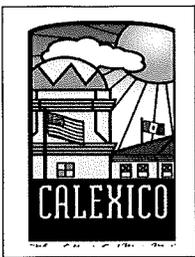


**AGENDA
ITEM**

16



AGENDA STAFF REPORT

DATE : December 1, 2015

TO: Mayor and City Council

APPROVED BY: Nick Fenley, Acting City Manager

PREPARED BY: Michael J. Bostic, Chief of Police

SUBJECT: Annual Maintenance Agreement for Spillman Technologies

=====

Recommendation: It is the recommendation of the Calexico Police Department to have the City Council approve the payment of the annual Spillman Technologies maintenance agreement for 12/01/2015 to 11/30/2015 Calexico Police Department.

Background: The Calexico Police Department has been using Spillman Technologies since 2004. Spillman Technologies provides the Records Management System (RMS) and Computer Automated Dispatch (CAD) for Calexico since 2004.

Discussion & Analysis: The Calexico Police Department, Imperial County Sheriff's Office, El Centro Police Department, Brawley Police Department, Calipatria Police Department, Westmoreland Police Department and the Imperial County District Attorney's Office all use and have access to the Spillman Technologies RMS and CAD systems. This system is vital for all these agencies mentioned in providing the best and most efficient public safety services. This system allows agencies access to each other's information when dealing with persons involved in crimes including past involvement and booking photographs of suspects.

Fiscal Impact:

Funds to paid out of Police Department's Annual Contract/Maintenance Budget

Payment Due on December 1, 2015		\$ 30,345.00
	Subtotal	\$ 30,345.00
	Estimated Shipping & Handling Cost	\$ 0.00
	Estimated Tax	\$ 0.00
	Total	\$ 30,345.00

Attachments:

Copy of Invoice for Maintenance Agreement

<p>AGENDA ITEM</p> <p>16</p>
--

Invoice



4625 Lake Park Blvd.
Salt Lake City, Utah 84120
801.902.1200

Page 1/1
Invoice 31588
Date 11/3/2015

Bill To: Calexico Police Department
420 E. Fifth St.
Calexico CA 92231-2894

Ship To: Calexico Police Department
420 E. Fifth St.
Calexico CA 92231-2894

Project #		Customer ID		Salesperson ID	PO Number	Payment Terms	Req Ship Date	Master No.
Maintenance		CACALPD					11/3/2015	27,292
Ordered	Shipped	B/O	Item Number	Description		Discount	Unit Price	Ext. Price
1	1	0	MAINTENANCE	Annual Maintenance 12/01/15 - 11/30/16		\$0.00	\$30,345.00	\$30,345.00

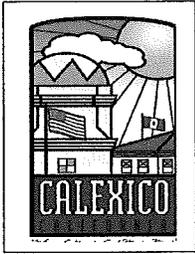
Subtotal \$30,345.00
Misc \$0.00
Tax \$0.00

A service charge of 1 ½% per month will be charged on all past due amounts. Any issues disputing the timing or amount of any items on this invoice must be brought to the attention of Spillman Technologies within 20 days of the date of this invoice to avoid related service charge.

Total \$30,345.00

**AGENDA
ITEM**

17



AGENDA STAFF REPORT

DATE: December 1, 2015

TO: Mayor and City Council

APPROVED BY: Nick Fenley, Acting City Manager 

PREPARED BY: Nick Fenley, Acting City Manager

SUBJECT: Temporary Reduction of Commercial and Industrial City Fees including but not limited to (Directed by Mayor Kim):

- a) Development Impact Fees.
- b) Building (Permitting & Inspection) Fees.
- c) Fire Inspection Fees.
- d) Business License Fees.
- e) Planning Fees.
- f) Engineering Fees.

=====

Recommendation:

Match the fees of the City of El Centro for a specified period of time, 12 months and authorize staff to conduct a new rate study.

Background:

At the City Council meeting of January 21, 2014, Council Member Kim requested consideration on reduction of impact fees. At the meeting of March 6, 2014 direction was given to staff to proceed with option 2 - A reduction in fees for a specified period of time as was done in the County of Riverside. Said County adopted a one year impact fee reduction. The County developed a working group to analyze an impact fee reduction. After analyzing the matter for under two months, the group recommended a fee reduction which would be proportionate with the approximate decline in construction costs at that time. The County Board eventually adopted a fee decrease in the hopes of providing a greater stimulus to development.

At the meeting of November 17, 2015, the City Council approved the reduction of residential impact, Building/Planning and Fire fees, to match the City of El Centro fees.

**AGENDA
ITEM
17**

Direction was given by Mayor Kim to bring the Commercial and Industries fees to the next regularly scheduled council meeting, for consideration of reduction of said fees.

Discussion and Analysis:

Request for Council's consideration towards the reduction of the following fees included but not limited to:

- a) Development Impact Fees.
- b) Building (Permitting & Inspection) Fees.
- c) Fire Inspection Fees.
- d) Business License Fees.
- e) Planning Fees.
- f) Engineering Fees.

Consideration of these reductions would assist and further development in the City of Calexico.

Fiscal Impact:

Unknown at this time.

Coordinated With:

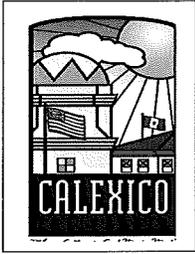
None.

Attachment:

1. City of Calexico and City of El Centro, Commercial and Industrial Permits Processing Fees.

**AGENDA
ITEM**

18



AGENDA STAFF REPORT

DATE: December 1, 2015

TO: Mayor and City Council

APPROVED BY: Nick Fenley, Acting City Manager 

PREPARED BY: Nick Fenley, Acting City Manager

SUBJECT: Authorize Acting City Manager to Sign Change Order No. 3 with UNICOM Government, Inc. in the Amount of \$569,711.64 for the Advanced Metering Infrastructure (AMI) System Project.

=====

Recommendation:

Authorize Acting City Manager to Sign Change Order No. 3 with UNICOM Government, Inc. in the amount of \$569,711.64 for the Advanced Metering Infrastructure (AMI) System Project.

Background:

On January 6, 2015, the City Council of the City of Calexico authorized the upgrade of the City's water meter reading system to the Sensus FlexNet Advanced Metering Infrastructure (AMI) System, including the purchase and installation of new digital meters, purchase and installation of new software and hardware, and training to City personnel on the new system to UNICOM Government, Inc. in the amount of \$4,579,195.70.

Discussion & Analysis:

As of November 17, 2015 UNICOM Government, Inc. has installed approximately 3,103 water meters. During the installation process City staff and UNICOM Government, Inc. discovered that the meter size quantities that were previously provided to UNICOM Government, Inc. by former City staff were not accurate. The initial quantities called for more ¾" meters than 1" meters. UNICOM Government, Inc. has given the City two (2) options in order to proceed with said project:

Option No. 1 – Utilize the surplus ¾" meters and purchase 453 additional ¾" meters (to match the quantity of 1" meters) and adapters to use them at the locations where there are now 1" meters, other than those locations that require a 1" meter to meet fire-flow. The cost for Option No. 1 is an additional \$299,123.66.

**AGENDA
ITEM
18**

Option No. 2 – Return the surplus ¾” meters for a partial refund (75%) and purchase in excess of 4,000 new 1” meters. The cost for Option No. 2 is an additional \$569,711.64.

City staff recommends that the City Council approve Option No. 2 due to the fact that if Option No. 1 is chosen the City will need to create two more locations at each service with a potential of having leaks as well as other issues that can be generated because essentially the ¾” meter will be adapted to become a 1” meter.

Fiscal Impact:

Option No. 1	
Original Contract Amount	\$4,579,195.70
Change Order No. 1	\$674,560.72
Change Order No. 2	\$26,995.63
Change Order No. 3	\$299,123.66
Total	\$5,579,875.71

Option No. 2	
Original Contract Amount	\$4,579,195.70
Change Order No. 1	\$674,560.72
Change Order No. 2	\$26,995.63
Change Order No. 3	\$569,711.64
Total	\$5,850,463.69

Coordinated With:

UNICOM Government, Inc. and Public Works Department

Attachment:

1. Change Order No. 3.
2. UNICOM Government, Inc. letter dated November 18, 2015.

November 18, 2015

City of Calexico
Attn: Mr. Nick Fenley, Interim City Manager
608 Heber Avenue
Calexico, CA 92231

Re: Water Meter Upgrade Project Update

Dear Mr. Fenley,

The purpose of this report is to give you a current update of the Water Meter Upgrade Project thus far and to present options for moving forward based on the most current information provided to UNICOM by the City. We have included options for moving forward with the project and it is imperative that the team receive guidance by December 4, 2014 to avoid any further delays in completing the project.

BACKGROUND: In 2014 Council approved a contract with UNICOM to replace all existing water meters in use within the City of Calexico's city limits. The project is primarily driven by the fact that the current meters are over 20 years old and have outlived their useful life and have resulted in greatly reduced accuracy. The City is also required to conserve water and accurately report all sources of water use. Upon completion of the project the City will have the ability to perform quantitative/qualitative analysis of water consumption within the various areas in the City. The project also hopes to provide a means for users to conserve water and the ability to detect leaks.

