, the Comptroller General of the United States, the Departmental Inspector General, or any of their duly authorized representatives, access to all books, documents, papers and records, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to verify the recipient's compliance with the Terms and Conditions of the Award. See 13 C.F.R. § 302.14.

When the OIG requires a program audit on the Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by an independent accountant under contract with the Department, OIG personnel, or any other federal, State or local audit entity.

2. An audit of the Award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (an account receivable) due to the Department. For this reason, the recipient should take seriously its responsibility to respond to all audit findings, questioned costs and recommendations with adequate explanations and written evidence when disputing audit determinations.
3. A recipient whose Award is audited will have an opportunity to dispute the audit findings.
 - (a) Unless the Inspector General determines otherwise, the recipient will have thirty (30) days from the date of the transmittal of the OIG's draft audit report to submit written comments and documentary evidence.
 - (b) The recipient will have thirty (30) days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
 - (c) EDA will review any documentary evidence submitted by the recipient, and will notify the recipient of the results in an "Audit Resolution Determination Letter," which will specify the timeframe in which the Recipient is able to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the findings in the Audit Resolution Determination Letter.
 - (d) An appeal of the findings in the Audit Resolution Determination Letter does not prevent the establishment of any audit-related debt, nor does it prevent the accrual of interest on the debt. If the findings in the Audit Resolution Determination Letter are overturned or modified on appeal, appropriate corrective action will be taken. An appeal will stay the offset of funds owed by the recipient against funds due to the recipient.
 - (e) EDA will review the recipient's appeal and notify the recipient of the results in an "Appeal Determination Letter." After the opportunity to appeal has expired or after the appeal determination has been rendered, the Department will not accept

any further documentary evidence from the recipient. No other administrative appeals are available in the Department.

C. PROPERTY MANAGEMENT

1. Any property that is acquired or improved, in whole or in part, with EDA investment assistance, whether through a grant or a cooperative agreement, is subject to the requirements of PWEDA and the regulations at 13 C.F.R. part 314. Title, authorized use, successor recipient, property disposition, and Federal Share (as defined in 13 C.F.R. § 314.5) requirements are set out at 13 C.F.R. part 314.
2. During the estimated useful life of the project, as determined by EDA, EDA retains a Federal Interest in the project property. *See* section III.A. of this Summary. The Federal Interest secures compliance with the ownership, purpose, scope and intended use of the EDA project and may be reflected by a recorded lien, statement or other recordable instrument setting forth EDA's property interest (e.g., a mortgage, covenant, or other statement of EDA's real property interest in the case of a project involving the acquisition, construction or improvement of a building). *See* 13 C.F.R. § 314.8.
3. A recipient may request a release of the Federal Interest in property acquired or improved with EDA investment assistance and fully compensate EDA for its Federal Share in the property. A release pursuant to 13 C.F.R. § 314.2(b) gives the recipient title to the property free and clear of any further governmental interest.

In contrast, a recipient may request a release of the Federal Interest in project assets that are subject to an estimated useful life in excess of the statutory twenty (20) year limitation. *See* section 601(d)(2) of PWEDA (42 U.S.C. § 3211) and 13 C.F.R. § 314.10. In that case, EDA may release its Federal Interest, however, the property acquired or improved with EDA investment assistance may not be used: (a) in violation of the nondiscrimination requirements set forth in 13 C.F.R. § 302.20; or (b) for inherently religious activities prohibited by applicable federal law.

D. CLOSEOUT PROCEDURES

1. After construction is completed and the project is closed out financially, the recipient has an ongoing responsibility to properly administer, operate and maintain the project for its estimated useful life in accordance with its original purpose. *See* 13 C.F.R. § 302.12. The recipient must comply with all Award requirements, including but not limited to ongoing compliance with applicable environmental law, performance measurement reporting requirements, and federal statutes, regulations and Executive Orders prohibiting discrimination and inherently religious activity. The recipient must maintain records to document such compliance, which shall be made available for inspection by EDA or other government officials as required. When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient may begin the closeout process. *See* section VI.C. of this Summary. The recipient must take the following actions:
 - (a) Confirm to EDA compliance with all Terms and Conditions.
 - (b) Confirm to EDA that it will procure permanent insurance for above-ground facilities.
 - (c) Notify EDA of the results of a review of the project to ensure that all changes to the project have been brought to the attention of EDA.
 - (d) Confirm to EDA that it will retain for three (3) years all records pertaining to the

