

# BOARD OF SUPERVISORS

## AGENDA

Meetings are located at:  
Yuba County Government Center  
Board Chambers, 915 Eighth Street  
Marysville, California



Agenda materials are available at the Yuba County Government Center, 915 8<sup>th</sup> Street, Marysville and [www.co.yuba.ca.us](http://www.co.yuba.ca.us). Any disclosable public record related to an open session item and distributed to all or a majority of the Board less than 72 hours prior to the meeting is available for public inspection at Suite 109 of the Government Center during normal business hours.

**OCTOBER 15, 2013**

**9:20 A.M. YUBA COUNTY HOUSING AUTHORITY**

**9:30 A.M. YUBA COUNTY BOARD OF SUPERVISORS - Welcome to the Yuba County Board of Supervisors meeting. As a courtesy to others, please turn off cell phones, pagers, or other electronic devices, which might disrupt the meeting. Thank you.**

- I. **PLEDGE OF ALLEGIANCE** - Led by Supervisor Griego
- II. **ROLL CALL** - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker
- III. **CONSENT AGENDA:** All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.

A. Clerk of the Board of Supervisors

1. Approve minutes of the meeting of October 1, 2013. (419-13)
2. Reappoint Elden Fowler to the Area 4 Agency on Aging Advisory Council with a term ending June 30, 2016. (420-13)
3. Reappoint Kathy Woods as the child care provider representative, Donna Greist as the community representative, and Vinny Johl as the discretionary representative on the Child Care Planning Council of Yuba and Sutter Counties for terms to end September 30, 2016. (427-13)

B. Treasurer-Tax Collector

1. Approve to sell at public auction properties that are tax defaulted subject to the power of sale via internet, and disburse any excess proceeds to all eligible parties of interest who submitted claims. (421-13)

IV. **SPECIAL PRESENTATION**

- A. Receive certificate of recognition from City of Marysville to Public Works Department regarding vegetation removal at Beckworth River Front Park. (No background material) (Ten minute estimate) (422-13)

V. **PUBLIC COMMUNICATIONS:** Any person may speak about any subject of concern provided it is within the jurisdiction of the Board of Supervisors and is not already on today's agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes. Prior to this time speakers are requested to fill out a "Request to Speak" card and submit it to the Clerk of the Board of Supervisors. Please note: No Board action can be taken on comments made under this heading.

VI. **COUNTY DEPARTMENTS**

A. Community Development and Services

1. Authorize budget transfer in the amount of \$47,936 from General Fund Contingency to Account No. 102-9100-431-23-01(Special Projects) for emergency illicit discharge response on Ravine Court. (Land Use and Public Works Committee recommends approval) (Five minute estimate) (423-13)

B. County Administrator

1. Confirm Yuba County as lead agency and recipient of Economic Development Administrations (EDA) Grant for wastewater conveyance system; adopt resolution authorizing County Administrator to execute grant for the amount of \$1,790,232 and supporting documents on behalf of the County; approve a grant match not to exceed \$447,558 provided by Yuba County and reimbursed by OPUD; and direct Auditor-Controller to establish project account funds necessary to administer grant and complete project. (Fifteen minute estimate) (424-13)

C. Health and Human Services

1. Authorize budget transfer in the amount of \$21,948 from Fixed Assets to Office Expense; and increase appropriation in the amount of \$18,080.71 to Capital Assets- IT Hardware for surveillance camera server. (Ten minute estimate) (425-13)

VII. **CORRESPONDENCE** - (426-13)

- A. Resolution from Reclamation District 784 appointing David Read as trustee of District.
- B. Letter from California Department of Community Services and Development regarding review of audit statements from Gallina LLP.
- C. Annual report from State Board of Equalization for 2011-2012.

VIII. **BOARD AND STAFF MEMBERS' REPORTS:** This time is provided to allow Board and staff members to report on activities or to raise issues for placement on future agendas.

IX. **CLOSED SESSION:** Any person desiring to comment on any matter scheduled for this closed session may address the Board at this time.

- A. Pending litigation pursuant to Government Code §54956.9(d)(2) - Brett vs. County of Yuba et al

X. **ADJOURN**

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Clerk of the Board's office at (530) 749-7510 or (530) 749-7353 (fax). Requests must be made two full business days before the start of the meeting. To place an item on the agenda, contact the office of the Clerk of the Board of Supervisors at (530) 749-7510.

**PUBLIC INFORMATION**

**AGENDA ITEMS:** The opportunity of the public to be heard on an item shall be provided during the consideration of that item. In the interest of time, the Board has limited the length of such comment or input on each item to 15 minutes total, with a limit of no more than 5 minutes per person or group. The period for public comments on a particular item may be extended upon a majority vote of the Board. These time limits do not apply to applicants appearing before the Board on behalf of their applications.

**ACTION ITEMS:** All items on the Agenda under the headings "Consent," "County Departments," Ordinances and Public Hearings," "Items of Public Interest," and "Closed Session," or any of them, are items on which the Board may take any action at this meetings.

**PUBLIC HEARINGS:** All members of the public shall be allowed to address the Board as to any item which is noticed on the Board's agenda as a public hearing. The Board has limited each person or group input to no more than 3 minutes. Any person or group may provide the Board with a written statement in lieu of or in supplement to any oral statement made during a public hearing. Written statements shall be submitted to the Clerk of the Board.

**ORDINANCES:** Ordinances shall not be passed within five days of their introductions, nor at other than a regular meeting or at an adjourned regular meeting. The Board of Supervisors will address ordinances at first readings. The public is urged to address ordinances at first readings. Passage of ordinances will be held at second readings, after reading the title, further reading is waived and adoption of the ordinance is made by majority vote. An urgency ordinance may be passed immediately upon introduction. The Board reserves the right to amend any proposed ordinances and to hold a first reading in lieu of a second reading.

**INFORMATIONAL CORRESPONDENCE:** The Board may direct any item of informational correspondence to a department head for appropriate action.

**SCHEDULED LUNCH BREAK:** Between the hours of 12:00 noon and 1:00 p.m. and at the discretion of the Chair, the Board will recess one hour for lunch.

**SPECIAL MEETINGS:** No public comment shall be allowed during special meetings of the Board of Supervisors, except for items duly noticed on the agenda.

**End**



Yuba County Housing Authority





**HOUSING AUTHORITY COMMISSION  
BOARD OF SUPERVISORS CHAMBERS  
915 8TH STREET, MARYSVILLE  
October 15, at 9:20 A.M.**

**AGENDA**

**I. CALL TO ORDER**

**II. ROLL CALL**

Commissioner Abe  
Commissioner Griego  
Commissioner Nicoletti  
Commissioner Stocker  
Commissioner Vasquez

**III. CONSENT ITEMS**

- A. Approve Minutes – September 24, 2013
- B. Approve Resolution for submittal of
  - i. WalMart Local Giving Program Grant Application
  - ii. First 5 Yuba Community Mini-Grant Application
  - iii. Authorize Housing Authority Executive Director to submit letters of funding for FY 2013-2014

**V. ADJOURNMENT**

**MINUTES**  
**YUBA COUNTY HOUSING AUTHORITY COMMISSION**  
**September 24, 2013**

The meeting of the Yuba County Housing Authority Commission was called to order by Commissioner Vasquez at 9:20 a.m. in the Yuba County Board of Supervisors Chambers, Yuba County Government Center Marysville, California with a quorum being present as follows: Commissioners Abe, Griego, Nicoletti, Stocker and Vasquez.

**CONSENT ITEMS**

Commissioner Nicoletti made a motion to approve the consent agenda which included the minutes of September 10, 2013, approve the submittal of the Housing Choice Voucher Family Self-Sufficiency Program Coordinator Grant Application. Commissioner Abe seconded motion and the motion carried unanimously.

**Additional Information-**

Executive Director, Kimberly Grimes, informed the Commissioners of the new activities and exciting news happening within the FSS program. She spoke about the new Healthy Family Nutrition Program with Farmer's Market in downtown Marysville that began August 6, 2013 and ran through to September 20, 2013. In collaboration with AmeriCorps, three individuals received employment with Harmony Health. Finally, a graduate of the FSS program completed her nursing certificate program and will begin full-time employment as a Psych Tech with a starting salary of \$51,000.

**ADJOURNMENT**

There being no further business, Commissioner Vasquez adjourned the meeting at 9:26 a.m.

\_\_\_\_\_, Commissioner Vasquez, Chair

\_\_\_\_\_, (Director/Secretary)

# The County of Yuba

## Community Development & Services Agency

**Kevin Mallen, Director**

Phone - (530) 749-5430 • Fax - (530) 749-5434

915 8<sup>th</sup> Street, Suite 123  
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October 15, 2013

**TO: YUBA COUNTY HOUSING COMMISSIONERS**

**FROM: Wendy Hartman, Planning Director** *WH*  
**Kimberly Grimes, Housing Authority Executive Director** *KG*

**SUBJECT: AUTHORIZE THE HOUSING AUTHORITY EXECUTIVE DIRECTOR TO  
SUBMIT LETTERS OF FUNDING FOR FY 2013-2014**

### **Recommendation:**

It is recommended that the Yuba County Housing Authority Commissioners authorize the Housing Authority Executive Director to submit letters of funding requests for the for the Healthy Nutrition Program and all other programs related to the self-sufficiency needs of the housing choice voucher active participants for FY 2013-2014.

### **Background:**

The Yuba County Housing Authority began a Healthy Nutrition Program for the tenants receiving Housing Choice Vouchers (HCV) and currently enrolled in the Family Self-Sufficiency Program (FSS) on August 6, 2013. The program collaborated with the Marysville Farmer's Market and was extremely successful. The program was using funds from the Community Services Block Grant which limited the funding and the numbers being served to those in the FSS Program. The program ended on September 20, 2013. The program is seeking additional funding to provide the services of Healthy Nutrition education and fresh foods to all tenants receiving HCV, up to 415 families.

### **Discussion:**

The Executive Director is seeking authorization to submit letters for funding during the FY 2013-2014 without a full application. These funds would not affect the Housing Authority's general operating budget.

### **Fiscal Impact:**

These letters of funding will be at no cost to the general fund.

**Attachment:**

Resolution

**BEFORE THE YUBA COUNTY HOUSING AUTHORITY**

**RESOLUTION DIRECTING EXECUTIVE )  
DIRECTOR TO SUBMIT LETTERS FOR )  
FUNDING FOR FY 2013-2014 )**

**RESOLUTION NO. \_\_\_\_\_**

**WHEREAS,** The Yuba County Housing Authority has been delegated the responsibility for the administration of the Housing Choice Voucher Program. This responsibility includes setting up necessary procedures governing the application and distribution of grants; and

**WHEREAS,** said procedures require the Executive Director to certify by resolution the approval of letters before submission of said letters to the Housing Authority Commission; and

**WHEREAS,** if awarded the funding from such letters, Yuba County will utilize the funds to continue the Healthy Nutrition Program started in August, 2013 and all other programs related to the self- sufficiency needs of the housing choice voucher active participants;

**NOW, THEREFORE, BE IT RESOLVED** that the Yuba County Housing Authority,

1. Approves the submitting of any and all support letters by the Executive Director for the purpose of funding the Healthy Nutrition Program and other related self-sufficiency programs,
2. Certifies that the Executive Director has reviewed, understands, and agrees to the General Provisions contained in the Support letter; and
3. Delegates authority to the Executive Director as agent to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the Program; and

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4. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

**PASSED AND ADOPTED**

,by the Yuba County Housing Authority,

by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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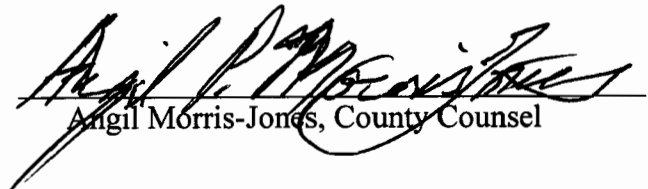
Chair, Yuba County Housing Authority

ATTEST:

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Donna Stottlemeyer, Clerk of the Board

APPROVED AS TO FORM:



Angil Morris-Jones, County Counsel

# The County of Yuba

## Community Development & Services Agency

**Kevin Mallen, Director**

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October 15, 2013

**TO: YUBA COUNTY HOUSING COMMISSIONERS**

**FROM:** Wendy Hartman, Planning Director *WH*  
Kimberly Grimes, Housing Authority Executive Director *KG*

**SUBJECT: APPROVE SUBMISSION OF FIRST 5 YUBA COMMUNITY MINI-GRANT APPLICATION**

### **Recommendation:**

It is recommended that the Yuba County Housing Authority Commissioners approve the submission of the First 5 Yuba Community Mini-Grant application.

### **Background:**

The Yuba County Housing Authority began a Healthy Nutrition Program for the tenants receiving Housing Choice Vouchers (HCV) and currently enrolled in the Family Self-Sufficiency Program (FSS) on August 6, 2013. The program collaborated with the Marysville Farmer's Market and was extremely successful. The program was using funds from the Community Services Block Grant which limited the funding and the numbers being served to those in the FSS Program. The program ended on September 20, 2013. The program is seeking additional funding to provide the services of Healthy Nutrition education and fresh foods to all tenants receiving HCV, up to 415 families.

### **Discussion:**

The application seeks \$5,000 to provide healthy fruits and vegetables from the local stores along with healthy recipes and nutritional information to provide each family. These funds would not affect the Housing Authority's general operating budget.

**Fiscal Impact:**

This application will be at no cost to the general fund.