Subsequently, it was discovered that the meter size quantities provided to UNICOM were not accurate. During the process of installation we encountered many 1" meters where the City's report indicated there would be ¾" meters, which resulted in an inaccurate count. While waiting for City staff to give us direction, the UNICOM team (UNICOM, AquaMetric and Concord Utilities) has progressed to the point in the project where we are virtually out of 1" meters, but have a large surplus of ¾" meters, while waiting for City staff to give us direction. The options to proceed are for the City to either, (1) utilize the surplus ¾" meters and purchase 453 additional ¾" meters (to match the quantity of 1" meters) and adapters to use them at the locations where there are now 1" meters, other than those locations that require a 1" meter to meet fire-flow, or (2) return the surplus ¾" meters for a partial refund (75%) and purchase in excess of 4000 new 1" meters at an increased price from when UNICOM quoted the project in 2014. This report will hopefully provide the City with the information needed to decide how we should proceed.

UPDATE: As of November 17, 2015, UNICOM has installed roughly 3,103 meters (1,677 of ¾" meters, 1,345 of 1" meters, and 81 of 2" meters) with approximately 5,295 remaining of various sizes up to 6".

Although as stated above, we have run into multiple issues regarding the data provided by the City, we have continued to install meters while attempting to iron out the issues with the data. The UNICOM Team (UGI, Concord, and Aqua-Metric) suggested a solution to the City to utilize the surplus of ¾" meters by using adapters to step down 1" locations to ¾" meters. However, the City thought this solution could be a liability to the City by creating two more locations at each service with a potential to leak. We asked the City to reconsider this position, as the cost of 4000+ 1" meters would far exceed utilizing the surplus ¾" meters and purchasing and installing adapters at the 1" locations.

In order to provide UNICOM with an accurate inventory of ¾" and 1" meters installed in the City, all parties decided that it would be prudent to perform an audit of the meters citywide. Since a full and complete audit would be cost prohibitive, the City performed a basic audit that provides size data only. The audit discovered that there are 4,079 1" and 1,505 ¾" meters remaining to be installed. Since the audit was completed by the City, we have installed several more meters. We have deducted them from the audit data to complete our study. We are relying on this data to calculate the financial impact of the two options available to complete the project.

Thank you very much for your consideration and as always, the UNICOM team stands ready to expeditiously complete the project when a decision is made. Please see the attached exhibits for the financial and schedule impacts for each option.

Respectfully submitted,



Stan Barnes

Principal Project Manager

Unicom Government, Inc.

stan.barnes@unicomgov.com

C 760-272-5086

O 703-502-2191

Cc: Jeremy Barnes, UGI Associate Project Manager

jeremy.barnes@unicomgov.com

C 760-285-0909

O 703-502-2194

Melinda Mariano, UGI Client Executive

melinda.mariano@unicomgov.com

C 858-750 9126

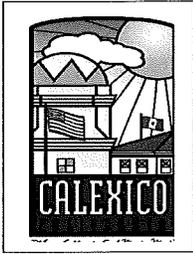
Exhibit A - UTILIZE EXISTING 3/4" METERS WITH ADAPTORS OPTION									
Item Description	Equipment Unit Price	Installation / Service Unit Price	Unit Price Installed	Est. Quan.	Unit	Equipment Price	Installation / Service Price	Estimated Total Item PRICE	
1" TO 3/4" Meter Adaptors	\$29.41	\$0.00	\$29.41	4079	ea	\$119,970.59	\$0.00	\$119,970.59	
Additional 3/4" Meters to Meet 1" Quantity	\$153.20	\$165.48	\$318.68	453	ea	\$69,399.60	\$74,962.44	\$144,362.04	
Project Management	\$0.00	\$17,246.32	\$17,246.32	1	mo	\$0.00	\$17,246.32	\$17,246.32	
Travel	\$0.00	\$1,448.25	\$1,448.25	1	mo	\$0.00	\$1,448.25	\$1,448.25	
Estimate Sub-Total =						\$189,370.19	\$93,657.01	\$283,027.20	
Tax =						\$16,096.47	\$0.00	\$16,096.47	
Grand Total Not-to-Exceed =						\$299,123.66			

Exhibit B - BUY 1" METERS OPTION									
Item Description	Equipment Unit Price	Installation / Service Unit Price	Unit Price Installed	Est. Quan.	Unit	Equipment Price	Installation / Service Price	Estimated Total Item PRICE	
Return 3/4" iPERL TR/PL 100 CF Meters	-\$153.20	\$0.00	-\$153.20	3626	ea	-\$555,503.20	\$0.00	-\$555,503.20	
Restocking Fee from Supplier at Cost	\$0.00	\$120,763.93	\$120,763.93	1	ea	\$0.00	\$120,763.93	\$120,763.93	
Restocking Local Labor	\$0.00	\$2,133.33	\$2,133.33	1	ea	\$0.00	\$2,133.33	\$2,133.33	
Purchase 1" iPERL TR/PL 100 CF Meter	\$230.45	\$0.00	\$230.45	4043	ea	\$931,709.35	\$0.00	\$931,709.35	
Project Management	\$0.00	\$17,246.32	\$17,246.32	2	mo	\$0.00	\$34,492.64	\$34,492.64	
Travel	\$0.00	\$1,448.25	\$1,448.25	2	mo	\$0.00	\$2,896.50	\$2,896.50	
Storage Containers (2)	\$0.00	\$620.78	\$620.78	2	mo	\$0.00	\$1,241.56	\$1,241.56	
Estimate Sub-Total =						\$376,206.15	\$161,527.96	\$537,734.11	
Tax =						\$31,977.52	\$0.00	\$31,977.52	
Grand Total Not-to-Exceed =						\$569,711.64			

**AGENDA
ITEM**

19





AGENDA STAFF REPORT

DATE: December 1, 2015

TO: Mayor and City Council

APPROVED BY: Nick Fenley, Acting City Manager 

PREPARED BY: Nick Fenley, Acting City Manager

SUBJECT: General Services Administration (GSA) Request to Use 1st Street (Tourist) Parking Lot

=====

Recommendation:

It is recommended that the City Council approve one (1) of the following options:

Option No. 1 – Authorize the Acting City Manager to allow GSA to use up to twenty (20) parking spaces at 1st Street (Tourist) Parking Lot during the construction of the Calexico West Port-of-Entry.

Option No. 2 – Do not authorize the Acting City Manager to allow GSA to use up to twenty (20) parking spaces at 1st Street (Tourist) Parking Lot during the construction of the Calexico West Port-of-Entry.

Background:

Due to the construction of the Calexico West Land Port-of-Entry expansion project, General Services Administration (GSA) will be eliminating their current employee parking site which is located on the old commercial port. GSA has taken possession of the Historical Old Port building located at the corner of 1st Street and Heffernan in order to utilize parking spaces for its employees but unfortunately the parking spaces available at that location will not be enough.

Discussion & Analysis:

On November 18, 2015, the Office of the City Manager received an email request from GSA to use 15 to 20 parking spaces on 1st Street (Tourist) Parking Lot between Heber Avenue and Mary Avenue due to the construction of the Calexico West Land Port-of-Entry. Staff is recommending that the City Council approve one (1) of the following options:

AGENDA ITEM 19

Option No. 1 – Authorize the Acting City Manager to allow GSA to use up to twenty (20) parking spaces at 1st Street (Tourist) Parking Lot during the construction of the Calexico West Land Port-of-Entry.

Option No. 2 – Do not authorize the Acting City manager to allow GSA to use up to twenty (20) parking spaces at 1st Street (Tourist) Parking Lot during the construction of the Calexico West Land Port-of-Entry.

Fiscal Impact:

Revenue Loss: \$300 per month = 20 (parking spaces) x \$15 (monthly parking permit fee).

Coordinated With:

GSA and Public Works Department.

Attachment:

1. Email from George Flores, GSA Building Management Specialist dated November 18, 2015.

Nick Fenley

From: George Flores - 9P3PSDS <george.flores@gsa.gov>
Sent: Wednesday, November 18, 2015 5:05 PM
To: Nick Fenley; Martha Gomez
Subject: Parking Area East of Orthopedic Clinic

Greeting Nick hope all is well, this is George Flores with GSA. Nick as you're aware work for the Calexico West LPOE expansion is schedule to start next week. GSA has taken possession of the Historic Old Port building located at the corner of First and Heffernan. GSA does not intend to utilize the building but will use all the parking spaces to mitigate the lost of parking at the construction site (old commercial port). The parking at the old port building is anticipated fill most but not all of the required employee parking. There's an expected short fall of 15 to 20 parking spaces. Nick would the City of Calexico be amenable to make additional parking available for port employees at the parking lot East of the orthopedic clinic?

I appreciate your attention to this matter, thank you.

--

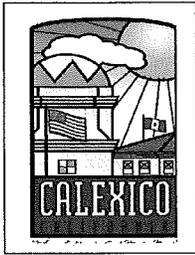
George Flores
Building Management Specialist
GSA, San Diego Field Office
Calexico & Andrade Land Ports of Entry
200 E. First Street
Calexico, CA 92231

Office: 760-357-4510
Cell: 619-247-8811
FAX: 760-357-9983

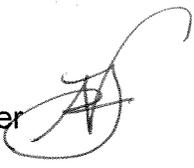
**AGENDA
ITEM**

20

6



AGENDA STAFF REPORT

DATE: December 1, 2015
TO: Mayor and City Council
APPROVED BY: Nick Fenley, Acting City Manager 
PREPARED BY: Nick Fenley, Acting City Manager
SUBJECT: Request by Mayor Kim for City Council to Refer an Item to the Calexico Special Financing Authority for Funding of Public Restrooms and a Sports Facility.