- Award.
- (e) Submit to EDA a completed and executed *Certificate of Final Completion*.
 - (f) Submit and obtain from the contractor or the architect/engineer as-built drawings.
 - (g) Certify to EDA that a currently valid single or program-specific audit (in compliance with OMB Circular A-133 and the related *Compliance Supplement*) has been submitted to the Federal Audit Clearinghouse. If no single or program-specific audit is available but is required, the recipient's plan to secure the audit must be furnished to EDA. If no single or program-specific audit is required, the recipient must advise EDA.
 - (h) Submit to EDA the currently valid audit required under OMB Circular A-133 *if* the audit contains material findings. Otherwise, the recipient shall certify to EDA that the audit does not contain material findings.
 - (i) Confirm to EDA that no outstanding Davis-Bacon Act or local labor employment violations exist.
 - (j) Notify EDA of any change, lien, mortgage or other encumbrance relating to the ownership of the property acquired or improved with EDA investment assistance.
 - (k) Notify EDA of any unresolved contract/contractor disputes.
 - (l) Maintain the facility during its estimated useful life, as determined by EDA, during which period the recipient may not alienate its ownership or alter the use and purpose of the EDA-assisted facility without EDA's written permission.
2. The recipient shall submit, within ninety (90) calendar days after the completion of the project, all financial, performance and other reports as required by the Terms and Conditions of the Award.
3. Unless EDA authorizes an extension, the recipient must liquidate all obligations incurred under the Award no later than ninety (90) calendar days after acceptance of the project from the contractor or before the end of project period, whichever occurs earlier, as specified in the Terms and Conditions of the Award.
4. The following documentation should accompany the recipient's final disbursement request, as applicable, unless such documentation has been previously furnished:
- (a) Copies of all executed contracts, subcontracts (if claimed separately from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the EDA investment;
 - (b) A certification signed by the authorized representative of the recipient that the recipient's currently valid OMB Circular A-133 audit has been or will be transmitted to the Federal Audit Clearinghouse;
 - (c) A certification signed by the authorized representative of the recipient that the recipient's currently valid OMB Circular A-133 audit does not contain material findings. If the recipient's currently valid OMB Circular A-133 audit *does* contain material findings, the recipient must provide the regional office with a hardcopy of the audit;
 - (d) Payroll forms, if any of the costs claimed is for work performed by force account construction;
 - (e) Title opinions, legal descriptions, appraisals, bills of sale, title records, etc., for any land cost being claimed; and
 - (f) Specifics of any administrative costs being claimed.
5. The closeout of an Award does not affect any of the following:
- (a) The right of EDA to disallow costs and recover funds on the basis of a later audit

- or other project review;
- (b) The recipient's obligation to return any funds due as a result of later corrections or other transactions;
- (c) Requirements for property management, records retention and performance measurement reports; and
- (d) Single or program-specific audit requirements per OMB Circular A-133 and the related "*Compliance Supplement*."

IX. APPENDIX

The following documents are available from the Office of Management and Budget's, the Department of Commerce's, and the Government Printing Office's websites at www.whitehouse.gov/omb/, www.commerce.gov, www.gpoaccess.com, public libraries, and other sources. Each document listed below contains a link that will take you directly to that document on the internet.

1. 15 C.F.R. part 14, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit and Commercial Organizations*
2. 15 C.F.R. part 24, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*
3. 2 C.F.R. part 225, *Cost Principles for State, Local and Indian Tribal Governments* (OMB Circular A-87)
4. OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and the related *Compliance Supplement* (Appendix B to OMB Circular A-133)
5. 2 C.F.R. part 230, *Cost Principles for Nonprofit Organizations* (OMB Circular A-122)
6. 2 C.F.R. part 220, *Cost Principles for Educational Institutions* (OMB Circular A-21)
7. 48 C.F.R. part 31, *Contract Cost Principles and Procedures*
8. 2 C.F.R. part 1326, *Nonprocurement Debarment and Suspension*
9. 15 C.F.R. part 29, *Governmentwide Requirements for a Drug-Free Workplace (Financial Assistance)*
10. 15 C.F.R. part 11, *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended*
11. Davis Bacon Wage Rate Determinations: www.wdol.gov/

The following are available as exhibits to this Summary from EDA's Internet website at www.eda.gov:

1. CHECKLIST FOR ARCHITECT/ENGINEER CONTRACTS
2. CHECKLIST FOR PLANS AND SPECIFICATIONS
3. CHECKLIST FOR INITIAL DISBURSEMENT OF EDA FUNDS
4. CHECKLIST FOR PROJECT CLOSEOUT
5. EDA CONTRACTING PROVISIONS FOR CONSTRUCTION PROJECTS
6. NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

7. CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS AND LOBBYING (CD-512)
8. QUARTERLY PERFORMANCE REPORT
9. CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY AND EASEMENTS (INCLUDING TITLE OPINION)
10. ACH VENDOR/MISCELLANEOUS PAYMENT ENROLLMENT FORM



Economic Development Administration
GPRA Data Collection Form

Public Works, Economic Adjustment Infrastructure and Revolving Loan Fund Investments

Date _____

Recipient Name _____

Full Address _____

Authorized Contact _____

Telephone _____ Fax _____

Email (not optional) _____

Investment Program Public Works ____ Economic Adjustment ____ Revolving Loan Fund ____