**Attachment:**

- Resolution



**RESOLUTION DIRECTING STAFF  
TO SUBMIT A FIRST 5 YUBA  
COMMUNITY MINI-GRANT  
APPLICATION**

**WHEREAS**, The Yuba County Housing Authority has been delegated the responsibility for the administration of the Housing Choice Voucher Program. This responsibility includes setting up necessary procedures governing the application and distribution of grants; and

**WHEREAS**, if awarded the First 5 Yuba Community Mini-Grant Application, Yuba County will utilize the funds to continue the Healthy Nutrition Program started in August, 2013;

1. Approves the submitting of an application for the First 5 Yuba Community Mini-Grant Application,
2. Certifies that the Applicant has reviewed, understands, and agrees to the General Provisions contained in the Application shown in the Application Package; and
3. Delegates authority to the Executive Director as agent to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the Program; and

1 of 2

4. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

**PASSED AND ADOPTED**

by the Yuba County Housing Authority,

by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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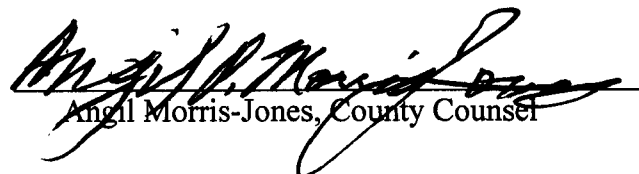
Chair, Yuba County Housing Authority

ATTEST:

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Donna Stottlemeyer, Clerk of the Board

APPROVED AS TO FORM:



Angil Morris-Jones, County Counsel

# The County of Yuba

## Community Development & Services Agency

**Kevin Mallen, Director**

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**FINANCE AND ADMINISTRATION**  
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October 15, 2013

TO: YUBA COUNTY HOUSING COMMISSIONERS

FROM: Wendy Hartman, Planning Director *WH*  
Kimberly Grimes, Housing Authority Executive Director *KG*

SUBJECT: **APPROVE SUBMISSION OF WALMART LOCAL GIVING PROGRAM GRANT APPLICATION**

### **Recommendation:**

It is recommended that the Yuba County Housing Authority Commissioners approve the submission of the Wal-Mart Local Giving Program Giving Grant application.

### **Background:**

The Yuba County Housing Authority began a Healthy Nutrition Program for the tenants receiving Housing Choice Vouchers (HCV) and currently enrolled in the Family Self-Sufficiency Program (FSS) on August 6, 2013. The program collaborated with the Marysville Farmer's Market and was extremely successful. The program was using funds from the Community Services Block Grant which limited the funding and the numbers being served to those in the FSS Program. The program ended on September 20, 2013. The program is seeking additional funding to provide the services of Healthy Nutrition education and fresh foods to all tenants receiving HCV, up to 415 families.

### **Discussion:**

The application seeks \$2,500 to provide healthy fruits and vegetables from the local Wal-Mart store along with healthy recipes and nutritional information to provide each family. These funds would not affect the Housing Authority's general operating budget.

**Fiscal Impact:**

This application will be at no cost to the general fund.

**Attachment:**

- Resolution

**RESOLUTION DIRECTING STAFF  
TO SUBMIT A WALMART LOCAL  
GIVING PROGRAM GRANT  
APPLICATION**

1. Approves the submitting of an application for the Wal-Mart Local Giving Program,
2. Certifies that the Applicant has reviewed, understands, and agrees to the General Provisions contained in the Application shown in the Application Package; and
3. Delegates authority to the Executive Director as agent to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the Program; and

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4. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

**PASSED AND ADOPTED**

by the Yuba County Housing Authority,

by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Chair, Yuba County Housing Authority

ATTEST:

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Donna Stottlemeyer, Clerk of the Board

APPROVED AS TO FORM:



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Angil Morris-Jones, County Counsel



*CONSENT*  
*AGENDA*

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# *The County of Yuba*

## B O A R D O F S U P E R V I S O R S



### OCTOBER 1, 2013 - MINUTES

The Honorable Board of Supervisors of the County of Yuba met on the above date, commencing at 6:00 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Supervisors Andy Vasquez, John Nicoletti, Mary Jane Griego, Roger Abe, and Hal Stocker. Also present were County Administrator Robert Bendorf, County Counsel Angil Morris-Jones, and Clerk of the Board of Supervisors Donna Stottlemeyer. Chairman Vasquez presided.

- I. PLEDGE OF ALLEGIANCE - Led by Supervisor Vasquez
- II. ROLL CALL - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker - Supervisor Nicoletti absent.
- III. CONSENT AGENDA: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.

MOTION: Move to approve

MOVED: Hal Stocker

SECOND: Roger Abe

AYES: Hal Stocker, Roger Abe, Andy Vasquez, Mary Jane Griego

NOES: None ABSENT: John Nicoletti ABSTAIN: None

#### A. Administrative Services

1. Approve Memorandum of Understanding with Yuba County Water Agency for information technology support services and authorize Chairman to execute. (395-13) Approved.

#### B. Auditor-Controller

1. Adopt resolution adopting budget for Fiscal Year 2013-2014. (396-13) Adopted Resolution No. 2013-104, which is on file in Yuba County Resolution Book No. 44, entitled: "RESOLUTION ADOPTING BUDGET FOR FISCAL YEAR 2013-14."

#### C. Board of Supervisors

1. Appoint Randy Rasmussen to the Planning Commission as the District Four representative for term ending January 10, 2017. (404-13) Approved.

#### D. Clerk of the Board of Supervisors

1. Approve minutes from the meeting of September 17, 2013. (397-13) Approved as written.

E. Community Development and Services

1. Award contract to apparent low bidder for Loma Rica Road Safety Improvements Project and authorize Chair to execute upon review and approval of Counsel. (398-13) Approved.

F. County Administrator

1. Accept monetary donation from Supervisor Andy Vasquez to benefit Yuba County Code Enforcement for the period August 1, 2013 through June 30, 2014. (399-13) Approved.

IV. SPECIAL PRESENTATION

- A. Present proclamation declaring October Domestic Violence Awareness Month to Casa de Esperanza. (400-13) Chairman Vasquez read and presented the proclamation to Director Linda Hodges who recapped awareness activities during October.
- B. Present proclamation to Sally Sokoloski commending 40 years of service. (Five minute estimate) (338-13) Postponed.

V. PUBLIC COMMUNICATIONS:

Mr. Don Schrader - District 10 and Hallwood flood protection

Supervisor Nicoletti joined the meeting at 6:09 p.m.

Board consensus was to hold a workshop/town hall meeting in October on flood management and drainage.

VI. COUNTY DEPARTMENTS

A. Administrative Services

1. Adopt resolution expressing concern on proposed California Water Services Company rate increase. (401-13) Following Chairman Vasquez requesting the matter tabled until City of Marysville responds to report provided by Cal Water, Director Doug McCoy advised the resolution memorializes the Board concerns expressed at the meeting of September 17, 2014.

The following individual spoke:

Mr. Bill Simmons - urged resolution opposing increase

Supervisor Nicoletti moved to adopt resolution expressing concern on increase. Motion died for lack for a second.

Following discussion, Board consensus was to bring back a resolution with stronger language opposing the 34.9 percent rate increase.

B. Board of Supervisors

1. Appoint CSAC Board representative and alternate for one-year terms commencing November 19, 2013. (Five minute estimate) (402-13)

MOTION: Move to appoint Supervisor Abe CSAC Representative  
MOVED: Andy Vasquez                      SECOND: John Nicoletti  
AYES: Andy Vasquez, John Nicoletti, Mary Jane Griego, Roger Abe, Hal Stocker  
NOES: None ABSENT: None ABSTAIN: None

MOTION: Move to appoint Supervisor Vasquez CSAC Alternate  
MOVED: Roger Abe                              SECOND: John Nicoletti  
AYES: Roger, Abe, John Nicoletti, Andy Vasquez, Mary Jane Griego, Hal Stocker  
NOES: None ABSENT: None ABSTAIN: None

2. Consider request from Tsi Akim Maidu tribe for fee waiver or in-kind services for use of Sycamore Ranch Park October 11 and 12, 2013 and take action as appropriate. (Ten minute estimate) (403-13) Tribe Chairman Don Ryberg and Ms. Letty Litchefield recapped request for use.

Community Development and Services Agency Director Kevin Mallen requested clarification for ongoing annual use by the tribe on Columbus Day weekend advising of current reservations and conflicts and received Board direction to bring back a resolution for Board reflecting annual reservation.

MOTION: Move to waive fee in lieu of in-kind services  
MOVED: Mary Jane Griego                      SECOND: Hal Stocker  
AYES: Mary Jane Griego, John Nicoletti, Andy Vasquez, Roger Abe, Hal Stocker  
NOES: None ABSENT: None ABSTAIN: None

VII. BOARD AND STAFF MEMBERS' REPORTS:

Supervisor Abe

Meetings attended:

- September 18 regarding Spenceville Road
- September 19 Wheatland High School back to school night
- September 24 Regional Flood Management meeting
- September 25-27 RCRC Conference
- Low Cost Health Screening provided Sutter Health Foundation and Peach Tree Health Care
- Casa de Esperanza annual celebration

Supervisor Griego

Meetings attended:

- September 26 South County Community Action Committee
- September 26 SACOG Board of Directors

Supervisor Nicoletti

- Linda Lions Talent Search September 28 at Yuba College
- Covered California
- September 24 Feather River Flood Management meeting
- Marysville Liaison Meeting October 3
- Memorial Adjournment - Ms. Lauren Pearson

Supervisor Abe left the meeting at 7:25 p.m. and returned at 7:27 p.m.

Supervisor Vasquez

Meetings attended:

- First 5 Yuba and RCRC Conference on September 25
- September 27 Yuba Sutter Naturalization Ceremony
- September 28 North Yuba Farm Fest
- September 28 and October 5 Linda Lions Talent Search

County Counsel Angil Morris-Jones: Yuba Sutter Naturalization Ceremony

VIII. CLOSED SESSION: Any person desiring to comment on any matter scheduled for this closed session may address the Board at this time.

The Board returned into closed session at 7:29 p.m. and returned at 8:06 p.m. with all present as listed above.

A. Pending litigation pursuant to Government Code §54956.9(d)(2) - One Claim Action was taken by a 3/2 vote and direction provided to staff.

IX. ADJOURN: 8:07 p.m. in memory of Ms. Lauren Pearson

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Chair

ATTEST: DONNA STOTTLEMEYER  
CLERK OF THE BOARD OF SUPERVISORS

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Approved: \_\_\_\_\_

# The County of Yuba

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## Office of Clerk of the Board of Supervisors

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**To:** Board of Supervisors

**From:** Donna Stottlemeyer, Clerk of the Board

**Subject:** Area 4 Agency on Aging Advisory Council – At Large Representative

**Date:** October 15, 2013

### Recommendation

Reappoint Elden Fowler to the Area 4 Agency on Aging Advisory Council with a term ending June 30, 2016.

### Background and Discussion

The Local Appointment List of all Boards/Commissions/Committees is continually posted indicating vacancies, appointees, terms of office, qualifications and meeting information. This is a scheduled vacancy due to the expiration of Mr. Fowler's term. Mr. Fowler has been serving on the commission since June 2011 and wishes to continue in this capacity.

In light of the expressed interest, it would be appropriate to appoint at this time.

### Fiscal Impact

None

### Committee Action

None required.

### Attachments

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# The County of Yuba

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**Office of Clerk of the Board of Supervisors**

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**To:** Board of Supervisors

**From:** Donna Stottlemeyer, Clerk of the Board

A handwritten signature in black ink, appearing to read "Donna Stottlemeyer", is written over the "From:" line.

**Subject:** Child Care Planning Council of Yuba and Sutter Counties

**Date:** October 15, 2013

## **Recommendation**

Reappoint Kathy Woods as the child care provider representative, Donna Greist as the community representative, and Vinny Johl as the discretionary representative on the Child Care Planning Council of Yuba and Sutter Counties for terms to end September 30, 2016.

## **Background and Discussion**

The Local Appointment List of all Boards/Commissions/Committees is continually posted indicating vacancies, appointees, terms of office, qualifications and meeting information. These are scheduled vacancy due to the expiration of their terms. Ms. Woods, Ms. Greist, and Ms. Johl have been serving on the council respectively and wish to continue in this capacity.

In light of the expressed interest, it would be appropriate to appoint at this time.

## **Fiscal Impact**

None

## **Committee Action**

None required.

Attachments



**Child Care  
Planning Council**  
of yuba and sutter counties

1104 E Street  
Marysville, CA 95901  
Phone: (530) 749-4040  
Fax: (530) 749-3279

# M e m o r a n d u m

**Date:** October 15, 2013

**To:** Yuba County Board of Supervisors

**From:** Tonya K. Byers, Coordinator  
Child Care Planning Council of Yuba & Sutter Counties

**RE:** Re-Appointment to the Child Care Planning Council

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**RECOMMENDATION:** The Council is recommending that the Board of Supervisors consider the re-appointments to the Child Care Planning Council of Yuba and Sutter Counties for the term October 1, 2013 to September 30, 2016.

**BACKGROUND:** The Yuba and Sutter County Superintendents of Schools formed the Council in 1991, in accordance with the state law established by AB 2141 that encouraged the formation of county level child care planning councils. In 1997, under AB 1542, the Council membership composition was established and legislative mandates were assigned to the Councils.

**DISCUSSION:** The Board of Supervisors and the Superintendent of Schools make the appointments of the Council Members to the Child Care Planning Council.

**COMMITTEE ACTION:** No committee has reviewed the request.

**FISCAL IMPACT:** None

Attachments



# The County of Yuba

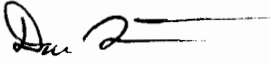
## OFFICE OF TREASURER AND TAX COLLECTOR

**DAN M. MIERZWA**  
TREASURER & TAX COLLECTOR



421-13  
GOVERNMENT  
915 8th STREET, SUITE 103  
MARYSVILLE, CA 95901-5273

TELEPHONE (530) 749-7840  
FAX (530) 749-7844

To: Board of Supervisors  
FROM: Dan M. Mierzwa, Treasurer & Tax Collector   
RE: Sale of Tax-Defaulted Properties October 3, 2013

### RECOMMENDATION:

To approve to sell at public auction via Internet, those properties that are tax-defaulted subject to the power to sell and described on the attached list in accordance with Chapter 7 of Part 6 of Division 1 of the California Revenue and Taxation Code. In the event that any parcels do not sell, approve to re-offer any unsold parcel at a reduced minimum price that the Tax Collector deems appropriate. Once sold and should there be excess proceeds, disburse said proceeds in proper proportion to all eligible parties of interest who submitted a claim as per R & T Code. (§4676).