=====

Recommendation:

Council to refer an agenda item to the Calexico Special Financing Authority for funding of public restrooms and a sports facility.

Background:

On June 20, 1996, the City of Calexico and the Heffernan Memorial Healthcare District entered into a Joint Exercise Powers Agreement creating the Calexico Special Financing Authority for the purpose of a) assisting the City or the District by purchasing its bonds, (b) financing certain public capital facilities improvements of the City or the District, and (c) otherwise implementing the transactions and agreements specified under the City Compromise Agreement.

At the meeting of November 17, 2015, Mayor Kim has requested an item be placed on the agenda for Council Consideration on referring an item to the Calexico Special Financing Authority for funding of public restrooms and a sports facility.

Discussion & Analysis:

Consideration of the following sites for public restrooms:

1. Field at Fifth Street and Andrade Avenue.
2. Joel Risen Field.
3. Las Casitas Field.
4. Rodriguez Park.

Plus other possible site approvals by City Council. Also for consideration is a sports boxing facility in the area of Kennedy Gardens Subdivision and Las Casitas area.

Fiscal Impact:

Unknown at this time.



Coordinated With:

Mayor Kim.

Attachments:

1. Joint Exercise Powers Agreement between the City of Calexico and the Heffernan Memorial Healthcare District.

JOINT EXERCISE OF POWERS AGREEMENT
BY AND BETWEEN THE
CITY OF CALEXICO
AND THE
HEFFERNAN MEMORIAL HOSPITAL DISTRICT
PROVIDING FOR THE CREATION OF THE
CALEXICO SPECIAL FINANCING AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT, dated as of June 20, 1996, by and between the CITY OF CALEXICO, a municipal corporation duly organized and existing under the Constitution and the laws of the State of California (herein called the "City"), and the HEFFERNAN MEMORIAL HOSPITAL DISTRICT, a local health care district duly organized and existing under the laws of the State of California (herein called the "District").

W I T N E S S E T H:

WHEREAS, Articles 1. and 2 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California authorize the City and the District to create a joint exercise of powers entity (herein called the "Calexico Special Financing Authority" or the "Authority") which has the power to jointly exercise any powers common to the City and the District;

WHEREAS, Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Marks-Roos Local Bond Pooling Act of 1985") authorizes and empowers the Authority to, among other things, issue bonds (the "Authority Bonds") to finance public capital improvements, working capital, liability and other insurance needs, or to purchase bonds, as defined in the Marks-Roos Local Bond Pooling Act of 1985, issued by any local agency, including the City or the District;

WHEREAS, the Marks-Roos Local Bond Pooling Act of 1985 further authorizes and empowers the Authority to sell bonds so purchased to public or private purchasers at public or negotiated sale;

WHEREAS, the City and the District have entered into the Agreement Respecting Compromise and Treatment of City and Redevelopment Agency Claims (the "City Compromise Agreement"), approved by the City on June 6, 1996, specifying certain terms and conditions for the formation of a joint powers agency between the City and the District, and containing certain related provisions for a plan of adjustment for the District; and

WHEREAS, by this Agreement, the City and the District desire to create and establish the Calexico Special Financing Authority for the purposes set forth herein and to exercise the powers described herein;

NOW, THEREFORE, the City and the District, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

SECTION 1. PURPOSE.

This agreement is made pursuant to the provisions of Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (Sections 6500-6599.1), including the Marks-Roos Local Bond Pooling Act of 1985, as amended (the

"Act"), relating to the joint exercise of powers common to public agencies for the purposes of (a) assisting the City or the District by purchasing its bonds, (b) financing certain public capital facilities improvements of the City or the District, and (c) otherwise implementing the transactions and agreements specified under the City Compromise Agreement, in each case, by exercising the powers referred to in the recitals hereof and described in Section 4 herein.

SECTION 2. TERM.

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until December 31, 2016, unless extended or earlier terminated by a supplemental agreement of the City and the District; provided, however, that this Agreement shall not terminate or be terminated until the date on which all Authority Bonds or other indebtedness issued or to be issued by the Authority shall have been retired, or full provision shall have been made for their retirement, including interest until their retirement date. Unless otherwise agreed by the City and the District pursuant to Section 19 hereof, this Agreement shall automatically terminate (a) as of December 31, 1996, if no Authority Bonds have been issued by that date, or (b) as of September 15, 1996, if the Selection Committee has not identified a suitable Business Partner for the District by that date (as such terms are defined in the City Compromise Agreement).

SECTION 3. AUTHORITY.

A. Creation of Authority.

There is hereby created pursuant to the Act an agency and public entity to be known as the "Calexico Special Financing Authority." As provided in the Act, the Authority shall be a public entity separate from the City and the District. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the City or the District.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Act.

B. Commission.

The Authority shall be administered by a Commission (the "Commission") which shall consist of four members, each serving in his or her individual capacity as a member of the Commission. The Commission shall be the administering agency of this Agreement, and, as such, shall be vested with the powers set forth herein, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein.

Two members of the Commission shall be appointed by the Mayor of the City and two members of the Commission shall be appointed by the governing body of the District.

Members of the Commission shall serve at the pleasure of the Commission until removed or replaced by the City or the District, as applicable.

Each of the City and the District may appoint an alternate member of the Commission for each member of the Commission which it appoints. Such alternate member may act as a member of the Commission in place of and during the absence or disability of such regularly appointed member. All references in this Agreement to any member of the Commission shall be deemed to refer to and include the applicable alternate member when so acting in place of a regularly appointed member.

Each member or alternate member of the Commission may be removed and replaced at any time by the governing body by which such member was appointed. Any individual, including any member of the governing body or staff of the City or the District shall be eligible to serve as a member or alternate member of the Commission.

Members and alternate members of the Commission shall not receive any compensation for serving as such but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member, if the Commission shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

C. Officers; Duties; Official Bonds.

The Commission shall elect a Chairman, a Vice-Chairman, and a Secretary of the Authority from among its members to serve for such term as shall be determined by the Commission. The Commission shall designate the person to serve as the treasurer of the Authority (the "Treasurer") and such Treasurer shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.

Subject to the applicable provisions of any resolution, indenture or other instrument or proceeding authorizing or securing any Authority Bonds (each such resolution, indenture, instrument and proceeding being herein referred to as an "Indenture") providing for a trustee or other fiscal agent, the Treasurer is designated as the depository of the Authority to have custody of all money of the Authority, from whatever source derived.

The Treasurer of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond with the Secretary of the Authority in the amount specified by resolution of the Commission but in no event less than \$1,000. If and to the extent permitted by law, any such officer may satisfy this requirement by filing an official bond in at least said amount obtained in connection with another public office.

The Commission shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

The Commission shall have the power, by resolution, to the extent permitted by the Act or any other applicable law, to delegate any of its functions to one or more of the members of the Commission or officers or agents of the Authority and to cause any of said members, officers or agents to take any actions and execute any documents or instruments for and in the name and on behalf of the Commission or the Authority.

D. Meetings of the Commission.

(1) Regular Meetings.

The Commission shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Commission and a copy of such resolution shall be filed with each party hereto.

(2) Special Meetings.

Special meetings of the Commission may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California.

(3) Ralph M. Brown Act.

All meetings of the Commission, including, without limitation, regular, adjourned regular, special, and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California).

(4) Minutes.

The Secretary of the Authority shall cause to be kept minutes of the regular, adjourned regular, special and adjourned special meetings of the Commission and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Commission and to the City and the District.

(5) Quorum.

A majority of the members of the Commission (which shall include the two members of the Commission appointed by the City) shall constitute a quorum for the transaction of business. No action may be taken by the Commission except upon the affirmative vote of a majority of the members of the Commission (which shall include the two members of the Commission appointed by the City), except that less than a quorum may adjourn a meeting to another time and place.

B. Rules and Regulations.

The Authority may adopt, from time to time, by resolution of the Commission such rules and regulations for the conduct of its meetings and affairs as may be required.

SECTION 4. POWERS.

The Authority shall have any and all powers which may be exercised under the Act, including, without limitation, the power to issue Authority Bonds and the power to purchase, with the amounts received or to be received by it pursuant to a bond purchase agreement (as defined in Section 6585(b) of the Act), bonds issued by the City or the District at public or negotiated sale, all in accordance with the Act. Any such bonds so purchased may be held by the Authority or sold to public or private purchasers at public or negotiated sale, in whole or in part. The Authority shall set any other terms and conditions on any purchase or sale contemplated herein as it deems to be necessary, appropriate and in the public interest, in furtherance of the Act.

The Authority may also issue refunding revenue bonds pursuant to any applicable laws of the State of California, including, but not limited to, Article 10, Chapter 3, Division 2, Title 5 of the Government Code of the State of California (commencing with Section 53570) and Article 11, Chapter 13, Division 2, Title 5 of the Government Code of the State of California (commencing with Section 53580).