Project Number _____

Award Date _____ Close-out Date _____
(if applicable)

Investment awarded during federal fiscal year: FY 19 ____ FY 20 ____

Data in this report:
 ____ 3 years after investment award ____ 6 years after investment award ____ 9 years after investment award

CONSTRUCTION OR LOAN FUNDING				
Total Investment	EDA Investment	Applicant Investment ¹	Private Investment ²	Other Federal Investment
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

(Note: Total Project should be the total of the other values in this section)

GRANT RECIPIENT COMPLETE THIS SECTION

RESULT OF EDA INVESTMENT			
	3 Years After Award ³	6 Years After Award ³	9 Years After Award ³
Private Investment Generated			
Jobs Created			
Jobs Retained			
Total Jobs Created/Retained			

¹ (includes Local and State)

² private investment associated with project construction, e.g. foundation grants

³ at the time of this report (see instructions)

GPRA Data Collection Instructions
Public Works, and Economic Adjustment Infrastructure and Revolving Loan Fund Investments

EDA regional personnel will complete the following information prior to sending the form to the Investment Recipient. If there is not sufficient space on the data collection form, you may use additional pages with the EDA project number, date of award, and reporting period at the top of each page.

Recipient Name: Legal name of the Recipient.

Full Address: Physical address of the Recipient including city, state and zip. Include mailing address if different.

Authorized Contact: Person to contact regarding this report. Include the telephone number, if different from Recipient.

Telephone: Telephone number, including area code. **Fax:** Facsimile number, including area code.

E-mail Address: Internet address of authorized contact using the following format, (name@organization.com).

Investment Program: Check to indicate appropriate EDA investment program.

Project Number: as in OPCS

Award Date: DEC as in OPCS

Investment awarded: Identify federal fiscal year of award.

Data for this report: Check to identify the reporting period: three, six, or nine years after investment award date (DEC date in OPCS).

Construction or Loan Funding:

Total Project dollars: Total of EDA investment, applicant (local and state) dollars, private dollars, other federal dollars used in project construction or loan fund capitalization.

EDA Investment: At time of award for this project number or most current value.

Applicant dollars: Include local and state funds. Local public sources such as city or county appropriations, general obligation/ revenue bond issues, and economic development sales taxes. CDBG funds to entitlement cities are authorized for use as local shares. State sources are state appropriations or CDBG funds to the state.

Private dollars: Private sector dollars invested in project construction or loan fund capitalization, including donations, foundation grants, contributions from local financial institutions, and private donors.

Other Federal dollars: Federal sources, such as HUD, Agriculture, or Transportation funds not reported in Applicant dollars section.

Recipient Section Instructions

Private Investment Generated as a result of the EDA investment.

The total private sector investment made because of the EDA investment, including investments in new plant and equipment. Do not report private sector contributions to project construction or loan fund capitalization reported above in this section.

Direct Project Jobs:

Total Jobs: Total of jobs created and retained at the time of this report.

Jobs Generally: Only *permanent* and *direct* jobs may be counted. Part-time jobs should be converted to full-time equivalents (sum the total part-time hours worked per week and divide by the hourly work week for full-time employees, normally 35-40 hours).

Jobs Created: Private sector jobs created by businesses and other project beneficiaries as a result of the EDA project.

Jobs Retained: Private sector jobs retained as a result of the EDA project.

Direct Jobs: Include those created or retained by employers located at the project site or by firms that require services of the EDA-funded facility in order to locate, expand or operate in the project area. Recipients should report other direct or *directly-related* jobs, including subsequent employers that locate or expand in the project area as a result of the project. For some projects (e.g., roads, water and sewer lines), direct jobs may include those created by firms that were not originally anticipated as part of the project; however the firms required the facility or service provided by the EDA project in order to locate or expand in the area.

Record retention: Recipients must retain supporting performance documentation for a minimum of three years.

For RLF reporting: **Actual Created Jobs** are the result of and attributable to the RLF loan, and have been verified by the borrower. Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion regardless of the status of the loan. A created job must be removed if the job fails to last 18 months. For loans paid in full, borrowers may use the job data on file provided there is confidence in the reliability of the data. If there is a question on reliability, the data should be verified by the next annual reporting period. **Retained Jobs** are existing jobs where it can be documented that without the RLF assistance, the jobs would have been lost.

Special Provision for RLF Recapitalization: For GPRA purposes, private investment and jobs reported in years three, six and nine (3, 6 and 9) following award of an RLF recapitalization should be reported from the date of the recap, not from the date of the initial RLF award. For example, if the RLF was initially awarded in 1995 and received a recapitalization award in 1999, only those jobs and private sector investments dollars generated from 1999 to the end of the appropriate reporting period should be reported.

Burden Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number 0610-0098 Expires 06/30/2011. The public reporting burden for this collection is estimated to average 8 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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