### BACKGROUND / DISCUSSION:

Per R & T Code, the tax collector must attempt to sell tax defaulted property if given adequate opportunity, to hold and conduct an auction, within four (4) years of the time the property becomes subject to the power to sell. Section 3694 requires Board approval to conduct the sale. One of the reasons for holding a public auction is to return the property to a revenue generating status by conveying the property to another owner. Further and more intense research will be performed prior to any of the properties being offered for sale. After carefully reviewing said research the Tax Collector may reduce the minimum bid being reported on the attached list.

Should some of the properties not sell for the minimum bid listed, Section 3698.5 (c) requires Board approval to allow the tax collector to re-offer those parcels at a reduced price.

The dates and place of the sale is Saturday, February 22<sup>nd</sup> through Tuesday, February 25<sup>th</sup>, 2014 by Bid4Assets Online Real Estate Internet Auctions.

### FISCAL IMPACT:

Any costs incurred while preparing for the sale are assessed and attached to the property, which are paid by the property owner upon redemption or upon the proceeds received when sold at auction. In the event parcels are sold for less than the net redemption amount, the County will need to off-set these losses per R & T Code 4703 from the Tax Loss Reserve fund.

COMMITTEE: Due to routine in nature, bypassed committee.

Assessor's Parcel Number	Minimum Bid
005 180 018 000	1,750.00
005 250 060 000	9,500.00
005 250 065 000	1,500.00
005 370 005 000	5,000.00
006 200 020 000	14,000.00
006 220 073 000	42,000.00
006 244 015 000	7,500.00
006 290 050 000	5,250.00
008 112 018 000	1,500.00
008 211 008 000	13,000.00
009 017 003 000	1,500.00
009 201 021 000	6,000.00
009 233 009 000	24,000.00
010 105 013 510	1,500.00
010 185 015 000	15,000.00
010 186 017 000	21,000.00
010 233 012 000	8,000.00
010 300 014 000	26,000.00
010 300 015 000	22,000.00
010 300 035 000	19,000.00
013 112 027 000	22,000.00
013 140 008 000	15,000.00
013 140 015 000	7,000.00
013 180 053 000	12,000.00
013 190 006 000	18,000.00
013 190 044 000	7,000.00
013 190 061 000	9,000.00
013 251 032 000	3,750.00
013 322 008 000	15,000.00
013 360 015 000	35,000.00
014 061 022 000	15,000.00
014 072 001 000	12,000.00
014 092 009 000	15,000.00
014 201 050 000	500.00
014 270 048 000	27,500.00
014 290 010 000	24,000.00
014 340 019 000	10,000.00

Assessor's Parcel Number	Minimum Bid
014 340 022 000	29,000.00
014 442 003 000	10,000.00
014 840 001 000	544,000.00
014 860 009 000	4,000.00
015 243 026 000	12,500.00
018 130 024 000	500.00
018 340 020 000	2,500.00
019 180 028 000	28,000.00
019 300 005 000	15,000.00
020 091 009 000	9,500.00
020 091 015 000	20,000.00
020 097 024 000	22,500.00
020 097 025 000	14,500.00
020 097 030 000	15,000.00
020 121 021 000	44,000.00
020 122 015 000	21,000.00
020 122 027 000	4,100.00
020 122 034 000	38,000.00
020 160 006 000	18,000.00
020 233 005 000	11,000.00
020 255 008 000	28,000.00
020 260 004 000	10,500.00
020 260 018 000	8,000.00
020 270 019 000	2,000.00
020 280 019 000	14,500.00
020 293 007 000	4,500.00
020 380 027 000	19,500.00
020 440 017 000	120,000.00
021 023 002 000	45,000.00
021 032 005 000	39,500.00
021 051 011 000	24,000.00
021 251 002 000	30,000.00
021 251 012 000	13,000.00
021 252 021 000	18,000.00
021 270 036 000	15,000.00
021 270 037 000	14,900.00
021 270 038 000	14,750.00

Assessor's Parcel Number	Minimum Bid
021 282 022 000	11,000.00
021 331 029 000	12,500.00
021 341 002 000	1,000.00
021 370 008 000	15,000.00
021 370 015 000	108,000.00
021 381 010 000	19,000.00
021 411 016 000	40,500.00
021 482 007 000	12,500.00
022 100 008 000	19,500.00
040 050 036 000	12,500.00
040 110 008 000	61,000.00
040 120 012 000	7,000.00
040 120 028 000	7,000.00
040 270 023 000	22,500.00
040 270 044 000	15,000.00
040 310 039 000	17,500.00
044 070 034 000	7,000.00
044 270 023 000	85,000.00
048 170 063 000	10,500.00
048 170 064 000	12,500.00
050 140 002 000	3,200.00
050 140 022 000	10,000.00
050 140 025 000	3,000.00
050 150 006 000	5,250.00
050 150 007 000	5,250.00
050 350 005 000	26,000.00
054 110 014 000	3,250.00
054 220 017 000	2,500.00
054 300 022 000	8,000.00
056 060 030 000	5,500.00
056 130 004 000	11,000.00
056 290 044 000	20,000.00
060 130 016 000	30,500.00
060 310 025 000	81,000.00
064 020 006 000	4,700.00
064 100 006 000	7,000.00
064 270 035 000	35,000.00



*COUNTY*  
*DEPARTMENTS*

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# The County of Yuba

## Community Development & Services Agency

**Kevin Mallen, Director**

Phone – (530) 749-5430 • Fax – (530) 749-5424  
915 8<sup>th</sup> Street, Suite 123  
Marysville, California 95901  
www.co.yuba.ca.us



423-13

**BUILDING**

749-5440 • Fax 749-5616

**CODE ENFORCEMENT**

749-5455 • Fax 749-5424

**ENVIRONMENTAL HEALTH • CUPA**

749-5450 • Fax 749-5454

**HOUSING & COMMUNITY SERVICES**

749-5460 • Fax 749-5464

**PLANNING**

749-5470 • Fax 749-5434

**PUBLIC WORKS • SURVEYOR**

749-5420 • Fax 749-5424

October 15, 2013

TO: BOARD OF SUPERVISORS

FROM: MICHAEL LEE, DIRECTOR OF PUBLIC WORKS

A handwritten signature in black ink, appearing to read "Michael Lee", is written over the printed name.

SUBJECT: APPROVE BUDGET AMENDMENT INCREASING THE APPROPRIATION TO 102-9100-431-2301 (SPECIAL PROJECTS) FOR EMERGENCY ILLICIT DISCHARGE RESPONSE WORK ON RAVINE COURT

RECOMMENDATION:

Approve budget amendment, increasing the appropriation to 102-9100-431-2301 (Special Projects) in the amount of \$47,936 to come from the General Fund Contingency for emergency illicit discharge response work on Ravine Court.

BACKGROUND:

In March 2013, Public Works received complaints regarding the presence of strong petroleum-based odors coming from the storm drain system on Ravine Court in Edgewater. Public Works and CUPA staff investigated the complaints and confirmed the presence of an illicit discharge. A significant rain event was forecast to hit the area in the next day or two.

To meet the requirements of the Clean Water Act, the County has adopted a Stormwater Quality Ordinance and approved a Storm Water Management Plan, indicating the County will take cleanup action as necessary upon identification of an illicit discharge.

DISCUSSION:

Because of the threat to public safety and the impending storm, CDSA determined that immediate action was required to clean up the illicit discharge. NRC Environmental Services, Inc. was hired to perform the cleanup with the total cost coming to approximately \$48,000. It was later determined that the contaminant was some form of "de-greaser".

CDSA and the Sheriff's Office investigated the incident and talked to the residents on the court. Unfortunately, we were unable to definitively determine the culprit, and subsequently the County has nobody from whom to seek reimbursement for cleanup costs.

COMMITTEE ACTION:

The Land Use & Public Works Committee reviewed this item and recommended approval.

FISCAL IMPACT:

This action will reimburse the Road Fund approximately \$47,936 for costs incurred performing the emergency work.

WHITE . AUDITOR - CONTROLLER  
YELLOW - COUNTY ADMINISTRATOR  
PINK - DEPARTMENT

AUDITOR - CONTROLLER TRANSFER NO. \_\_\_\_\_

**COUNTY OF YUBA**  
**REQUEST FOR TRANSFER OR**  
**REVISION OF APPROPRIATION, ESTIMATED REVENUE OR FUNDS**

DATE: October 8 20 13

DEPARTMENT CDSA - Public Works

**REQUEST APPROVAL OF THE FOLLOWING TRANSFER FISCAL YEAR ENDING JUNE 30, 20 14**

**BUDGET OR ESTIMATED REVENUE**

☒ **ESTIMATED REVENUE INCREASED**

☐ **APPROPRIATION DECREASED**

ACCOUNT NO.	NAME	AMOUNT
102-0000-372-99-01	Operating Transfers In	<del>48,000</del>
		47,936

☒ **APPROPRIATION INCREASED**

ACCOUNT NO.	NAME	AMOUNT
102-9100-431-23-01	Special Projects	<del>48,000</del>
		47,936

**FUND TRANSFERS**

**FUNDS TO BE REDUCED:**

FUND	AMOUNT
101 General Fund Contingency	47,936 <del>48,000</del>

**FUNDS TO BE INCREASED:**

FUND	AMOUNT
102 Road Fund	47,936 <del>48,000</del>

**GENERAL LEDGER (AUDITOR - CONTROLLER USE ONLY)**

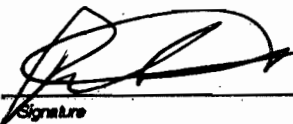
FUND	ACCOUNT	AMOUNT			FUND	ACCOUNT	AMOUNT	
		DEBIT	CREDIT				DEBIT	CREDIT

**REASON FOR TRANSFER:**

To reimburse the Road Fund for costs incurred performing emergency illicit discharge response work on Ravine Court.

**APPROVED:**

☒ **AUDITOR - CONTROLLER**

  
Signature Date 10/12/13

Signature



DEPARTMENT OR PUBLIC OFFICIAL

☒ **COUNTY ADMINISTRATOR:**

  
Signature Date 9/30/13

Public Works Director

TITLE

Approved as to Availability of Budget Amounts and Balances  
in the Auditor/Controllers Office.

AUDITOR - CONTROLLER

Auditor/Controller,



Approved:

BOARD OF SUPERVISORS

Clerk of the Board

Date



# The County of Yuba

---

**Office of the County Administrator**

---

Robert Bendorf, County Administrator

**TO:** Yuba County Board of Supervisors  
**FROM:** Robert Bendorf, County Administrator *RB*  
**RE:** Wastewater Conveyance Project Grant  
**DATE:** October 15, 2013

## RECOMMENDATION

It is recommended that the Board of Supervisors;

1. Confirm previous Board action of Yuba County as the lead agency and recipient of an Economic Development Administration (EDA) Grant for repair and replacement of a wastewater conveyance system from the Airport Industrial area on Arboga Road to the Olivehurst Public Utility District's (OPUD) wastewater treatment facility, and;
2. Adopt a resolution authorizing the County Administrator to execute the **EDA grant for the amount of \$1,790,232** and supporting documents on behalf of Yuba County.
3. Approve a grant match not to exceed \$ 447,558 to be provided by Yuba County and reimbursed by OPUD, during or soon after project completion.
4. Direct the Auditor-Controller to establish the necessary project accounting funds in order for the County to administer the grant and complete the project.

## BACKGROUND

Wastewater from Yuba County's Industrial Park and contiguous areas in Olivehurst is conveyed through a collection system that eventually reaches OPUD's wastewater treatment facility on Mary Avenue in Olivehurst.

That system has limited capacity to serve additional development, which cripples the economic development of the Industrial Park area. Recent work with a potential manufacturing company has highlighted the above stated issues. OPUD and the County have worked together over the past several months to identify solutions that address the current capacity issues and create additional capacity for business.

The Yuba County Board of Supervisors, at its January 22, 2013 meeting, approved a resolution supporting a grant application to the Economic Development Administration for this project. On February 26, 2013, the Board of Supervisors authorized the grant application and support for a local match (see attached staff report from 2/26/13).

## **DISCUSSION**

On September 26, 2013, the County received electronic notification from the EDA announcing that the grant had been awarded to Yuba County. OPUD, the Yuba Sutter EDC and County representatives have all been notified of receipt of the grant.

The initial ask of the local match was for up to \$600,000 and approved by your Board at the February 26, 2013 board meeting. Based on the final award amount as stated by the EDA, the local match is considerably less, \$447,558, however it is based on estimated costs and it is too early in the project process to determine if actual costs may be less than or exceed the estimated amounts that the grant and local match are based on. OPUD has conceptually agreed to reimburse the County for the local match which will be accomplished through a separate agreement that staff will begin drafting immediately.

As stated in the previous staff report, Yuba County as the lead agency will:

- Be the recipient of grant funds for the grant.
- Coordinate cash flow requirements needed for the project.
- Develop an agreement with OPUD for reimbursement to the County for the costs not covered by the EDA grant.
- Through an engineering consultant, design the project and prepare the necessary construction and bid documents.
- Oversee the bid process, with the Board of Supervisors awarding the construction contract(s).
- County staff, in partnership with OPUD and the necessary engineering consultants will oversee construction.
- Once complete, dedicate the improvements to OPUD.

## **FISCAL IMPACT**

- The local match will be transferred as needed from the Capital Project fund (Fund 200) to the Grant Project Fund. As needed is identified as the proportionate share (federal grant funds are provided on a reimbursement basis concurrent with the local match proportionate share). The local match will be reimbursed by OPUD during the course of the project or upon dedication of the project to OPUD, depending on the reimbursement agreement terms.
- Cash flow of the project through the General Fund will most likely result in a period over two fiscal years as the estimated completion of the project will be during calendar year 2014 (early spring and up to and including fall). Cash flow through the General Fund will most likely result in negative interest of approximately \$10,000 to \$15,000 to the General Fund. This charge is not anticipated to be reimbursed. Staff will report back to the Board on the total as soon as possible and take necessary steps to incur negative interest.