The Authority is hereby authorized to do all acts necessary for the exercise of such powers, including, but not limited to, any or all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity; to sue and be sued in its own name; and generally to do any and all things necessary or convenient to accomplish the purpose set forth in Section 1 hereof. Without limiting the generality of the foregoing, the Authority may issue or cause to be issued bonded and other indebtedness, and pledge any property or revenues as security to the extent permitted under the Act, including Article 4 or any other applicable provision of law.

The manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner of exercising such power as are imposed upon the City in the exercise of similar powers, as provided in Section 6509 of the Act.

SECTION 5. TERMINATION OF POWERS.

The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement or until the City and the District shall have mutually rescinded this Agreement.

SECTION 6. FISCAL YEAR.

Unless and until changed by resolution of the Commission, the term "Fiscal Year" shall mean the fiscal year as established from time to time by the Authority, being, at the date of this Agreement, the period from July 1 to and including the following June 30, except for the first Fiscal Year which shall be the period from the date of this Agreement to June 30, 1997.

SECTION 7. DISPOSITION OF ASSETS.

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 2 hereof, after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall automatically vest in the City.

SECTION 8. BONDS.

The Authority shall issue Authority Bonds for the purpose of exercising its powers and raising the funds necessary to carry out its purposes under this Agreement. The Authority Bonds may, at the discretion of Authority, be issued in series.

The services of bond counsel, financing consultants and other consultants and advisors working on the projects and/or their financing shall be used by the Authority. The fees and expenses of such counsel, consultants, advisors, and the expenses of the City, the District and the Commission shall be paid from the proceeds of the Authority Bonds or any other unencumbered funds of the Authority available for such purpose.

SECTION 9. AUTHORITY BONDS ONLY LIMITED AND SPECIAL OBLIGATIONS OF AUTHORITY.

The Authority Bonds, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of the City or the District or pledge of the faith and credit of the City, the District or the Authority. The Authority Bonds shall be only special obligations of the Authority, and the Authority shall under no circumstances be obligated to pay the Authority Bonds or the respective project costs except from revenues and other funds pledged therefor. None of the City, the District or the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Authority Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the City nor the faith and credit of the District shall be pledged to the payment of the principal of, premium, if any, or interest on the Authority Bonds nor shall the City or the District in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Authority Bond or Indenture shall be deemed to be a covenant or agreement of any member of the Commission, or any officer, agent or employee of the Authority in his individual capacity and neither the Commission of the Authority nor any officer thereof executing the Authority Bonds shall be liable personally on any Authority Bond or be subject to any personal liability or accountability by reason of the issuance of any Authority Bonds.

SECTION 10. ACCOUNTS AND REPORTS.

All funds of the Authority shall be strictly accounted for. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Authority Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by the City and the District and their representatives.

The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Act. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with the City and the District. Such report shall be filed within 12 months of the end of the Fiscal Year or Years under examination.

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose or otherwise payable by the District.

In any Fiscal Year the Commission may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

The Treasurer of the Authority, within 12 months after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the District to the extent such activities are not covered by the reports of the trustees for the Authority Bonds. The trustee appointed under each Indenture shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said Indenture. Said trustee may be given such duties in said Indenture as may be desirable to carry out this Agreement.

SECTION 11. FUNDS.

Subject to the applicable provisions of each Indenture, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to the accounting procedures developed under Section 10 hereof, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions or purposes of this Agreement.

SECTION 12. NOTICES.

Notices and other communications hereunder to the City shall be sufficient if delivered to the Clerk of the City Council of the City.

SECTION 13. INDEMNIFICATION.

To the full extent permitted by law, the Commission may authorize indemnification by the Authority of any person who is or was a member or alternate member of the Commission, or an officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member or alternate member of the Commission, or an officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances

SECTION 14. CONTRIBUTIONS AND ADVANCES.

Contributions or advances of public funds and of the use of personnel, equipment or property may be made to the Authority by the City and the District for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance may be made subject to repayment, and in such case shall be repaid, in the manner agreed upon by the Authority and the party making such advance at the time of such advance. It is mutually understood and agreed that neither the City nor the District has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though either may do so. The City or the District may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

SECTION 15. IMMUNITIES.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents or employees of the City and District when performing their respective functions, shall apply to them to the same degree and extent while engaged as members of the Commission or otherwise as an officer, agent or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

SECTION 16. COMPLIANCE WITH CITY COMPROMISE AGREEMENT.

Notwithstanding any provision herein to the contrary, the Authority shall comply with the provisions of Section 3 of the City Compromise Agreement, including, among other things, the following provisions:

(a) The City shall not be liable to the District or the Calexico Hospital on account of its participation in the Authority;

(b) The City shall not be liable to the holders of Authority Bonds on account of its participation in the Authority;

(c) The City shall not be required to make any contributions, payments or advances of public funds to the Authority;

(d) The City shall not have any management rights or responsibilities to the District or the Calexico Hospital on account of its participation in the Authority;

(e) The Authority shall be administered and its purposes executed by a governing body comprised of two representatives of the City and two representatives of the District, or their respective whereases;

(f) Any actions taken by the Authority shall require an affirmative vote by not less than three members of the governing body of the Authority, which shall include the two members of the Commission appointed by the City; and

(g) The Authority shall continue in full force and effect so long as the Authority Bonds, or any bonds issued solely to refund such Authority Bonds, remain outstanding.

SECTION 17. COVENANT OF CITY AND DISTRICT REGARDING SALES TAX.

Throughout the term of this Agreement, the City and the District shall comply with all provisions of law and any regulations issued thereunder relating to the transactions and use tax (the "Sales Tax"), authorized to be imposed and collected by the City for the exclusive use of the District, including, but not limited to, Revenue and Taxation Code Sections 7286.20 and 7286.21. The City shall take the steps necessary (a) to continue to levy, and collect the Sales Tax for the exclusive use thereof by the District throughout the term of this Agreement and (b) to perform the obligations required by the City Compromise Agreement.

SECTION 18. COVENANT OF DISTRICT TO MAINTAIN STATUS AS HEALTH CARE DISTRICT.

Throughout the term of this Agreement, the District shall take any and all actions required to maintain its status as a health care district duly organized and existing under the

Constitution and under the laws of the State of California, including, without limiting the foregoing, The Local Health Care District Law (commencing with Health and Safety Code Section 32000).

SECTION 19. AMENDMENTS OF AGREEMENT.

This Agreement shall not be amended, modified, or altered except by a written instrument duly executed by the City and the District.

SECTION 20. PARTIAL INVALIDITY.

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

SECTION 21. SUCCESSORS; ASSIGNMENT.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no party may assign any right or obligation hereunder without the consent of the other parties.

SECTION 22. AGREEMENT NOT EXCLUSIVE.

This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between the City and the District, except as the terms of this Agreement shall conflict therewith, in which case, the terms of this Agreement shall prevail.

SECTION 23. MISCELLANEOUS.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

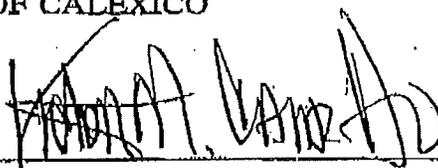
The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

This Agreement is made in the State of California, under the Constitution and laws of such state and is to be so construed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, as of the day and year first above written.

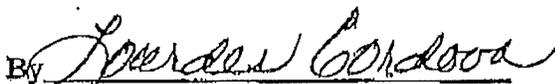
CITY OF CALEXICO

By



Mayor

ATTEST:



Clerk of City of Calexico

APPROVED AS TO FORM BY
CITY ATTORNEY:



Michael Rood
City Attorney

HEFFERNAN MEMORIAL HOSPITAL
DISTRICT

By *Super. Acuña*
Chairman

ATTEST:

By *[Signature]*
Secretary

APPROVED AS TO FORM BY
DISTRICT COUNSEL:

By *[Signature]*
Jeffrey D. Goetz
Counsel to the District

JOINT POWERS AGREEMENT CERTIFICATION

I, the undersigned, authorized officer of the Calexico Special Financing Authority certify that attached is a true, complete and correct copy of the Joint Exercise of Powers Agreement (the "Agreement"), by and between the City of Calexico and the Heffernan Memorial Hospital District and that the Agreement, as attached, has not been amended, modified or rescinded and is now in full force and effect.

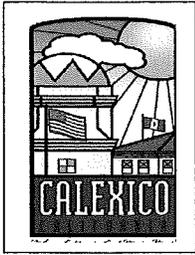
Dated: October 29, 1996.

By Henry Legarza
Authorized Officer of the Calexico
Special Financing Authority

**AGENDA
ITEM**

21





AGENDA STAFF REPORT

DATE: December 1, 2015
TO: Mayor and City Council
APPROVED BY: Nick Fenley, Acting City Manager 
PREPARED BY: Nick Fenley, Acting City Manager
SUBJECT: Evaluation of City Commissions, Discussion on Mandatory Regular Monthly Meetings and Senior Citizens Commission.

=====

Recommendation:

Council to evaluate the Commissions including the newly established Senior Citizens Commission and provide direction to bring item back for Council Action on possible combining of the commissions with common purposes and to establish mandatory regular monthly meetings.

Background:

At the meeting of November 17, 2015, Council Member Real requested an item for the agenda to consider combining some of the City Commission with common purposes and also requested information on the Senior Citizens Commission. Mayor Kim on various occasions has expressed his desire for the commissions to hold monthly meetings to discuss the issues or to receive commission training.

Discussion & Analysis:

The Council approved Ordinance 1159 on February 3, 2015 in order to provide eligibility and procedures for commissions, boards and committees. The City has fifteen commissions, boards or committees (See Attached) to evaluate and consider combining. The newly established Senior Citizens Commission is still short one General Commissioner and two commissioners from the local senior citizens complexes. Staff requests direction on whether the Council wants to proceed with the commission as is or incorporate it with another.

Please note that for the most part, commissions have increased their monthly meetings and attendance has also improved overall. There are some commissions that only meet on an as needed basis such as the Abatement and Dangerous Buildings Commission, the Street Naming Committee and the Personnel Commission. Mayor Kim would like for these commission to meet monthly to discuss current and upcoming issues of concern to commission and/or to receive related training.

<p>AGENDA ITEM</p> <p>21</p>

Fiscal Impact:

None.

Coordinated With:

City Manager.

Attachments:

None.

CITY COMMISSIONS, BOARDS AND COMMITTEES

- 1) Abatement of Dangerous Buildings
- 2) Calexico Arts Commission
- 3) Beautification Commission
- 4) Business Improvement District
- 5) Economic Development Commission
- 6) Financial Advisory Board
- 7) Historical Commission
- 8) Library Board of Trustees
- 9) Measure H Committee
- 10) Personnel Commission
- 11) Planning Commission
- 12) Police Advisory Board
- 13) Recreation Commission
- 14) Senior Citizens Commission
- 15) Street Naming Committee

COMMISSION MEETING CALENDAR

Monday	Tuesday	Wednesday	Thursday
1st Monday ARTS Commission 5:30 PM Council Chambers	1st Tuesday City Council MTG 6:30 PM JPA Mtg. 12:30 pm @ HMHD	1st Wednesday	1st Thursday
2nd Monday Planning Commission 6:30 PM Council Chambers	2nd Tuesday Beautification Commission 5:30 PM	2nd Wednesday B.I.D MTG 8AM C/C	2nd Thursday Housing Authority 5:30 PM Council Chambers
3rd Monday Measure H Committee Council Chambers 5:15 PM Financial Advisory Board RDA Conf. room 6:30pm	3rd Tuesday City Council MTG 6:30 PM	3rd Wednesday Recreation MTG 5:30 PM Council Chambers	3rd Thursday EDC - 4:15 PM -Council Chambers
4th Monday Planning Commission 6:30 PM Council Chambers	4th Tuesday Historical Commission 4 pm - Housing Conf. Room	4th Wednesday Library Board MTG 6:30 PM Carnegie Library	4th Thursday

* **Police Commission meets every last Wednesday of each month @ 6 pm Council Chambers**

* **Street Naming Committee - as needed**

* **Personnel Commission - as needed**

* **Abatement of Dangerous Buildings Board of Appeals - as needed**

* **Senior Citizens Commission pending activation.**

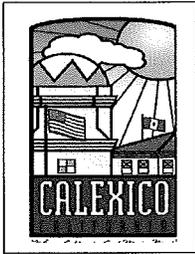
SENIOR CITIZENS COMMISSION

Title	Name	Appointed By	Date Appointed	Term Expires
Member	Vacant	John Moreno	03-03-2015	December 2016
Member	Hilda Bowen (760) 693-9168	Joong Kim	03-03-2015	December 2016
Member	Olivia Valenzuela (760) 412-7648 oliluval67@yahoo.com	Luis Castro	05-05-2015	December 2016
Member	Refugio Servin	Maritza Hurtado	03-03-2015	December 2018
Member	Chavela Wong	Armando Real	03-03-2015	December 2018

**AGENDA
ITEM**

22





AGENDA STAFF REPORT

DATE: December 1, 2015
TO: Mayor and City Council
APPROVED BY: Nick Fenley, Acting City Manager 
PREPARED BY: Nick Fenley, Acting City Manager
SUBJECT: Consideration by Mayor Kim to Remove his Appointee on the Business Improvement District.

=====

Recommendation:

Consideration by Mayor Kim to Remove his Appointee on the Business Improvement District.

Background:

Mayor Kim has requested an item be placed on the agenda for consideration on removing his recent appointee to the Business Improvement District.

Discussion & Analysis:

Section 2.19.020 B - Vacancies and Removal of Members allows for a member of any commission, board, or committee may be removed at any time by the City Council Member who appointed such member to the respective commission, board, or committee for any reason and/or if absent from three (3) regularly scheduled meetings in a calendar year. Such removal must be announced at a public meeting of the City Council.

Mayor Kim requests that the vacancy be opened up for advertising for the required period of time and be brought back to Council for new appointment.

Fiscal Impact:

None.

Coordinated With:

Mayor Kim.

Attachments:

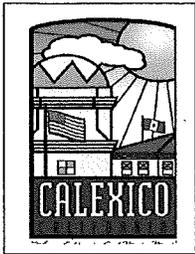
None.

AGENDA
ITEM
22

**AGENDA
ITEM**

23





AGENDA STAFF REPORT

DATE: December 1, 2015

TO: Mayor and City Council

APPROVED BY: Nick Fenley, Acting City Manager

PREPARED BY: Gabriela T. Garcia, Deputy City Clerk 

SUBJECT: Appointment by Mayor and Council Members to Various Commissions, Boards and Committees

- a. Economic Development Commission – Appointments by Mayor Pro Tem Castro.
- b. Business Improvement District – Appointments by Mayor Kim, Council Member Hurtado and Council Member Moreno.
- c. Recreation Commission – Appointment by Mayor Kim
- d. Financial Advisory Board – Council Member Hurtado
- e. Senior Citizen Commission – Council Member Moreno

=====

Recommendation:

Mayor and Council Members to make the following appointments to the following Commissions, Boards and Committees:

- a. Economic Development Commission – Appointments by Mayor Pro Tem Castro.
- b. Business Improvement District – Appointments by Mayor Kim, Council Member Hurtado and Council Member Moreno.
- c. Recreation Commission – Appointment by Mayor Kim
- d. Financial Advisory Board – Council Member Hurtado
- e. Senior Citizen Commission – Council Member Moreno

Background:

At the meeting of August 18, 2015, Staff presented a report on the City Commissions, Boards and Committees and reported attendance by commissioners. Pursuant to Ordinance No. 1159 approved by the City Council on February 3, 2015 several commissioners forfeited their position on the commission by having three or more absences from regular commission meetings between March 2015 and June 2015. As a result, the above-mentioned positions were opened to the public and advertised by the City Clerk's office.

Discussion & Analysis:

City Clerk has advertised the positions on the Calexico website, City Hall and Camarena Library.

The following persons submitted applications:

- 1. Saul Garcia – Business Improvement District
- 2. Mary Helen Zuniga Arellano – Senior Citizen Commission

<p>AGENDA ITEM</p> <p>23</p>
--

Fiscal Impact:

None.

Coordinated With:

None.

Attachment:

1. Applications (2)



CITY OF CALEXICO
APPLICATION FOR CITY COMMISSION
 And
STATEMENT OF QUALIFICATIONS

ALL APPLICANTS MUST EITHER
 RESIDE, BE EMPLOYED, OR
 REGISTERED TO VOTE IN THE CITY
 OF CALEXICO. PROOF IS
 REQUIRED WHEN SUBMITTING
 THIS APPLICATION.

APPLICATION IS FOR THE FOLLOWING COMMISSION:
 (A separate application is required for each commission)

Senior Citizens Commission

PERSONAL INFORMATION:

Name Mary Helen Zuniga Arriola
 Residence Address 601 Lincoln St. Calexico, Ca.
 Length of time at this Address: 30 yrs. E-mail address: —
 Home Phone No. (760) 357-6294 Cell/Message Phone No. (760) 562-4140
 Are you 18 years of age or older? Yes Are you registered to vote in the City of Calexico? Yes
 Do you currently serve as an elected or appointed official for any board and/or agency within the City of Calexico? No
 If yes, name of agency and position: —

EDUCATION: Highest level of education completed: js. College
 Name of Institution where Highest Level of Education was completed: Imperial Valley College
 Location of Institution: Imperial County

EMPLOYMENT INFORMATION / EXPERIENCE:

Name and Address of Employer (s)	Position Title	Dates of Employment
<u>E.O.C. Clamen</u>	<u>Head Start Teacher</u>	<u>1965-1988</u>
<u>C.U.I. Clamen</u>	<u>Head Start Pre-School Supervisor</u>	<u>1989-2009</u>

IMPORTANT: Read the following carefully and answer completely. A conviction is not an automatic bar to appointment. Each case is considered on its individual merits.

HAVE YOU EVER BEEN CONVICTED OF A FELONY OR MISDEMEANOR OTHER THAN A MINOR TRAFFIC VIOLATION? No
 If yes, Please list all offenses, date and place of offenses(s), and the sentence/fine received:

ACKNOWLEDGMENT/CERTIFICATION:
 I understand that upon filing, this application becomes a public record. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Mary Helen J. Arriola
 Signature and Date

Do Not Write Below this Line – For City Use Only

Applicant furnished proof of eligibility requirements via:
 Proof of residency: Yes No
 Proof of employment: Yes No
 Voter Registration Verification: Yes No

Appointment By: _____
 Term Expires: 20
 Date & Clerk Verifying: _____



CITY OF CALEXICO
APPLICATION FOR CITY COMMISSION
 And
STATEMENT OF QUALIFICATIONS

ALL APPLICANTS MUST EITHER
 RESIDE, BE EMPLOYED, OR
 REGISTERED TO VOTE IN THE CITY
 OF CALEXICO. PROOF IS
 REQUIRED WHEN SUBMITTING
 THIS APPLICATION.