**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

**RESOLUTION AUTHORIZING THE COUNTY )  
ADMINISTRATOR TO EXECUTE CERTAIN GRANT ) RESOLUTION NO. \_\_\_\_\_  
DOCUMENTS FOR RECEIPT OF A GRANT FROM THE )  
ECONOMIC DEVELOPMENT ADMINISTRATION FOR )  
WASTEWATER INFRASTRUCTURE IMPROVEMENTS )**

**WHEREAS**, on a periodic basis certain governmental agencies request that the County Administrator sign Agreements, Grant Submittals, Grant Awards and/or Contracts for the provision of services to that governmental agency; and

**WHEREAS**, in a joint effort with the Olivehurst Public Utility District, and Yuba Sutter Economic Development Corporation, Yuba County received a grant for wastewater infrastructure improvements to a wastewater conveyance system from the industrial park area on Arboga Road to OPUD's wastewater treatment plant in Olivehurst; and

**WHEREAS**, the grant award notification is dated September 26, 2013 and a response is due to the Economic Development Administrator within 30 days, and;

**WHEREAS**, it is in the interest of efficient and effective county government for the Board of Supervisors to authorize the Yuba County Administrative Officer to execute certain Contracts, Agreements and grant awards on behalf of Yuba County.

**NOW, THEREFORE, BE IT RESOLVED** that the Yuba County Administrative Officer, be and hereby is authorized to execute on behalf of Yuba County all necessary documents for receipt and completion of the Economic Development Administration grant mentioned herein, subject

to approval of County Counsel and County Risk Management. A copy of grant award will be retained by the Office of the County Administrator and Yuba Sutter Economic Development Corporation, and a copy will be filed with the Clerk of the Board of Supervisors of the County of Yuba.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_  
2013, by the Board of Supervisors of the County of Yuba, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Chairman

ATTEST: DONNA STOTTLEMEYER  
CLERK OF THE BOARD OF SUPERVISORS

\_\_\_\_\_

APPROVED AS TO FORM: COUNTY COUNSEL  
ANGIL P. MORRIS-JONES

  
\_\_\_\_\_

# The County of Yuba

074-13



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**Office of the County Administrator**

---

Robert Bendorf, County Administrator

**TO:** Yuba County Board of Supervisors  
**FROM:** Robert Bendorf, County Administrator *RB*  
**RE:** Wastewater Conveyance Project Grant  
**DATE:** February 26, 2013

## RECOMMENDATION

It is recommended that the Board of Supervisors;

1. Approve Yuba County as the lead agency and recipient of an Economic Development Administration (EDA) Grant for repair and replacement of a wastewater conveyance system from the Airport Industrial area on Arboga Road to the Olivehurst Public Utility District's (OPUD) wastewater treatment facility, and;
2. Approve a grant match of up to \$600,000 to be provided by Yuba County and later reimbursed by OPUD, soon after project completion, and authorize the Chairman to execute a letter to the EDA recognizing the match commitment.
3. Adopt a resolution authorizing the County Administrator to execute the EDA grant application and supporting documents on behalf of the County.

## BACKGROUND

Wastewater, including storm water that is collected from Yuba County's Industrial Park and contiguous areas in Olivehurst is conveyed through a collection system that eventually reaches OPUD's wastewater treatment facility on Mary Avenue in Olivehurst.

That system has been at capacity for several years, particularly during the winter months, and has resulted in violations from the State of California. Of additional concern, the current conveyance system has limited ability to take on more capacity, particularly during winter months. This cripples the ability for industry to locate within the Industrial Park area.

Recent work with a potential manufacturing company has highlighted the above stated issues. OPUD and the County have worked together over the past several months to identify solutions that address the current capacity issues and create additional capacity for business.

The Yuba County Board of Supervisors, at its January 22, 2013 meeting, approved a resolution supporting a grant application to the Economic Development Administration for this project.

## **DISCUSSION**

Upon evaluating the initial grant proposal and after further discussion with the Olivehurst Public Utility District, the Yuba-Sutter Economic Development Corporation and County staff, we feel that moving forward with the grant application with Yuba County as the lead agency would benefit all parties involved.

In addition, Yuba County would provide the local match, of up to \$600,000 for the project. These funds need to be made available; however will not be spent until, and if, the grant is awarded. OPUD has conceptually agreed to reimburse the County for the local match which will be accomplished through a separate agreement (a letter of commitment is attached from OPUD).

With Yuba County as the lead agency, and if the grant is awarded, our responsibilities will be to:

- Be the recipient of grant funds for the grant.
- Through an engineering consultant, design the wastewater project and improvements.
- Through an engineering consultant and County staff, prepare the necessary construction and bid documents.
- Oversee the bid process.
- Staff recommends to the Board of Supervisors award of the contract
- County staff, in partnership with OPUD and the necessary engineering consultants, will oversee construction.
- Once complete, dedicate the improvements to OPUD.

## **FISCAL IMPACT**

\$600,000 will be used from the Capital Project fund 200 for funding of the local match. That amount will be reimbursed by OPUD through a separate agreement to be approved by the Board of Supervisors and the OPUD Board.

**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

**RESOLUTION AUTHORIZING THE COUNTY )  
ADMINISTRATOR TO EXECUTE CERTAIN GRANT ) RESOLUTION NO. \_\_\_\_\_  
DOCUMENTS FOR SUBMITTAL OF A GRANT TO THE )  
ECONOMIC DEVELOPMENT ADMINISTRATION FOR )  
WASTEWATER INFRASTRUCTURE IMPROVEMENTS )**

**WHEREAS**, on a periodic basis certain governmental agencies request that the County Administrator sign Agreements, Grant Submittals and/or Contracts for the provision of services to that governmental agency; and

**WHEREAS**, in a joint effort with the Olivehurst Public Utility District (OPUD), the Yuba-Sutter Economic Development Corporation and Yuba County, is submitting a grant application for wastewater infrastructure improvements to a wastewater conveyance system from the industrial park area on Arboga Road to OPUD's wastewater treatment plant in Olivehurst; and

**WHEREAS**, the grant is due to the Economic Development Administrator on March 14th, 2013, and;

**WHEREAS**, it is in the interest of efficient and effective county government for the Board of Supervisors to authorize the Yuba County Administrative Officer to execute certain Contracts, Agreements and grant submittals on behalf of Yuba County.

**NOW, THEREFORE, BE IT RESOLVED** that the Yuba County Administrative Officer, be and hereby is authorized to execute on behalf of Yuba County, the grant documents for purposes of submittal to the Economic Development Administration, subject to approval of County Counsel and County Risk Management. A copy of grant submittal will be retained by the Office of the

County Administrator and the Yuba-Sutter Economic Development Corporation, and a copy will be filed with the Clerk of the Board of Supervisors of the County of Yuba.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_,

2013, by the Board of Supervisors of the County of Yuba, State of California, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Andy Vasquez, Chairman

ATTEST: DONNA STOTTLEMEYER  
CLERK OF THE BOARD OF SUPERVISORS

\_\_\_\_\_

APPROVED AS TO FORM:  
COUNTY COUNSEL  
ANGIL P. MORRIS-JONES

*by [Signature]*  
\_\_\_\_\_

**DRAFT**

March 1, 2013

David Farnworth-Martin, Economic Development Representative  
Economic Development Administration (EDA)  
Jackson Federal Building, Room 1890  
915 Second Avenue  
Seattle, WA 98174

RE: Commitment of Grant Match for EDA grant application

Dear Mr. Farnworth-Martin:

This letter is in support of a grant application to EDA for a public works project that will upgrade wastewater infrastructure in Olivehurst, Yuba County, to provide increased wastewater capacity necessary to operate a nitrile glove manufacturing facility. This letter also conveys Yuba County's commitment, as the project lead, to provide a required grant match.

All Yuba County funds committed to the project are available as needed, and not conditioned or encumbered in any way, that would preclude its use consistent with requirements of Economic Development Administration investment assistance.

Yuba County and the Yuba-Sutter community would be appreciative of favorable consideration of EDA's review of the grant application and anticipates the successful project would merit an EDA investment.

Sincerely,

Andy Vasquez, Chairman  
Yuba County Board of Supervisors

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**U. S. DEPARTMENT OF COMMERCE**

Economic Development Administration

915 Second Avenue, Room 1890

Seattle, WA 98174

Fax: 206.220.7669

Voice: 206.220.7660

**SEP 25 2013**

In reply refer to:

Investment No.: 07 01 06992

Mr. Robert Bendorf  
County Administrator  
County Administrator's Office  
County of Yuba  
915 8<sup>th</sup> Street, Suite 115  
Marysville, California 95901

Dear Mr. Bendorf:

I am pleased to inform you that the Economic Development Administration (EDA) has approved a Financial Assistance Award in the amount not to exceed \$1,790,232 in response to your Application for Federal Assistance to fund a construction project to improve the wastewater system of the Yuba County Industrial Park.

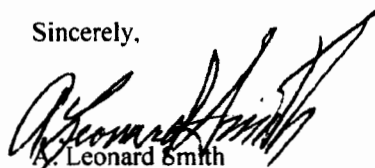
Enclosed are three signed copies of the Financial Assistance Award. Your agreement to the terms and conditions of the award should be indicated by the signature of your principal official on each of the signed copies of the Financial Assistance Award. Two of the executed copies should be returned to: A. Leonard Smith, Regional Director, Seattle Regional Office, Economic Development Administration, 915 Second Avenue, Room 1890, Seattle, Washington 98174-1012. If not signed and returned within 30 days of receipt, EDA may declare the Award null and void.

Please, do not make any commitments in reliance on this award until you have carefully reviewed and accepted the terms and conditions. Any commitments entered into prior to obtaining the approval of EDA in accordance with its regulations and requirements will be at your own risk.

EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA implements this mission by making strategic investments in the nation's most economically distressed communities that encourage private sector collaboration and creation of higher-skill, higher wage jobs. EDA investments are results driven, embracing the principles of technological innovation, entrepreneurship, and regional development.

I share your expectations regarding the impact of this investment and look forward to working with you to meet the economic development needs of your community.


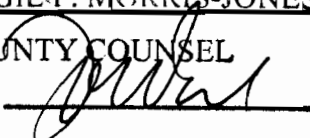
Sincerely,



A. Leonard Smith  
Regional Director

Enclosures

c: Dana Burroughs, Yuba-Sutter Economic Development Corporation  
David Farnworth-Martin, Economic Development Representative

FORM CD-450 (REV. 3-13)		U.S. DEPARTMENT OF COMMERCE			
<h2 style="margin: 0;">FINANCIAL ASSISTANCE AWARD</h2>		<input checked="" type="checkbox"/> GRANT <input type="checkbox"/> COOPERATIVE AGREEMENT			
		AWARD PERIOD Date of Grants Officer's Signature through 60 Months			
RECIPIENT NAME <b>County of Yuba</b>		AWARD NUMBER <b>07 01 06992</b>			
STREET ADDRESS <b>915 8th Street, Suite 123</b>		FEDERAL SHARE OF COST \$ <b>1,790,232.00</b>			
CITY, STATE, ZIP CODE <b>Marysville, California 95901</b>		RECIPIENT SHARE OF COST \$ <b>447,558.00</b>			
AUTHORITY <small>42 U.S.C. 3141, Section 201 of the Public Works and Economic Development Act of 1965 (Public Law 89-136), as amended by the Economic Development Administration Reauthorization Act of 2004 (Public Law 108-373)</small>		TOTAL ESTIMATED COST \$ <b>2,237,790.00</b>			
CFDA NO. AND PROJECT TITLE <b>11.300/Yuba County Industrial Park Wastewater System Upgrade Project</b>					
BUREAU	FUND	FCFY	PROJECT-TASK	ORGANIZATION	OBJECT CLASS
EDA	40	13	00	SRO	41, 10, 00
<p>This Award approved by the Grants Officer is issued in triplicate and constitutes an obligation of Federal funding. By signing the three documents, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, two signed Award documents shall be returned to the Grants Officer and the third document 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.</p> <p> <input type="checkbox"/> Department of Commerce Financial Assistance Standard Terms and Conditions (January 2013)  <input checked="" type="checkbox"/> Special Award Conditions  <input checked="" type="checkbox"/> Line Item Budget  <input type="checkbox"/> 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations  <input checked="" type="checkbox"/> 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments  <input type="checkbox"/> OMB Circular A-21, Cost Principles for Educational Institutions  <input checked="" type="checkbox"/> OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments  <input type="checkbox"/> OMB Circular A-122, Cost Principles for Nonprofit Organizations  <input type="checkbox"/> 48 CFR Part 31, Contract Cost Principles and Procedures  <input checked="" type="checkbox"/> OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations  <input checked="" type="checkbox"/> Other(s): <u>U.S. Department of Commerce Economic Development Administration Standard Terms and Conditions for Construction Projects (March 12, 2013)</u> </p> <p><b>Attachment 1 to Special Award Conditions</b></p> <p><b>Summary of EDA Construction Standards</b></p>					
SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER 		TITLE <b>Regional Director</b>		DATE <b>SEP 25 2013</b>	
TYPED NAME AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL <b>Robert Bendorf</b>		TITLE <b>County Administrator</b>		DATE	
APPROVED AS TO FORM <b>ANGIL P. MORRIS-JONES</b>		COUNTY COUNSEL BY: 			

SPECIAL AWARD CONDITIONS  
U.S. DEPARTMENT OF COMMERCE  
Economic Development Administration (EDA)

Public Works and Economic Development Facilities Program  
under 42 U.S.C. §3141, Section 201 of the  
Public Works and Economic Development Act of 1965 (Public Law 89-136),  
as amended by the Economic Development Administration Reauthorization Act of 2004  
(Public Law 108-373)

**Project Title: Yuba County Industrial Park Wastewater System Upgrade Project**

**Grantee Name: County of Yuba**

**Project Number: 07 01 06992**

1. This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work* (Attachment 1). All work on this project should be consistent with this *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized through execution of a Form CD-451.