APPLICATION IS FOR THE FOLLOWING COMMISSION:
 (A separate application is required for each commission)

Business Improvement District

PERSONAL INFORMATION:

Name Saul Garcia

Residence Address 241 Hernandez St

Length of time at this Address: 5 E-mail address: Saul701@hotmail.com

Home Phone No. 760 890-5142 Cell/Message Phone No. (760) 562-2190

Are you 18 years of age or older? YES Are you registered to vote in the City of Calexico? YES

Do you currently serve as an elected or appointed official for any board and/or agency within the City of Calexico? NO
 If yes, name of agency and position: _____

EDUCATION: Highest level of education completed: SOME COLLEGE

Name of Institution where Highest Level of Education was completed: INSTITUTO BIBLICO BETHANIA

Location of Institution: TIJUANA BC.

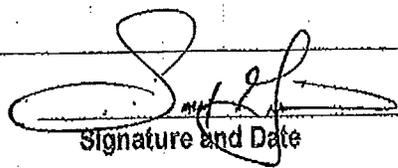
EMPLOYMENT INFORMATION / EXPERIENCE:

Name and Address of Employer (s)	Position Title	Dates of Employment
<u>TOP QUALITY AUTO GROUP LLC</u>	<u>OWNER</u>	<u>1/1/2015 -</u>
<u>ROLENS & ROLENS TOYOTA</u>	<u>MANAGER</u>	<u>2008 - 2013</u>

IMPORTANT: Read the following carefully and answer completely. A conviction is not an automatic bar to appointment. Each case is considered on its individual merits.

HAVE YOU EVER BEEN CONVICTED OF A FELONY OR MISDEMEANOR OTHER THAN A MINOR TRAFFIC VIOLATION? NO
 If yes, Please list all offenses, date and place of offenses(s), and the sentence/fine received:

ACKNOWLEDGMENT/CERTIFICATION:
 I understand that upon filing, this application becomes a public record. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct


 Signature and Date 9/21/15

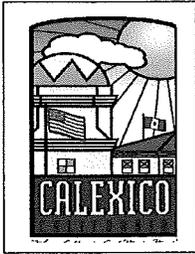
Do Not Write Below this Line - For City Use Only

Applicant furnished proof of eligibility requirements via:
 Proof of residency: Yes No
 Proof of employment: Yes No
 Voter Registration Verification: Yes No

Appointment By: _____
 Term Expires: _____
 Date & Clerk Verifying: _____

**AGENDA
ITEM**

24



AGENDA STAFF REPORT

DATE: December 1, 2015
TO: Mayor and City Council
APPROVED BY: Nick Fenley, Acting City Manager
PREPARED BY: Nick Fenley, Acting City Manager
SUBJECT: Economic Development Administration Grant – Town Center Project Update

=====

Recommendation:

Acknowledge Receipt.

Background:

On November 17, 2015, Acting City Manager Fenley provided the Council with a status report regarding the U.S. Department of Commerce, Economic Development Administration Grant for the development of the Town Center Project.

Council requested Mr. Fenley bring the matter back before the Council for discussion on the various issues impacting the project.

Discussion & Analysis:

Since November 17, 2015, Mr. Fenley met with Mr. Kevin Smith from the Town Center Project, Council Member Real, Ralph Morales, Building and Planning Manager, Ben Horton, EDC Chairperson to discuss the pending issues on the project. Staff continues to work with Mr. Smith, Imperial Irrigation District and other agencies regarding pending matters.

Fiscal Impact:

None.

Coordinated With:

City Manager.

Attachments:

Status Update 11-17-2015.

AGENDA
ITEM
24

City of Calexico and United States Department of Commerce Economic Development Administration (EDA) for EDA Project No. 07-01-06185 – Towncenter/Portico Industrial Development Project

BACKGROUND INFORMATION:

On August 20, 2008, the City of Calexico received Financial Assistance in the amount of \$3,000,000 with a City Match of \$3,105,217 from the United States Department of Commerce Economic Development Administration (EDA) for EDA Project No. 07-01-06185 – Towncenter/Portico Industrial Development Project. The purpose of this Financial Assistance was to construct infrastructure improvements to serve the development of Towncenter Plaza and Portico/Kloke Sites. The infrastructures improvements included were the installation of new streets, traffic signals, sewer and waterlines and all necessary improvements to render the area free of infrastructure constraints and therefore make it attractive for the future creation of economic benefits.

On September 21, 2010, the City Council of the City of Calexico awarded the construction contract to Hazard Construction in the amount of \$4,003,810. On July 6, 2012, Hazard Construction completed the project in the amount of \$4,341,117.63. The overall total cost of the project was \$4,946,215.13.

EDA REIMBURSEMENT REQUESTS:

No.	Requested Date	Amount Requested	Date Received
1	10/25/10	\$76,487.00	8/25/11
2	08/03/11	\$1,053,751.00	8/25/11
3	01/21/12	\$1,066,891.00	03/19/13
4	05/21/14	\$226,516.00	06/18/14
Total		\$2,423,645.00	

REPORTING:

As part of our grant agreement, EDA requires that the City report jobs created and private investment generated/created every 3, 6 and 9 years from the grant award date. The 3rd year GPRA report was submitted to EDA on August 29, 2011 and the 6th year GPRA report was submitted to EDA on June 30, 2014. The 9th year GPRA report will be due on July 1, 2017.

DOCUMENT(S) ATTACHED:

1. Financial Assistance Award Letter
2. Standard Terms & Conditions for Construction Project
3. Covenant of Purpose and Use

FINANCIAL ASSISTANCE AWARD

ACCOUNTING CODE

RECIPIENT NAME **City of Calexico**

AWARD NUMBER
07-01-06185

STREET ADDRESS **608 Heber Avenue**

FEDERAL SHARE OF COST \$ **3,000,000**

CITY, STATE, ZIP CODE **Calexico, California 92231**

RECIPIENT SHARE OF COST \$ **3,105,217**

AWARD PERIOD **From date of approval shown below through 60 months**

TOTAL ESTIMATED COST \$ **6,105,217**

DEPARTMENT OF COMMERCE OPERATING UNIT **Economic Development Administration**

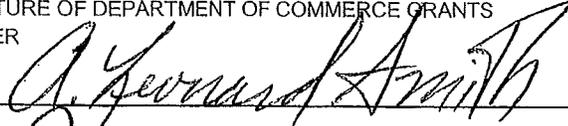
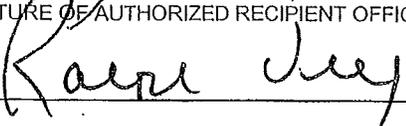
AUTHORITY **42 U.S.C. Section 3141, et seq. Public Works and Economic Development Act, as amended by Public Law 108-373.**

CFDA NO. **11.300** PROJECT TITLE: **Public Works and Economic Development Facilities Program**

BUREAU	FCFY	FUND	PROGRAM CODE	BUDGET SUBACTIVITY	OBJECT 1	CLASS EXPEND	ENTITY
20	08	40	01	210	41	10	22

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.

- EDA Standard Terms and Conditions Public Works and Implementation Construction Components, dated 12/2007
- Special Award Conditions and Attachments
- Line Item Budget
- 15 CFR Part 24, Uniform Admin Requirements for Grants/Cooperative Agreements to State & Local Governments
- OMB Circular A-87, Cost Principles for State and Local Governments and Indian Tribal Governments
- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations
- 15 CFR, Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations
- OMB Circular A-122, Cost Principles for Nonprofit Organizations
- OMB Circular A-21, Cost Principles for Educational Institutions
- EDA Standard Terms and Conditions Capacity Building Programs
- Department of Commerce Financial Assistance Standard Terms and Conditions, dated 01/05

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER 	NAME A. Leonard Smith TITLE Regional Director	DATE 08/20/2008
SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL 	TYPED NAME AND TITLE Ralph Velez, City Manager	DATE 09-10-2008

AUG 29 2008



U.S. DEPARTMENT OF COMMERCE

Economic Development Administration
Jackson Federal Building, Room 1890
915 Second Avenue
Seattle, Washington 98174
Fax: (206) 220-7669

In reply refer to:
Investment No.: 07-01-06185

Mr. Ralph Velez
City Manager
City of Calexico
608 Heber Avenue
Calexico, California 92231

Dear Mr. Velez:

I am pleased to inform you that the Department of Commerce's Economic Development Administration (EDA) has approved your application for a \$3,000,000 EDA investment to construct infrastructure improvements to serve the development of the Town Center Plaza and the Portico/Kloke sites.

Enclosed are three signed originals 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 original Financial Assistance Award. Two of the executed copies should be returned to A. Leonard Smith, Regional Director, ATTN: JoAnn Smith, EDA Seattle Regional Office, 915 Second Avenue, Room 1890, Jackson Federal Building, Seattle, Washington 98174. If not signed and returned within 30 days of receipt, EDA may declare the Award null and void.