2. The Grantee Contact's name, title, address, and telephone number are:

Dana Burroughs  
Grants Administrator  
Phone: (530) 751-8555, ext. 105  
Email: dburroughs@ysedc.org

County of Yuba  
c/o Yuba Sutter Economic Development Corp.  
1227 Bridge Street, Suite C  
Yuba City, California 95991

3. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

A. Leonard Smith  
Regional Director  
Fax: (206) 220-7659

Economic Development Administration  
Seattle Regional Office  
915 Second Avenue, Room 1890  
Seattle, Washington 98174-1012

4. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Kristine Skrinde  
Area Director  
Phone: (206) 220-7700  
FAX: (206) 220-7669  
Email: KSKrinde@eda.gov

Economic Development Administration  
Seattle Regional Office  
915 Second Avenue, Room 1890  
Seattle, Washington 98174-1012

5. The EDA Project Officer is responsible for day-to-day administration and liaison with the Grantee and receives all reports and payment requests. The Project Officer is:

Stan Good Civil Engineer Phone: (206) 220-7701 FAX: (206) 220-7669 Email: SGood@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012
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**6. ADDITIONAL INCLUDED DOCUMENTS:**

In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award form (Form CD-450) the following additional documents are included with and considered to be part of the Award's terms and conditions:

- Authorized Scope of Work (Attachment 1); and

Should there be a discrepancy among these documents the Special Award Conditions (this document) and associated attachments hereto shall control.

- 7. PROJECT DEVELOPMENT TIME SCHEDULE:** The Grantee agrees to the following Project development time schedule:

<u>Deliverable</u>	<u>Submission Deadline</u>
Return of Executed Financial Assistance Award	30 calendar days after receipt of Form CD-450
Start of Construction	24 Months from Date of Award
Completion of Construction	48 Months from Date of Award
Authorized Award End Date	60 Months from Date of Award
Final Financial Report on Standard Form 425	No later than 90 calendar days after date of completion of construction

Project Closeout – All Project closeout documents, including final financial reports (Standard Form 425) and any required program reports, shall be submitted to EDA not more than 90 calendar days after the date the Grantee accepts the completed project from the contractor(s).

The Grantee shall diligently pursue the development of the Project so as to ensure completion within this time schedule. Moreover, the Grantee shall promptly notify EDA in writing of any event that could substantially delay meeting any of the proscribed time limits for the Project as set forth above. The Grantee further acknowledges that failure to meet the development time schedule may result in EDA's taking action to terminate the Award in accordance with the regulations set forth at 15 C.F.R. § 14.62 or 15 C.F.R. § 24.43, as applicable.

## 8. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:

- A. AWARD DISBURSEMENTS: Reimbursable basis only:** EDA will make disbursements under this Award on a reimbursement basis only, in accord with the procedures outlined during the grant kick-off meeting.

The *Outlay Report and Request for Reimbursement for Construction Programs* (Standard Form 271) is used to request a disbursement, which shall be approved in writing by the Civil Engineer/Project Officer.

Please note that prior to the initial disbursement, Grantees must complete SF-3881, *ACH Vendor/Miscellaneous Payment Enrollment Form* and submit it to NOAA's Accounting Office by FAX to (301) 528-3675 (*FAX is required to secure confidentiality of sensitive information*). The form must be completed by the respective parties (EDA, Grantee Bank, and Grantee) at the start of each new award.

### B. REPORTS:

- a. *Project Progress Reports:* The Grantee shall submit project progress reports to the Civil Engineer/Project Officer on a quarterly basis for the periods ending **December 31, March 31, June 30 and September 30**, or any portion thereof until the final grant payment is made by EDA. Reports should be submitted in accordance with the format required by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than the 15<sup>th</sup> day of the month following the end of the quarterly period.
- b. *Financial Reports:* The Grantee shall submit a *Federal Financial Report* (Standard Form 425) on a semi-annual basis for the periods ending **March 31 and September 30**, or any portion thereof.

A Final Financial Report on Standard Form 425 must be submitted no more than 90 calendar days after the expiration date of the Award (e.g., the Award end date specified on the Form CD-450 or Form CD-451). Final Financial reports should follow the guidance outlined by the form instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire project period, and that all matching and program income (if applicable) is fully reported. Final grant rate and determinations of final balances owed to the government will be determined by the information on the final Standard Form 425, so it is imperative that this final financial form is submitted in a timely and accurate manner.

- 9. ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined at the conclusion of the award period in accordance with the administrative authorities applicable pursuant to the *Financial Assistance Award* (Form CD-450), including the applicable *Cost Principles* and *Uniform Administrative Requirements*, after Final Financial Documents are submitted.

Except as otherwise expressly provided for within these Special Award Conditions, the Investment Rate for the award (see 13 C.F.R. §§ 300.3 and 301.4) shall apply to allowable costs incurred by the Grantee in connection with the project. The Federal share in the allowable costs shall be based upon the Investment Rate (see 15 C.F.R. § 14.2(s)). In the event of an under run in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate established in the Form CD-450, or previously executed Form CD-451. The Federal share of total allowable costs shall not exceed the dollar amount of the original Award and subsequent amendments, if any, absent a determination by the Assistant Secretary (see 13 C.F.R. § 308.1).

Line Item Budget:

- A. Under the terms of the Award, the total approved authorized budget is:

Federal Share (EDA Funds)	\$1,790,232
Non-Federal Matching Share	<u>\$447,558</u>
Total Project Cost	\$2,237,790

- B. Under the terms of this Award, the total approved line item budget is:

<u>COST CLASSIFICATION</u>	<u>Proposed</u>	<u>Approved</u>
Administrative and legal expenses	\$18,790	\$18,790
Land, structures, rights-of-way, etc.	\$15,900	\$15,900
Relocation expenses and payments	\$0	\$0
Architectural and engineering fees	\$125,000	\$125,000
Other architectural and engineering fees	\$20,000	\$20,000
Project inspection fees	\$100,000	\$100,000
Site work	\$60,000	\$60,000
Demolition and removal	\$10,000	\$10,000
Construction	\$1,374,000	\$1,374,000
Equipment	\$125,000	\$125,000
Contingencies	<u>\$390,000</u>	<u>\$390,000</u>
Total Project Costs	\$2,237,790	\$2,237,790

- 10. FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs, based on the area's grant rate eligibility at the time of award, whichever is less.

**11. MATCHING SHARE:** The Grantee agrees to provide the Grantee's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expenses. (See 13 C.F.R. § 300.3) The Grantee also certifies that, in accepting the Financial Assistance Award, the Grantee's Matching Share of the project costs is committed and unencumbered, from authorized sources, and shall be available as needed for the project.

**12. REFUND CHECKS, INTEREST, OR UNUSED FUNDS:** Treasury has given EDA two options for having payments deposited to EDA's account:

- i. The first one is Pay.Gov. This option allows the payee to pay EDA through the Internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
- ii. The second option is Paper Check conversion. All checks must identify on their face the name of the DOC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, who processes EDA's accounting functions at the following address:

U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
Finance Office – Accounting Operations Division  
Attn: EDA Grants  
20020 Century Boulevard  
Germantown, MD 20874

The accounting staff will scan the checks in encrypted file to the Federal Reserve Bank, and the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

Notice to Customers Making Payment by Check

If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.

EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, we will charge you a one-time fee of \$25.00, which will be collected by EFT.

- 13. CONSTRUCTION COMPLETION:** In keeping with prudent grants management policy, EDA construction projects must be completed within five (5) years from the date the Form CD-450 is signed by the Grantee accepting the Award. If construction is not completed by this date and the Grants Officer determines, after consultation with the Grant Grantee, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously, the grant may be terminated. Extensions beyond the five year project period are exceedingly rare and can only be authorized by the Assistant Secretary.
- 14. USEFUL LIFE:** The useful life of this project is hereby determined to be 20 years. Nothing in this paragraph is intended to alter the Project Development Time Schedule set forth in provision 7 above.
- 15. GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth in 41 C.F.R. § 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 Grantee shall comply with these regulations and shall obtain compliance with 41 C.F.R. § 60-4 from contractors and subcontractors employed in the completion of the Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. § 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 C.F.R. § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions.
- 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 Grantee shall include the *Standard Federal Equal Employment Opportunity Construction Contract Specifications* (or cause them to be included, if appropriate) in all Federally-assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6.
- 16. ARCHITECT/ENGINEER AGREEMENT.** Prior to initial disbursement of funds by EDA, the Grantee must submit to the Government for approval, an Architect/Engineer Agreement that meets the requirements in the EDA's "Summary of EDA Construction Standards," as well as the competitive procurement standards of 15 C.F.R. Part 24 or 15 C.F.R. Part 14, as applicable. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.



- 17. CONSTRUCTION MANAGEMENT/INSPECTION AGREEMENT.** Prior to initial disbursement of funds by EDA, the Grantee must submit to the Government for approval, an Construction Management/Inspection Agreement that meets the requirements in the EDA's "Summary of EDA Construction Standards," as well as the competitive procurement standards of 15 C.F.R. Part 24 or 15 C.F.R. Part 14, as applicable. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.
- 18. PROCUREMENT:** The Grantee agrees that all procurement transactions shall be in accordance with Department of Commerce Regulations at 15 C.F.R § 24.36 (State and Local Governments) or 15 C.F.R. § 14.44 (Higher Education, Hospitals, other Non-Profits), as applicable.
- 19. EVIDENCE OF GOOD TITLE:** Prior to the initial disbursement of funds by EDA, the Grantee shall provide opinion of counsel, satisfactory to the Government, that the Grantee has acquired good and marketable title to land, free of all encumbrances, as well as rights-of-way, and easements necessary for the completion of the project, or of a long-term leasehold interest in accordance with 13 C.F.R. part 314.
- 20. NONRELOCATION:** In signing this award of financial assistance, the Grantee(s) attests that the EDA funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award. (See 13 C.F.R. § 300.3) In the event that EDA determines that its assistance was used for such relocation purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements and termination of the award for convenience or cause, and disallowance of any costs attributable, directly or indirectly, to the relocation and the recovery of the Federal share thereof.
- For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project assisted by EDA. EDA considers an employer to be a "primary beneficiary" if, in seeking EDA assistance, the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application to EDA to make the Award. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more jobs permanent jobs so identified.
- 21. FREEDOM OF INFORMATION ACT COMPLIANCE:** EDA is responsible for meeting Freedom of Information Act (FOIA), Title 5 of the United States Code, Section 522 (5 U.S.C. §522) (Public Law 89-554), requirements regarding its records. The regulations governing the U.S. Department of Commerce under 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants may be released in response to a written request for federal records that cites FOIA. Applicants should be aware that EDA may make certain application information publicly available. Accordingly, the applicant should notify EDA if it believes any application information to be confidential.

**22. U.S. ARMY CORPS OF ENGINEERS (ACOE) CLEARANCE:** If there is trenching across the Clark Slough, then prior to the advertisement for construction bid, the Grantee shall provide evidence satisfactory to EDA that the ACOE has issued a Clean Water Act Section 404 permit.

**23. STREAMBED ALTERATION AGREEMENT:** Prior to advertisement for construction bid, the Grantee shall provide evidence satisfactory to the EDA that: 1) notification has been provided to the California Department of Fish and Wildlife (CDFW) regarding plans to bore under the Clark Slough; and 2) if trenching occurs across the Clark Slough, then a Streambed Alteration Agreement has been obtained from the CDFW and recommendations in the Streambed Alteration Agreement have been incorporated into the construction bid documents.

**24. CALIFORNIA STATE HISTORIC PRESERVATION OFFICER (SHPO) CLEARANCE:** Prior to any ground-disturbing activities, the Grantee shall provide evidence satisfactory to the EDA that the National Historic Preservation Act Section 106 consultation has been completed with the California SHPO.

**25. PROPERTY MANAGEMENT STANDARDS:** The Grantee shall be responsible to ensure that the real property acquired or improved by this Award as an industrial park is used only for the authorized and specific purpose of an industrial park, and that the sell, lease, or conveyance parcels of the improved property within the park shall serve that purpose of the Award in accordance its terms and conditions and with 13 C.F.R. Part 314.

Since the authorized purpose of the project is to construct facilities to serve industrial or commercial parks or sites owned by the Grantee for sale or lease to private parties, such sale or lease is permitted so long as EDA requirements continue to be met. EDA requires evidence that the Grantee has title to the park or site prior to such sale or lease.

**26. SECURITY AGREEMENT – MACHINERY AND EQUIPMENT:** In order to better memorialize and protect the Federal Share in property acquired with Award funds, Grantee will and hereby does agree to execute a Security Agreement, in form and substance satisfactory to EDA, granting EDA a security interest in all property acquired or to be acquired using Award funds, and will file or cause to be filed any and all financing statements or lien notices required in accordance with applicable laws of the appropriate jurisdiction to perfect said security interest, and will file all continuation statements or other modifications to maintain uninterrupted the priority of EDA's security interest. The Grantee further agrees that it will not, without the prior written approval of EDA, sell, trade or convey any interest whatsoever in such property subject to the EDA security interest; provided, however, that should EDA approve of the disposal of any property for purposes of acquiring a replacement, Grantee will execute such documentation and file such notices as will ensure that EDA's security interest attaches to and is perfected in the replacement property with the same priority and extent as it had in the original property it replaced.

- 27. OPERATION AND MAINTENANCE AGREEMENT:** If the Grantee intends to contract for the operation and maintenance of Award-acquired or -improved real property with another party, then such agreement for operation and maintenance of the Project must be consistent with and provide for compliance with all the terms, conditions and requirements of the EDA Award, including but not limited to nondiscrimination, environmental, and adequate consideration requirements. No disbursement shall be made under the Award until a copy of the executed operation and maintenance agreement, in form and substance satisfactory to EDA, has been provided to the EDA Project Officer by the Grantee. It is advisable for the Grantee to discuss such an arrangement in advance with the EDA Project Officer.
- 28. PROJECT ADMINISTRATION SERVICE AGREEMENT:** The Grantee, prior to any Award disbursement, must submit to EDA for approval a Project Administration Service Agreement for project administration services charged against the Award.
- 29. PERFORMANCE MEASURES:** The Grantee agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010.