Please do not to 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 handwritten signature in black ink, appearing to read "A. Leonard Smith".

A. Leonard Smith
Regional Director

Enclosures

THE FOLLOWING CFR'S AND OMB CIRCULARS CHECKED ON THE FINANCIAL ASSISTANCE AWARD CAN BE ACESSED THROUGH GOOGLE BY TYPING THE RESPECTIVE TITLES:

15 CFR Part 24, Uniform Admin Requirements for Grants/Cooperative Agreements, to State & Local Governments.

OMB Circular A-87, Cost Principles for State and Local Governments and Indian Tribal Governments.

OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

RESOLUTION NO. 07-71

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT APPLICATION FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT PROGRAM THROUGH THE U. S. DEPARTMENT OF COMMERCE ECONOMIC DEVELOPMENT ADMINISTRATION IN THE AMOUNT OF \$3 MILLION DOLLARS

WHEREAS, the City of Calexico is eligible to apply for funds available through the U. S. Department of Commerce Economic Development Administration for public works infrastructure improvements;

WHEREAS, the improvements to the project area will create employment opportunities for Calexico and Imperial County;

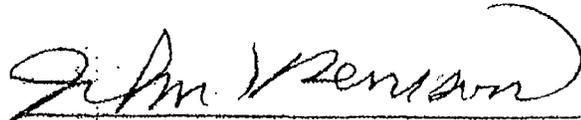
WHEREAS, the estimated project cost is \$6 million;

WHEREAS, the City of Calexico is applying for \$3 million EDA funds and will match \$3 million with non federal sources;

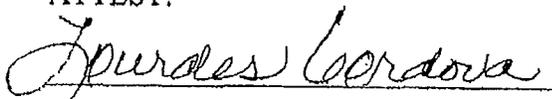
WHEREAS, the City Manager or his designee is authorized and directed to act on the City's behalf in all matters pertaining to this application;

NOW, THEREFORE BE IT RESOLVED THAT the City Manager or his designee is authorized to enter into and sign the grant agreement and any documents related to the grant application with Economic Development Administration for the purposes of this grant

PASSED, APPROVED AND ADOPTED this 4th day of December, 2007.


John Reinson, Mayor

ATTEST:



Lourdes Cordova, City Clerk

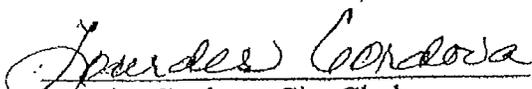
APPROVED AS TO FORM:


Jennifer Lyon, City Attorney

State of California)
County of Imperial) ss
City of Calexico)

I, Lourdes Cordova, City Clerk for the City of Calexico do hereby certify the foregoing Resolution No. 07-71, was adopted by the City Council in a regular meeting held on the 4th day of December, 2007 by the following vote to-wit:

AYES: Renison, Durazo, Fuentes, Pacheco and Ouzan
NOES: None
ABSENT: None


Lourdes Cordova, City Clerk

 12/12/07
DATE

I HEREBY CERTIFY THAT THIS IS A TRUE COPY
OF THE ORIGINAL RECORD ON FILE IN THIS OFFICE.

PUBLIC WORKS PROJECT COST CLASSIFICATIONS

RECIPIENT: City of Calexico

EDA Award No. 07-01-06185

State: California

County: Imperial

<u>Cost Classification</u>	<u>Proposed</u>	<u>Approved</u>
Administrative and legal expenses	\$ 85,588	\$ 85,588
Land, structures and rights-of-way appraisals, etc.	0	0
Relocation expenses and payments	0	0
Architectural and engineering fees	161,174	161,174
Other architectural and engineering fees	10,000	10,000
Project inspection fees	142,645	142,645
Site Work	0	0
Demolition and removal	0	0
Construction	5,187,100	5,187,100
Equipment	0	0
Contingencies	518,710	518,710
TOTAL PROJECT COSTS	\$ 6,105,217	\$ 6,105,217

EXHIBIT "A"

U.S. DEPARTMENT OF COMMERCE
Economic Development Administration

Page 1 of 3

Public Works and Development Facilities

RECIPIENT: **City of Calexico, California**

Award No. **07-01-06185**

SPECIAL AWARD CONDITIONS

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

Time allowed after receipt of Financial Assistance Award for:

Return of Executed Financial Assistance Award - 30 days

Time allowed after acceptance by Recipient of Financial Assistance Award for:

Start of Construction - 24 months
Construction Period - 24 months

*9.10.2010 start
9.10.2012 completed*

Project Closeout - All Project closeout documents, including final financial information and any required program reports, shall be submitted to the Government not more than 90 days after the date the Recipient accepts the completed Project from the contractor(s).

The Recipient shall pursue diligently the development of the Project so as to ensure completion of the Project and submission of closeout documents within this time schedule. Moreover, the Recipient shall notify the Government in writing of any event which could delay substantially the achievement of the Project within the prescribed time limits. The Recipient further acknowledges that failure to meet the development time schedule may result in the Government's taking action to terminate the Award in accordance with the regulations set forth at 13 CFR 305.99(b) and 15 CFR 24.43 (53 Fed. Reg. 8048-9, 8102, March 11, 1988).

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

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

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 CFR 60-4.6, or any 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 Recipient 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 CFR 60-4.6.

3. TITLE: Prior to EDA authorization to start construction, the Recipient shall provide evidence satisfactory to the Government that the Recipient has acquired good and merchantable title, free of all mortgages, foreclosable liens, or encumbrances, to all land, rights-of-way, and easements necessary for the completion of the Project.
4. ARCHITECT/ENGINEER AGREEMENT: Prior to the disbursement of funds by EDA, the Recipient must submit to the Government for approval an Architect/Engineer agreement that meets the requirements of Section I of the EDA publication, "Requirements for Approved Construction Projects," as well as the competitive procurement standards of 15 CFR Part 24 or 15 CFR 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 upon a cost-plus-a-percentage-of-cost or a cost using a multiplier.
5. FEDERAL SHARE OF PROJECT COSTS: 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.
6. REPORT ON UNLIQUIDATED OBLIGATIONS: If there is an EDA grant award of more than \$100,000 which has not been fully disbursed (or disbursed and closed out) as of September 30 each year the recipient must submit OMB Standard Form 269A, Financial Status Report, to EDA annually on the status of unreimbursed obligations. The report will provide information on the amount of allowable project expenses that have been incurred by the Recipient but not claimed for reimbursement as of September 30. The report must be submitted to EDA no later than October 30 of each year. Noncompliance with this requirement will result in the suspension of EDA grant disbursements. EDA will furnish instructions for completing and filing the report to all recipients at least 60 days before the report is due.
7. GRANT SUSPENSION FOR FAILURE TO START CONSTRUCTION: If significant construction (as determined by EDA) is not commenced within two years of 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 grant recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously.

Annual Report

Schedule
or

8. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS GOVERNMENT CONTRACTORS' LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS: Pursuant to E.O. 13202, unless the project is exempted under section 5(c) of the order, bid specifications, project agreements, or other controlling documents for construction contracts awarded by recipients of grants or cooperative agreements, or those of any construction manager acting on their behalf, shall not: a) include any requirement or prohibition on bidders offerors, contractors, or subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction project(s); or b) otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction projects(s).

9. PROPERTY MANAGEMENT STANDARDS: In affirming this Award, the Recipient/Owner acknowledges its responsibility to use the real property acquired, benefitted, or improved in whole or in part with this investment assistance for **the Town Center Plaza Industrial Park and the Portico/Kloke Industrial Park** and to comply with the Economic Development Administration Reauthorization Act of 2004 (Public Law 108-373) interim final rule to reflect the amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965, and 13 CFR PART 314-PROPERTY Subpart B-Real Property 314.7 Title.

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

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

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



OCTOBER 2007
(as amended on December 13, 2007)

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS

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

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

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

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

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

PREFACE

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

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

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

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

ECONOMIC DEVELOPMENT ADMINISTRATION
STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS

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

A. **General Requirements and Responsibilities.**

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

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

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

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

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

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

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

B. **Financial Requirements.**

1. **Financial Reports.**

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

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

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

2. **Disbursement Requests.**

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

3. **Federal and Non-Federal Cost Sharing.**

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

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

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

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

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

5. **Indirect Costs.**

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

- (i) *State, local, and Indian Tribal Governments; Educational Institutions; and Non-Profit Organizations (Non-Commercial Organizations)*

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

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

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

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

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

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

8. **Time Extensions.**

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

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

- c. EDA has no obligation to provide any additional prospective funding. Any amendment of this Award to increase funding or to extend the period of performance is at the sole discretion of EDA.

9. **Tax Refunds.** Refunds of Federal Insurance Contributions Act and Federal Unemployment Tax Act ("FICA/FUTA") taxes received by the Recipient during or after the Project period must be refunded or credited to DOC where the benefits were financed with federal funds under the Award. The Recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of this Award.