At this time, all Awards for construction assistance require Grantees to report actual job creation/retention and private investment leverage three (3), six (6), and nine (9) years after an EDA investment. Grantees are to retain sufficient documentation so that they can submit these required reports. Failure to submit this required report can adversely impact the ability of the Grantee to secure future funding from EDA.

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 staff will contact Grantees in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. Grantees should ensure adequate and sufficient records are kept to support the methodology for computing initial job and private investment estimates and all subsequent actual performance data calculations so that this information can be made available to EDA in the event of an audits or performance site visits.

**Attachment 1**  
***Authorized Scope of Work***

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The Grantee will lead a construction project to improve a wastewater system and related sewer lines that service the Yuba County Industrial Park. Construction components will include the following activities:

The proposed project will direct sewage flow to a new sewer lift station and install approximately 2.6 miles of new piping force main. The force main piping will be of varying sizes of 6-inch, 8-inch, 10-inch and 14-inch pipes. Along the route new lift stations will be installed to improve flows and the renovated system will discharge to the Olivehurst Public Utility District (OPUD) wastewater treatment plant.

The design includes installing the sewer within existing rights-of-way, crossing a railroad track, and some portions within paved travel lanes.

**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



March 12, 2013

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**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**

*Terms and Conditions of the Award.* This financial assistance award on Form CD-450 or any successor form (this "Award"), executed by the Economic Development Administration ("EDA") and the Recipient, and any properly executed amendment hereto, 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 applicable 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 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.

The Recipient agrees to provide EDA with information and documentation necessary for the agency to conduct due diligence to ensure the business integrity and responsibility of the Recipient and key individuals associated with the Recipient in the management or administration of this Award.

**5. 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 state 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.

For purposes of this provision, 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.

**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 business days following the end of each quarter for an Award under \$1 million, 15 business 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-425, "Federal Financial 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 reports must be submitted in accordance with the schedule outlined in the applicable Special Award Conditions. If deadlines for the submission of reports are not documented in the Special Award Conditions, the SF-425 shall be semi-annually, with the first report period ending as of March 31 of each year and submitted to EDA no later than April 30 of each year, and the second report ending as of September 30 of each year submitted to EDA no later than October 30 of each year. Instructions for completing and submitting Form SF-425 will be discussed during the project kick-off meeting. Recipients may contact their applicable EDA Project Officer with questions on how to complete or submit the report, if necessary; however Recipients are still required to submit reports on time and are encouraged to pose such questions sufficiently prior to the deadline to allow for timely submission of required reports.
- c. The Recipient must submit a final financial report using Form SF-425 within 90 calendar days of the expiration date of the Award.
- 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 in electronic format, unless otherwise specified in the applicable special award conditions.

## 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](http://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 applicable EDA 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. For the purposes of this Award, the Federal share is the amount of EDA funds invested under the Award, while the non-federal share, or “Matching Share,” means non-EDA funds and any in-kind contributions that are approved by EDA and provided by the Recipient or third parties as a condition of the Award. 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 Matching Share shall be calculated by applying the approved federal and non-federal cost share ratios to actual allowable costs. *See* 13 C.F.R. §§ 305.10 and 308.1. 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 must create and maintain sufficient records justifying the required Matching Share to facilitate questions, audits, and other inquiries necessary to meet EDA’s requirements to safeguard Federal funds, and must provide these records if requested by EDA, auditors, or other Federal parties. EDA may disallow undocumented costs. *See* section C.17 of these Construction Standard Terms and Conditions.
- d. 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 through the Project Officer 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*," or any successor form, 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 and Facilities and Administrative Costs.**

- a. Indirect costs, or facilities and administrative (F&A) costs for educational institutions, are generally not applicable under this Award.
- b. When indirect costs are applicable, they will not be allowable charges against the Award unless permitted under the award and specifically included as a line item in the award's approved budget.
- c. Excess indirect costs may not be used to offset unallowable direct costs.
- d. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas. The cognizant agency reviews and approves Recipients' indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the Recipient would like indirect costs in its budget, but 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 and Local Governments: Department of Health and Human Services (HHS) serves as the cognizant agency for all States and most cities. For certain State agencies, cities and counties, OMB published a list of cognizant Federal agency assignments on January 6, 1986 (51 F.R. 552). The cognizant agency for governmental units or agencies not specifically identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. *See* Subsection D.1.b. of Appendix E to 2 C.F.R. part 225 (OMB Circular A-87);
  - (ii) Indian Tribes: Department of the Interior serves as the cognizant agency for all Indian tribal governments. *See* Subsection D.1.c. of Appendix E to 2 C.F.R. part 225 (OMB Circular A-87);
  - (iii) Educational Institutions: Department of Health and Human Services or the Department of Defense's Office of Naval Research serves as the cognizant agency for educational institutions as determined in accordance with Subsection G.11. of Appendix A to 2 C.F.R. part 220 (OMB Circular A-21);
  - (iv) Non-Profit Organizations: Cognizant agency is determined by calculating which Federal agency provides the largest dollar amount of awards to the non-profit organization in accordance with Subsection E.2. of Appendix A to 2 C.F.R. part 230 (OMB Circular A-122); and

- (v) Hospitals: Department of Health and Human Services serves as the main cognizant agency for hospitals. *See* Appendix E to 45 C.F.R. part 74.

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 plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

Within 90 business 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:

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

The Recipient shall provide the Project Officer with a copy of the transmittal letter.

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 Project 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 business 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-business day due date may be approved by the Grants Officer.
- g. 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. The Grants Officer must authorize pre-award costs in writing and such costs must also be allowable under relevant Federal cost principles and the specific Award terms and included in the EDA-approved budget. Pre-award costs not included and approved in the authorized budget are not allowable and may not be reimbursed. *See* 13 C.F.R. § 302.8.

**7. Incurring Costs or Obligor Federal 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 authorized project period documented in the Award agreement, 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 calendar days following that date are those strictly associated with Closeout activities. Closeout activities are generally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer. The Grants Officer may approve extensions of the 90-calendar day Closeout period upon a request by the recipient as provided in 15 C.F.R. §§ 14.71 or 24.50.
- 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.
- c. Neither DOC nor EDA have any obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the project period is at the sole discretion of DOC and/or EDA.

**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.

#### **9. Tax Refunds.**

Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (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. Project Progress and Performance Reporting.**

- a. Project progress 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 Project progress 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.

Project progress reports shall be submitted for each calendar quarter to the Project Officer. Each Project progress report must be submitted in accordance with the deadlines outlined in the applicable special award conditions, or, in cases where report deadlines are not contained therein, Project progress reports will be due on a quarterly basis not later than January 15, April 15, July 15, and October 15 for the immediate previous quarter. The final Project progress report shall be submitted to EDA no more than 90 calendar 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 Project progress reports to the EDA Project Officer electronically unless otherwise 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 Project progress 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 Project 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. The Project Officer forwards requests for consideration by the Grants Officer, who must provide written approval for applicable programmatic changes.
- b. 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.**

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 without the express written approval of the Grants Officer, which may be provided in a special award condition.

**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. Recipient's Duty to Refrain from Employing Certain Government Employees.**

Pursuant to section 606(2) of PWEDA (42 U.S.C. § 3216), for the two-year period beginning on the date the Government executes this Award, the Recipient(s) agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:

- a. On the date the Government executes this Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Government, and
- b. Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the award of Investment Assistance under PWEDA.

The two-year period and associated restrictions referenced above also shall apply beginning on the date the Government executes any cost amendment to this Award that provides additional funds to the Recipient(s).

### **14. 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.

#### **15. 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.

#### **16. 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 interests or benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest or benefit 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).

#### **17. 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) Copies of all reports and disbursement requests submitted to EDA;
- (v) The benefits/impacts of the project, as reported through GPRA and other reports to EDA;
- (vi) The amount and nature of the portion of Project costs provided by non- EDA sources;
- (vii) Contractor compliance with applicable federal requirements; and
- (viii) 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 of the relevant real property or equipment; and
- (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.

**18. 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.

## 19. Project Closeout Procedures.

As noted above in section C.15, 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 preferably via e-mail to the Project Officer, who will review with 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, preferably via e-mail, to the Project Officer, who will review with the Grants Officer before final disbursement. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the relevant Project Officer.

- 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.
- c. As required under GPRA and in accordance to a schedule that will be provided by EDA, the Recipient must submit additional Performance Measurement Reports, generally three, six, and nine years after the date of the Award to accurately and completely report the impacts of the Project, especially in terms of job creation and private investment leveraging.
- 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.

## **20. Freedom of Information Act.**

EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 522) responsibilities for its records. DOC regulations at 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants and Recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain application and other submitted information publicly available. Accordingly, the Recipient should identify in its application any information it believes to be confidential.

### **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 non-discrimination requirements below:

**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. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) (ADA), 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;
- e. 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;
- f. Revised ADA Standards for Accessible Design for Construction Awards: The U.S. Department of Justice has issued revised regulations implementing Title II of the ADA (28 C.F.R. part 35; 75 F.R. 56164, as amended by 76 F.R. 13285) and Title III of the ADA (28 C.F.R. part 36; 75 F.R. 56164, as amended by 76 F.R. 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards). The 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). DOC deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects under 15 C.F.R. § 8b.18(c), as follows:
  - (i) Public Recipients subject to Title II of the ADA may use either the 2010 Standards or UFAS where the physical construction or alternations commence on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 35.151(c)(2)); and
  - (ii) Private Recipients subject to Title III of the ADA may use either the 2010 Standards or UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010 and before March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 36.406(a)(2)).

In all cases, once a Recipient selects an applicable ADA accessibility standard (i.e., the 2010 Standards or UFAS), that standard must be applied to the entire facility.

As of March 15, 2012, all new construction and alteration projects must comply with the 2010 Standards.



- g. 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; and
- h. Other applicable Federal statutes, regulations, and Executive Orders, and other applicable non-discrimination law(s).

## **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*," requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them, and DOC policy guidance issued on March 24, 2003 (68 F.R. 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting 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, by electronic submission to the Federal Audit Clearinghouse website, which may be accessed at: <http://harvester.census.gov/sac/>. Please visit the website's "Frequently Asked Questions" for more information on submitting audit materials.

If it is necessary for a Recipient to submit using paper, the address for submission is:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 E. 10<sup>th</sup> Street  
Jeffersonville, IN 47132

- b. Unless otherwise specified in the terms and conditions of the award, in accordance with 15 C.F.R. § 14.26(c) and (d), for-profit hospitals, commercial entities, and other organizations not required to follow the audit provisions of OMB Circular A-133 shall have an audit performed when the Federal share amount awarded is \$500,000 or more over the duration of the project period. Unless otherwise specified in the terms and conditions of the award, an audit is required at least once every two years using the following schedule for audit report submission:
  - (i) For awards where the project period is less than two years, an audit is required within 90 business days of the end of the project period – the award close-out period is included in the 90 business days;
  - (ii) For awards with a two- or three-year project period, an audit is required within 90 days after the end of the first year, which is the period of time when Federal funding is available for obligation by the recipient, and within 90 business days of the end of the project period – the award close-out is included in the 90 business days; or
  - (iii) For awards with a four- to five-year project period, an audit is required within 90 business days after the end of the first year and third year, and within 90

business days of the end of the project period – the award close-out period is included in the 90 business days.

Some DOC programs have specific audit guidelines that will be incorporated into the Award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133, § .235. The Recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer as specified in the Award Terms and Conditions, and to the OIG at [NonFederalAudits@OIG.DOC.GOV](mailto:NonFederalAudits@OIG.DOC.GOV). If e-mail is unavailable, submission to the OIG can be made at the following address:

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, preferably via e-mail, to the Project Officer, who will review with the Grants Officer. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the relevant Project 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 business days from the date of the transmittal of the "Draft Audit Report" to submit written comments and documentary evidence.
  - (ii) The Recipient has 30 business 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 business 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.
  - (v) The DOC 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 has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

**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. § 19.1, delinquent debt is a debt that has not been paid by the date specified in the agency’s initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 15 C.F.R. § 19.5 and 31 U.S.C. § 3717, failure to pay a debt by the due date, or if there is no due date, within 30 calendar days of the billing date, shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. DOC entities will transfer any DOC debt that is more than 180 calendar days delinquent to the Financial Management Service for debt collection services, a process known as “cross-servicing,” pursuant 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and 15 C.F.R. § 19.9, and may result in DOC taking further action as specified in the standard term and condition entitled “Noncompliance With Award Provisions.” Funds for payment of a debt must not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.

**2. Late Payment Charges.**

- a. Interest shall be charged on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act (see 31 U.S.C. § 3701 *et seq.* for the entire Debt Collection Act), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury’s Current Value of Funds Rate (CVFR). The CVFR is available online at <http://www.fms.treas.gov/cvfr/index.html>. The CVFR is published by the Department of the

Treasury in the Federal Register

(<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the Treasury Financial Manual Bulletin. The assessed rate shall remain fixed for the duration of the indebtedness.

- b. Penalties shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by law.
- c. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by the DOC entity collecting the debt, as directed by the Office of the Deputy Chief Financial Officer.

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

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, 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. 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*" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), 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, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

**I. Drug-free Workplace.**

The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690, Title V, Sec. 5153, as amended by Pub. L. No. 105-85, Div. A., Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102), 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.

**J. Lobbying Restrictions.**

- a. *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 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.
- b. *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 calendar 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 Project Officer.
- c. *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.

**K. 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, and all associated Terms and Conditions.
- 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 Project Officer within 30 days following the end of the calendar quarter.

**5. Small Businesses, Minority Business Enterprises and Women's Business Enterprises.**

DOC encourages Recipients to utilize small businesses, minority business enterprises, and women's business 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 visit MBDA's website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

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

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

- a. 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.
- b. 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 must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Finance and Litigation for review prior to making the final determination. The Grants Officer 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.

**L. 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 the uniform administrative requirements set forth in 15 C.F.R. §§ 14.30 – 14.37 and 15

C.F.R. §§ 24.31-24.34, and 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 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 through the Project 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. *General and Evidence of Title.* As stated in section A.4 of these Construction Standard Terms and Conditions, the Recipient holds all real property and tangible and intangible personal property that it acquires or improves, in whole or in part, with funds made available under the Award in trust for the public purposes for which the Award was made. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains the Federal Interest.

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 L.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* 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. Eminent Domain.**

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 L.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.

#### **M. 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. In the event that any additional information is required during the project period in order to assess any impacts that a Project may have on the environment, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit such additional environmental compliance information sufficient to enable EDA to make the requisite assessment.

**2. National Historic Preservation Act (16 U.S.C. § 470 et seq.)**

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Recipients of Federal funding are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients may also be requested to assist EDA in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation is complete, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to fully comply with the requirement of the NHPA. In the event that any additional information is required during the project period in order to assess any impacts that a Project may have on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit such additional information sufficient to enable EDA to make the requisite assessment.

3. **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.

4. **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* (this list is incorporated into the Excluded Parties List System located at <https://www.sam.gov/portal/public/SAM/>) in performing any Award that is nonexempt under 2 C.F.R. § 1532, and shall notify the 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.

5. **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.

6. **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.

7. **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.

8. **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.

**9. 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.

**10. 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.

**11. 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.

**12. 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.

**13. The Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund") (42 U.S.C. § 9601 et seq.), and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 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 to state and local emergency responders.

**14. 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.



**15. 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 Federal programs, policies, and activities on low-income and minority populations.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**N. 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.

**O. 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 money representing grants, loans, or other benefits).
- b. The False Claims Amendment Act and the False Statements Act (18 U.S.C. §§ 287 and 1001) provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. The Civil False Claims Act (31 U.S.C. § 3729 *et seq.*) provides that suits under this Act can be brought by the 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. The Copeland "Anti-Kickback" Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

**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 – 10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. 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. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow Federal funded transportation services for travel and cargo movements to use foreign air carriers under certain

circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website <http://www.gsa.gov/portal/content/103191>. Information on the three Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website <http://www.state.gov/e/eeb/tra/>.

- 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. A recipient that is a non-profit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an invention without the permission of DOC unless that assignment 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 retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the recipient. DOC 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 provision at 35 U.S.C. § 202(e) also authorizes the Recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.

(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](http://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. § 24.34, for State and Local Governments, and 15 C.F.R. § 14.36, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations. 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 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 because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion, DOC may require the recipient to transfer to DOC its copyright in a particular work for Government purposes or when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 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. 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. Minority Serving Institutions ("MSIs") Initiative.**

Pursuant to Executive Order 13555 ("White House Initiative on Educational Excellence for Hispanics"), 13270 ("Tribal Colleges and Universities"), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities"), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC'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. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

## **9. Research Misconduct.**

The Department of Commerce adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the Department must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The Department requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The DOC 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.

## **10. Publications, Videos, and Acknowledgment of Sponsorship.**

- a. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting results of federally funded projects, e.g. scientific research, and expanding access to federally funded projects.
- b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to their EDA Project Officer.
- c. When releasing information related to a funded project, recipients must include a statement that the project or effort undertaken was or is sponsored by DOC.
- d. Recipients are responsible for assuring that every publication of material based on, developed under, or produced under a DOC financial assistance 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.*

#### **11. 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.

#### **12. Homeland Security Presidential Directive 12.**

If the performance of a grant award requires Recipient organization personnel to have routine access to Federally-controlled facilities and/or federally controlled information systems (for purpose of this term “routine access” is defined as more than 180 business days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that they are eligible for employment within the US. Any items or services delivered under a financial assistance award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, “Policy for a Common Identification Standard for Federal Employees and Contractors”, FIPS PUB 201, and OMB Memorandum M-05-24. The Recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The Recipient shall insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a federally controlled information system:

- a. The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require*



*routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.*

- b. The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.*

**13. 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 items.
- 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) *Export-controlled items.* Items (commodities, software, or technology), that are subject to the Export Administration Regulations (EAR) (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application.
  - (ii) *Deemed Export/Reexport.* The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from DOC may be required for deemed exports or reexports.
- 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, including the EAR.

- e. As applicable, Recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.
- f. 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.
- g. 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.

**14. The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 C.F.R. part 175**

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the recipient or subrecipient engages in certain activities related to trafficking in persons. The Department hereby incorporates the following award term required by 2 C.F.R. § 175.15(b).

See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>.

Award Term from 2 C.F.R. § 175.15(b): Trafficking in persons.

- a. Provisions applicable to a Recipient that is a private entity.
  - (i) You as the Recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
    - a) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
    - b) Procure a commercial sex act during the period of time that the award is in effect; or
    - c) Use forced labor in the performance of the award or subawards under the award.
  - (ii) EDA, as the Federal awarding agency, may unilaterally terminate this award, without penalty, if the Recipient or a subrecipient that is a private entity —
    - a) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
    - b) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with

performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by DOC at 2 C.F.R. part 1326, "Nonprocurement Debarment and Suspension."

- b. Provision applicable to a recipient other than a private entity. EDA as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
  - (i) Is determined to have violated an applicable prohibition in Section 14 paragraph a.1 of this award term; or
  - (ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
    - a) Associated with performance under this Award; or
    - b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by DOC at 2 C.F.R. part 1326, "Nonprocurement Debarment and Suspension."
- c. Provisions applicable to any Recipient.
  - (i) You must inform EDA immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  - (ii) EDA's right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - a) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - b) Is in addition to all other remedies for noncompliance that are available to us under this award.
  - (iii) You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this award term:
  - (i) Employee means either:

- a) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - b) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- (ii) Forced labor means: labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (iii) Private entity:
- a) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25;
  - b) Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b); and (B) A for-profit organization.
- (iv) "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**15. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 USCA § 6101 Note)**

- a. **Searchable Website Requirements.** The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at [www.USASpending.gov](http://www.USASpending.gov). Recipients and subrecipients must include the following required data elements in their application:
  - (i) Name of entity receiving award;
  - (ii) Award amount;
  - (iii) Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
  - (iv) Location of entity, primary location of performance (City/State/Congressional District/Country; and
  - (v) Unique identifier of entity.
- b. **Subaward and Executive Compensation Data Reporting Requirements.** Prime grant recipients awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime recipient

is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to \$25,000. See Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (see 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of 2 C.F.R. Part 170 and are available on GPO's FDsys website: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf>.

c. Central Contractor Registration and Universal Identifier requirements.

- (i) Requirement for Central Contractor Registration (CCR). Unless you are exempted from this requirement under 2 C.F.R. 25.110, you as the Recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
- (ii) Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:
  - a) Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
  - b) May not make a subaward to an entity unless the entity has provided its DUNS number to you.
- (iii) Definitions for purposes of this award term:
  - a) Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at <https://www.sam.gov/portal/public/SAM/>).
  - b) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
  - c) Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:
    - (1) A Governmental organization, which is a State, local government, or Indian Tribe;
    - (2) A foreign public entity;

- (3) A domestic or foreign nonprofit organization;
- (4) A domestic or foreign for-profit organization; and
- (5) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

d) Subaward:

- (1) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- (2) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 210 of the attachment to OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*").
- (3) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

e) Subrecipient means an entity that:

- (1) Receives a subaward from you under this award; and
- (2) Is accountable to you for the use of the Federal funds provided by the subaward.

## **16. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown**

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

- a. Unless there is an actual rescission of funds for specific grant obligations, recipients of Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.
- d. All award actions will be delayed during a government shutdown; if it appears that a recipient's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise recipients that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, recipients whose ability to withdraw funds is subject to prior agency approval, which in general are

recipients that have been designated high risk, recipients of construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

- c. The ASAP system should remain operational during a government shutdown. Recipients that do not require any grant office or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown and advanced funds held for more than 30 days will have to be returned with interest.

## 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 [http://www.eda.gov/pdf/EDAs\\_regs-13\\_CFR\\_Chapter\\_III.pdf](http://www.eda.gov/pdf/EDAs_regs-13_CFR_Chapter_III.pdf).

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](http://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/](http://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-425, "Federal Financial Report"
5. Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"
6. Form SF-272, "Federal Cash Transaction Report"
7. 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](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](http://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)

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## **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(l) 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/](http://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. The Recipient shall contact the Project Officer for refund instructions.

## **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. 10<sup>th</sup> Street  
Jeffersonville, IN 47132

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

Email: [govs.fac@census.gov](mailto: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/](http://www.whitehouse.gov/omb/), [www.commerce.gov](http://www.commerce.gov), [www.gpoaccess.com](http://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/](http://www.wdol.gov/)

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



**ACH VENDOR/MISCELLANEOUS PAYMENT  
ENROLLMENT FORM**

OMB No. 1510-0056

This form is used for Automated Clearing House (ACH) payments with an addendum record that contains payment-related information processed through the Vendor Express Program. Recipients of these payments should bring this information to the attention of their financial institution when presenting this form for completion. See reverse for additional instructions.

**PRIVACY ACT STATEMENT**

The following information is provided to comply with the Privacy Act of 1974 (P.L. 93-579). All information collected on this form is required under the provisions of 31 U.S.C. 3322 and 31 CFR 210. This information will be used by the Treasury Department to transmit payment data, by electronic means to vendor's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Automated Clearing House Payment System.

**AGENCY INFORMATION**

FEDERAL PROGRAM AGENCY

Economic Development Administration

AGENCY IDENTIFIER:

EDA

AGENCY LOCATION CODE (ALC):

13-20-0001

ACH FORMAT:



CCD+



CTX

ADDRESS:

1401 Constitution Avenue, N.W., Room 71004

Washington, D.C. 20230-0001

CONTACT PERSON NAME:

Stan Good

TELEPHONE NUMBER:

( 206 ) 220-7701

ADDITIONAL INFORMATION:

Seattle Regional Office, 915 Second Avenue, Room 1890, Seattle, Washington 98174-1012

**PAYEE/COMPANY INFORMATION**

NAME

County of Yuba

SSN NO. OR TAXPAYER ID NO.

94-6000549

ADDRESS

915 8th Street, Suite 123

Marysville, California 95901

CONTACT PERSON NAME:

Robert Bendorf

TELEPHONE NUMBER:

( 530 ) 749-5414

**FINANCIAL INSTITUTION INFORMATION**

NAME:

ADDRESS:

ACH COORDINATOR NAME:

TELEPHONE NUMBER:

( )

NINE-DIGIT ROUTING TRANSIT NUMBER:

DEPOSITOR ACCOUNT TITLE:

DEPOSITOR ACCOUNT NUMBER:

LOCKBOX NUMBER:

TYPE OF ACCOUNT:



CHECKING



SAVINGS



LOCKBOX

SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL:  
(Could be the same as ACH Coordinator)

TELEPHONE NUMBER:

( )

AUTHORIZED FOR LOCAL REPRODUCTION

SF 3881 (Rev. 2/2003)  
Prescribed by Department of Treasury  
31 U S C 3322; 31 CFR 210

### **Instructions for Completing SF 3881 Form**

Make three copies of form after completing. Copy 1 is the Agency Copy; copy 2 is the Payee/Company Copy; and copy 3 is the Financial Institution Copy.

1. **Agency Information Section** - Federal agency prints or types the name and address of the Federal program agency originating the vendor/miscellaneous payment, agency identifier, agency location code, contact person name and telephone number of the agency. Also, the appropriate box for ACH format is checked.
2. **Payee/Company Information Section** - Payee prints or types the name of the payee/company and address that will receive ACH vendor/miscellaneous payments, social security or taxpayer ID number, and contact person name and telephone number of the payee/company. Payee also verifies depositor account number, account title, and type of account entered by your financial institution in the Financial Institution Information Section.
3. **Financial Institution Information Section** - Financial institution prints or types the name and address of the payee/company's financial institution who will receive the ACH payment, ACH coordinator name and telephone number, nine-digit routing transit number, depositor (payee/company) account title and account number. Also, the box for type of account is checked, and the signature, title, and telephone number of the appropriate financial institution official are included.

### **Burden Estimate Statement**

The estimated average burden associated with this collection of information is 15 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Financial Management Service, Facilities Management Division, Property and Supply Branch, Room B-101, 3700 East West Highway, Hyattsville, MD 20782 and the Office of Management and Budget, Paperwork Reduction Project (1510-0056), Washington, DC 20503.

# The County of Yuba

425-13

## HEALTH & HUMAN SERVICES DEPARTMENT

**Suzanne Nobles, Director**

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901  
Phone: (530) 749-6311 Fax: (530) 749-6281



**Michael Kinnison, M.D.**

**Interim Health Officer**  
Phone: (530) 749-6366

**TO:** Board of Supervisors  
Yuba County

**FROM:** Suzanne Nobles, Director *H/ble for S Nobles*  
Health & Human Services Department

**DATE:** October 15, 2013

**SUBJECT:** Approve Fiscal Year 13/14 budget transfers and increase to revenue line item for the Health and Human Services Department

**RECOMMENDATION:** Board of Supervisors approval to transfer funds in the amount of \$21,948.00 from 100-5200-461.62-00 (Fixed Assets) to 100-5200-451.22-00 (Office Expense) to cover items that no longer meet the new capital asset thresholds; increase appropriation in the amount of \$18,080.71 to 100-5200-451.63-30 (Capital Asset – IT Hardware) to cover the cost of a surveillance camera server; and increase revenue line item 100-0000-361.45-00 (State/Social Services Administration) in the amount of \$18,080.71. The increase to revenue is covered as the actual allocation came in higher than the budgeted allocation.

**BACKGROUND:** The Health and Human Services Department (HHSD) requests transfer of funds in the amount of \$21,948.00 from 100-5200-461.62-00 (Fixed Assets) to 100-5200-451.22-00 (Office Expense) to cover items that no longer meet the new capital asset thresholds. In addition, HHSD requests to increase appropriation in the amount of \$18,080.71 to the 100-5200-451.63-30 (Capital Asset – IT Hardware) account to cover the cost of an emergency purchase of a new surveillance camera server. Although the camera server was not originally approved in the budget, the Office of County Administrator approved the emergency purchase since there was funds in the 100-5200-461.62-00 (Fixed Assets) account to cover the cost. However, due to the new capital asset thresholds, the camera server must be paid from funds in the new account 100-5200-451.63-30 (Capital Asset – IT Hardware). Therefore an increase appropriation in the Capital Asset IT Hardware account is requested.

**DISCUSSION:** The actions are necessary to cover the cost of an emergency capital asset purchase.

**COMMITTEE:** Due to the routine nature of the request, the Health and Human Services Committee was bypassed.

**FISCAL IMPACT:** Approval of the budget transfers and increase to the revenue line item will have no fiscal impact to county funds.

WHITE - AUDITOR  
YELLOW - COUNTY ADMINISTRATOR  
PINK - DEPARTMENT

COUNTY OF YUBA

AUDITOR-CONTROLLER

DATE October 2, 2013

REQUEST FOR TRANSFER OR

TRANSFER # \_\_\_\_\_

REVISION OF APPROPRIATION, ESTIMATED REVENUE OR FUNDS

DEPARTMENT \_\_\_\_\_

Health & Human Services - Human Services Division - 100

REQUEST APPROVAL OF THE FOLLOWING TRANSFER FISCAL YEAR ENDING JUNE 30, 20

13

BUDGET OR ESTIMATED REVENUE

☒ ESTIMATED REVENUE INCREASE

☐ ESTIMATED REVENUE DECREASE

☒ APPROPRIATION DECREASED

☒ APPROPRIATION INCREASED

ACCOUNT NO.	NAME	AMOUNT
100-5200-451.62-00	Fixed Assets-Equipment	\$21,948
100-0000-361.45-00	State/Social Svcs Admin	\$18,081

ACCOUNT NO.	NAME	AMOUNT
100-5200-451.22-00	Office Expense	\$21,948
100-5200-451.63-30	Capital Asset-IT Hardware	\$18,081

FUND TRANSFERS

OPERATING TRANSFERS OUT

ACCOUNT NO.	NAME	AMOUNT

OPERATING TRANSFERS IN

ACCOUNT NO.	NAME	AMOUNT

GENERAL LEDGER (AUDITOR - CONTROLLER USE ONLY)

		AMOUNT				AMOUNT	
FUND	ACCOUNT	DEBIT	CREDIT	FUND	ACCOUNT	DEBIT	CREDIT

REASON FOR TRANSFER:

Decrease 62-00 and increasing 22-00 is to cover items that no longer meet the new capital asset thresholds;  
Increasing 63-30 is cover the cost of a surveillance camera server and increasing revenue line item 45-00 is to cover the actual allocation that came in higher than the budgeted allocation.

APPROVED:

☒ AUDITOR-CONTROLLER

Signature

Date

Signature

DEPARTMENT HEAD OR AUTHORIZED OFFICIAL

☒ COUNTY ADMINISTRATOR

Signature

Date

Program Manager

TITLE

Approved as to Availability of Budget Amounts and Balances  
in the Auditor/Controllers Office.

AUDITOR - CONTROLLER

Auditor/Controller, Dean E. Sellers

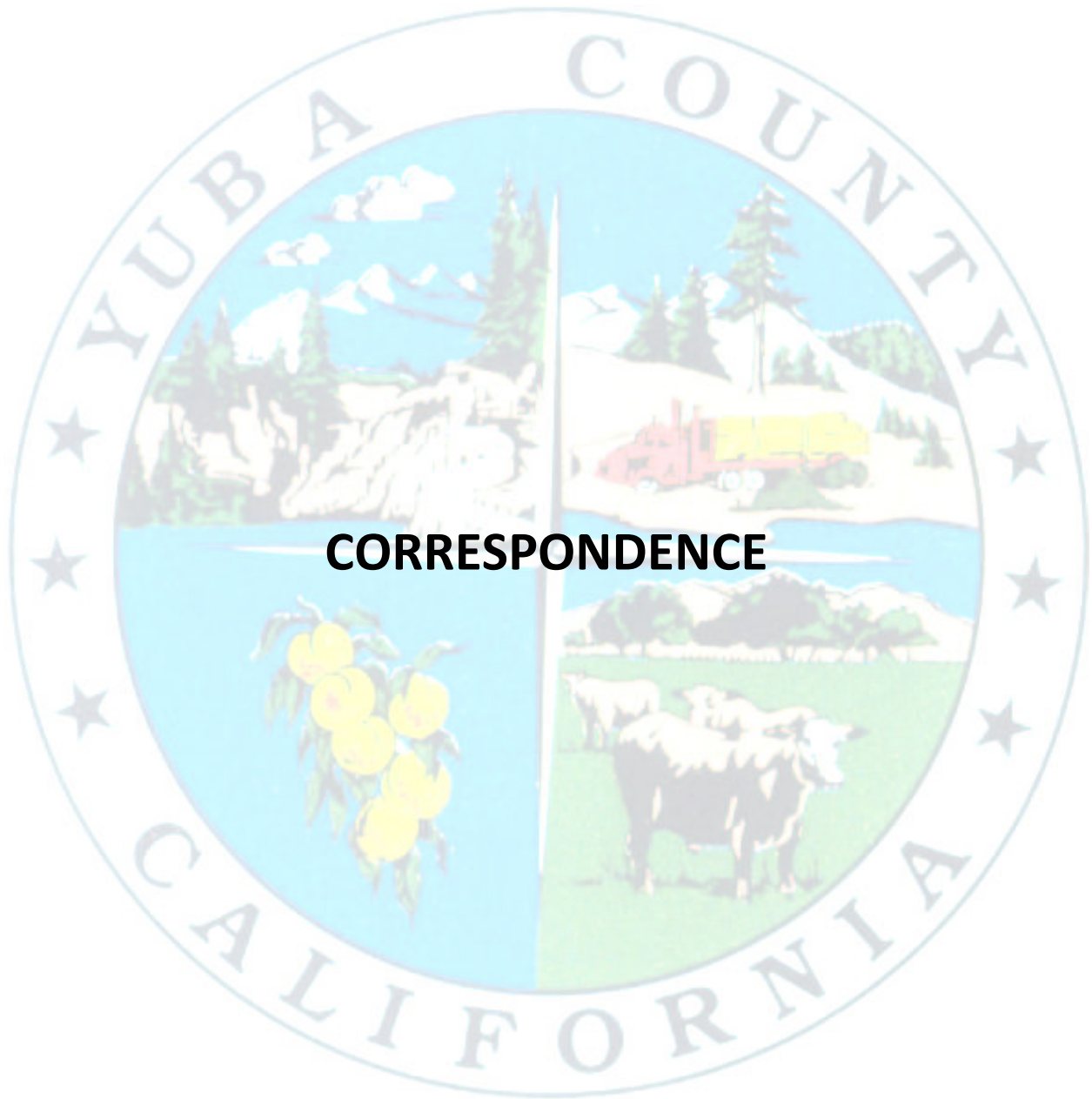
Approved:

BOARD OF SUPERVISORS

Clerk of the Board

Date

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**BEFORE THE BOARD OF TRUSTEES  
OF RECLAMATION DISTRICT 784**

**RECEIVED**

OCT 1 2013

Clerk/Board of Supervisors

**In re:**

**RESOLUTION RATIFYING APPOINTMENT OF AND )  
APPOINTING DAVID READ A MEMBER OF THE BOARD )  
OF TRUSTEES OF RECLAMATION DISTRICT 784. )**

**Res. No. 2013-10-02**

**WHEREAS**, Don Graham had been duly elected and served as member of the Board of Trustees of Reclamation District 784;

**WHEREAS**, Trustee Graham resigned his position as Trustee, effective at the close of business on Tuesday, September 10, 2013;

**WHEREAS**, on September 10, 2013, the District's Board of Trustees voted to appoint David Read to be a member of the Board and fill the unexpired term of former Trustee Don Graham;

**WHEREAS**, the District's Board of Trustees desires to ratify its selection of David Read and, by this Resolution, appoint him to be a member of the Board and serve for the remainder of the unexpired term of former Trustee Don Graham;

**WHEREAS**, the District's Board of Trustees, prior to the adoption of this Resolution, held at least one public meeting, noticed in accordance with applicable law and at which oral and written presentations were permitted; and

**WHEREAS**, the District's Board of Trustees has considered all presentations submitted;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Trustees of Reclamation District 784 as follows:

The Board of Trustees, by this Resolution, ratifies its prior selection of David Read to be a member of the Board of Trustees of Reclamation District 784 and to serve for the remainder of the unexpired term of former Trustee Don Graham and does, hereby, so appoint David Read to be a member of the Board of Trustees.

This Resolution shall take effect immediately.

The foregoing resolution was introduced at a scheduled meeting of the District's Board of Trustees, duly held on October 1, 2013, by Trustee Dave Gothrow, which motion was seconded by Trustee, Joe Danna, and was approved and enacted by the following vote:

AYES:	<u>3</u>
NOES:	<u>0</u>
ABSTAIN:	<u>0</u>
ABSENT:	<u>1</u>

Rick Brown  
Rick Brown, President of the Board

ATTEST: STEVE FORDICE  
SECRETARY OF THE BOARD OF TRUSTEES:

Steve L Fordice

APPROVED AS TO FORM  
CARL R. LINDMARK, DISTRICT COUNSEL

Carl R Lindmark



LINNÉ K. STOUT  
DIRECTOR

State of California-Health and Human Services Agency  
**DEPARTMENT OF COMMUNITY SERVICES AND DEVELOPMENT**  
 2389 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833  
 Telephone: (916) 576-7109 | Fax: (916) 263-1406  
[www.csd.ca.gov](http://www.csd.ca.gov)



EDMUND G. BROWN JR.  
GOVERNOR

October 3, 2013

Andy Vasquez, Jr., Chair  
 Yuba County Board of Supervisors  
 915 8<sup>th</sup> Street, Suite 109  
 Marysville, CA 95901

Margo Wildman, Chair  
 Yuba County Community Services Commission  
 1385 Sundance Drive  
 Plumas Lake, CA 95961

Delores Schoen, Chair  
 Sutter County Community Action Agency  
 1247 Casita #4  
 Yuba City, AA 95991

Members of the Boards:

**SUBJECT: Follow-up to Audit Transmittal Report TR 12-023 (FYE 6/30/12)**

The Department of Community Services and Development (CSD) has performed a desk review of the revised audit statements submitted to this office by the independent auditing firm Gallina, LLP, CPAs dated 9/17/13.

Based on our review, we have the following comments and/or recommendations:

**Contract Number: 11F-4250**

The amount of expenditures your agency reported (and was reimbursed) to CSD for the term of this contract (1/1/11 – 12/31/11) exceeds the audited costs reported this and prior year by \$33,907 as follows:

\$ 255,965	Amount CSD Reimbursed Agency
- 68,003	Audited Costs Reported FYE 6/30/11
+ 187	Interest Income Reported FYE 6/30/11
- 154,624	Audited Costs Reported FYE 6/30/12
+ 382	Interest Income Reported FYE 6/30/12
<u>\$ 33,907</u>	
- 100	Interest Allowed for Agency to Expend on Administrative Operating Costs
<u>\$ 33,807</u>	Amount Due CSD

**Recommendation:**

1. Please refund \$33,807 to CSD within 30 days from the date of this letter.

**RECEIVED**

OCT 4 2013

Clerk/Board of Supervisors

Andy Vasquez, Jr., Chair  
Margo Wildman, Chair  
Delores Schoen, Chair  
October 3, 2013  
Page 2 of 2

**Contract Number: 11F-4255**

The amount of expenditures your agency reported (and was reimbursed) to CSD for the term of this contract (1/1/11 – 12/31/11) exceeds the audited costs reported this and prior year by \$32,112 as follows:

\$ 256,036	Amount CSD Reimbursed Agency
- 92,160	Audited Costs Reported FYE 6/30/11
+ 272	Interest Income Reported FYE 6/30/11
- 132,397*	Audited Costs Reported FYE 6/30/12
+ 361	Interest Income Reported FYE 6/30/12
\$ 32,112	
- 100	Interest Allowed for Agency to Expend on Administrative Operating Costs
<u>\$ 32,012</u>	Amount Due CSD

\*\$132,397 was reported on the Schedule of Expenditures of Federal Awards (SEFA) which is \$3,293 less than the \$135,690 reported on the Supplemental Statement of Revenue and Expenditures (SSRE) which we must assume is non-federal dollars expended and not to be reported on the SEFA.

**Recommendation:**

2. Please refund \$32,012 to CSD within 30 days from the date of this letter.

Please submit a written response to CSD indicating corrective actions taken to resolve the findings and recommendations in this transmittal letter within 30 days of this notice. The use of the subject TR number will facilitate our handling of your reply. If there are any questions or additional information required, I may be contacted at (916) 826-6147 or [lance.brandon@csd.ca.gov](mailto:lance.brandon@csd.ca.gov).

Sincerely,



LANCE BRANDON, CFS  
CSD Management Auditor  
Audit Services Unit

cc: Kimberly Grimes, Executive Director  
Gallina LLP, CPAs  
CSD Field Operations

## Memorandum

To: Recipients of the *2011-12 Annual Report*

Date: October 1, 2013

**RECEIVED**

OCT 7 2013

From: Linda L. Gross  
Editor

**COPY OF REFERENCED  
DOCUMENT ON FILE WITH  
CLERK OF THE BOARD**

**Clerk/Board of Supervisors**

Subject: ***Updated Versions -2011-12 Annual Report of the California State Board of Equalization  
Publication 41, Taxes and Fees Administered by the California State Board of Equalization***

Enclosed you will find the State Board of Equalization's *2011-12 Annual Report* and publication 41, *Taxes and Fees Administered by the California State Board of Equalization 2011-12*. Both of these publications include updated information from the copies sent to you on September 18, 2013.

The report, in its entirety is located online at [www.boe.ca.gov](http://www.boe.ca.gov). The expanded HTML edition includes information about all BOE programs and services as well as 48 comprehensive statistical tables.

If I can be of further assistance, please contact me at 1-916-322-6322.