10. **Program Income.** For Projects that create long-term rental revenue (e.g., buildings or real property constructed or improved for the purpose of renting or leasing space), the Recipient agrees to use such income generated from the rental or lease of any Project facility in the following order of priority:
 - a. Administration, operation, maintenance, and repair of Project facilities for their estimated useful life (as determined by EDA) in a manner consistent with good property management practice and in accordance with established building codes. This includes, where applicable, repayment of indebtedness resulting from any EDA-approved encumbrance (e.g., approved mortgage) on the EDA-assisted facility.
 - b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA.

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

C. Programmatic Requirements.

1. Quarterly Reporting.

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

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

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

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

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

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

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

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

11. **Prohibition on Use of Third Parties to Secure Award.** Unless otherwise specified in the special award conditions to this Award, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this Award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of this warrant, the Government has the right to annul this Award without liability, or at its discretion, to deduct from the Award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

12. **Payment of Attorneys' or Consultants' Fees.** No Award funds shall be used, directly or indirectly, to reimburse attorneys' or consultants' fees incurred in connection with obtaining investment assistance under PWEDA, such as, for example, preparing the application for EDA investment assistance. However, ordinary and reasonable attorneys' and consultants' fees incurred for meeting Award requirements, such as, for example, conducting a title search or preparing plans and specifications, may be eligible Project costs and may be paid out of Award funds, provided such costs are otherwise eligible. *See* 13 C.F.R. § 302.10.

13. **Commencement of Construction.**
 - a. *Delayed Construction Starts.* If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. If significant construction has not been commenced within three years of the Award date, an extension must be approved by the Assistant Secretary.

 - b. *Early Construction Starts.* The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For Project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the Terms and Conditions of this Award. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA's review and concurrence. *See* 13 C.F.R. § 305.11. HSIP

 - c. *Project Sign.* The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. *See* 13 C.F.R. § 305.12.

14. **Efficient Administration of Project.** The Recipient agrees to properly and efficiently administer, operate, and maintain the Project for its estimated useful life, as required by section 504 of PWEDA (42 U.S.C. § 3194). If the Government determines, at any time during the estimated useful life of the facility, that the Project is not being properly and efficiently

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

15. Conflicts-of-Interest Rules.

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

16. Record-Keeping Requirements.

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

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

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

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

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

17. Termination Actions.

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

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

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

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

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

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

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

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

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

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

D. Additional Requirements Relating to Construction Projects.

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

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

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

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

1. **Statutory Provisions.**

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

2. **Other Provisions.**

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

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

3. **Title VII Exemption for Religious Organizations.**

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

F. **Audits.**

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

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

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

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

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

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

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

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

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

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

G. Debts.

1. Payment of Debts Owed the Federal Government.

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

2. Late Payment Charges.

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

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

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

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

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

H. **Name Check Reviews.**

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

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

2. Applicability of Award Provisions to Subrecipients.

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

3. Competition and Codes of Conduct for Subawards.

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

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

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

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

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

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

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

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

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

Website: www.mbda.gov/

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

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

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

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

M. **Property.**

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

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

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

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

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

4. **Insurance and Bonding.**

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

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

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

6.

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

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

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

7. Disposal of Real Property.

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

N. Environmental Requirements.

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

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

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

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

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

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

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

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

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

P. **Miscellaneous Requirements.**

1. **Criminal and Prohibited Activities.**

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

2. **Foreign Travel.**

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

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

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

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

- d. **Copyright.** The Recipient may copyright any work produced under a DOC Award subject to the Department's royalty-free, non-exclusive, and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Federal Government purposes. Works jointly authored by the Department and Recipient employees may be copyrighted, but only the part authored by the Recipient is protected under 17 U.S.C. § 105, which provides that works produced by Federal Government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. On occasion, the Department may ask the Recipient to transfer to the Department its copyright in a particular work when the Department is undertaking the primary dissemination of the work. Ownership of copyright by the Federal Government through assignment is permitted under 17 U.S.C. § 105.
5. **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.
6. **Research Involving Human Subjects.**
- a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27, "*Protection of Human Subjects.*" No research involving human subjects is permitted under this Award unless expressly authorized by special award condition or otherwise authorized in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. The Department's regulations at 15 C.F.R. part 27 require that Recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in carrying out the purpose(s) of this Award, the Recipient shall submit appropriate documentation to the Project Officer for approval. This documentation may include:
- (i) Documentation establishing approval of the Project by an institutional review board ("IRB") approved for government-wide use under Department of Health and Human Services guidelines (*see* 15 C.F.R. § 27.103);
- (ii) Documentation to support an exemption for the Project under 15 C.F.R. § 27.101(b);
- (iii) Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118; or
- (iv) Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred or charged for human subjects research until the appropriate documentation is approved in

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

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

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

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

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

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

APPENDIX

THE FOLLOWING REFERENCE MATERIALS AND FORMS ARE AVAILABLE ONLINE:

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

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

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

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

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

EDA FORMS:

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

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

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

CHUCK STOREY
COUNTY CLERK/RECORDER

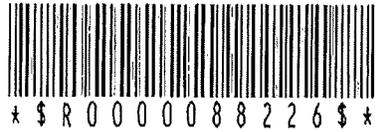
P Public

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

Doc#: **2014003812**

Titles: 1	Pages: 5
Fees	36.00
Taxes	0.00
Other	0.00
PAID	36.00

City of Calexico
608 Heber Avenue
Calexico, California 92231



NO RECORDING FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383

COVENANT OF PURPOSE AND USE

This Covenant of Purpose and Use ("Covenant") is made as of the 21st day of January, 2014, the City of Calexico ("City") required by and in favor of the United States Department of Commerce Economic Development Administration ("EDA"), wherein it is agreed by the City as follows:

RECITALS

- A. The City received a Financial Assistance Award dated August 20, 2008 ("Financial Assistance Award") in the amount not to exceed three million dollars and zero cents (\$3,000,000.00) for EDA Project No. 07-01-06185 ("EDA Project").
- B. The property improved with funds from the EDA, is more particularly described as Towncenter/Portico Industrial Development in the City of Calexico, County of Imperial, State of California legally described in Exhibit "A," attached hereto and made a part hereof (the "EDA Improved Property").
- C. The Project purpose was to be fund the construction of public works infrastructure improvements on the real property described in the attached and incorporated as Exhibit "A."
- D. A term of 20 years has been established as the Useful Life of the federally funded improvements to the EDA Improvement Property (the "Useful Life").

AGREEMENTS

In consideration of the Recitals (which are incorporated herein by reference) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the City of Calexico (the "Recipient"), for itself and its successors agrees as follows:

- 1. The Recipient agrees that the EDA Improved Property shall be used in a manner consistent with the authorized general and special purposes of the EDA Award (EDA Project No. 07-01-06185 the "EDA Award").

2. The Recipient agrees that for the Useful Life of the EDA Improved Property, it shall comply with all EDA requirements, including, but not limited to, the civil rights and environmental requirements.
3. The Recipient further agrees that, for the Useful Life of the EDA Improved Property, it will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, or use the Property for purposes other than and different from those purposes set forth in the EDA Award, because such alienation is prohibited by 13 CFR Part 314 and by 15 CFR Parts 14 or 24.
4. The Recipient further agrees that in the event the EDA Improved Property is used other than as authorized under the EDA Award, without prior written approval of the Federal Government, the Recipient will compensate the Federal Government in the amount of the EDA Award funds disbursed, or at the option of the Federal Government, the Federal Share of the Property, as provided in 13 CFR Part 314; provided, however, that this provision contained in Paragraph 4 of this Covenant shall terminate and be of no further force and effect after the expiration of the Useful Life.
5. The Recipient further agrees that during and after the Useful Life of the EDA Improved Property, pursuant to 13 CFR § 314.10, the EDA Improved Property is and shall henceforth be subject to and encumbered by the following two covenants to wit:
 - a. At no time shall the EDA Improved Property be used in violation of the nondiscrimination requirements set forth in 13 CFR § 302.20; and
 - b. At no time shall the EDA Improved Property be used for inherently religious activities prohibited by applicable federal law.
6. Pursuant to 13 CFR § 314, Recipient further agrees that, as a prerequisite to accepting the disbursement of any award funds by EDA, Recipient shall execute and record against the EDA Improved Property, this Covenant in the County where the EDA Improved Property is located, thereby securing to EDA an estate in the Property. Recipient further agrees that whenever the Property is sold, leased or otherwise conveyed pursuant to 13 CFR § 314, Recipient or the transferor shall add to the document conveying such interest notice of this Covenant of Purpose and Use and shall require that the conveyance document be subject to this Covenant in satisfactory. EDA may require an opinion of counsel for Recipient that the Covenant is valid and enforceable according to its terms and has been properly recorded.
7. It is stipulated and agreed that the terms of this Covenant constitute a reasonable restraint on alienation of use, control and procession of or title to the Property given the federal interest expressed through EDA funding of the Project.
8. This Covenant shall run with the land and shall bind the Recipient and its successors in title in and to the Property.

IN WITNESS WHEREOF, the Recipient has caused this Covenant to be executed by its official duly authorized to take such actions on behalf of and binding upon the Recipient.

RECIPIENT:

CITY OF CALEXICO

By: Oscar G. Rodriguez

City Manager
Title

ACKNOWLEDGMENT

State of California)
County of Imperial) SS.

On 2/27/14 before me, V. Luna-Alvarado, Notary Public
(insert name and title of the officer) personally appeared Oscar G. Rodriguez,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]

(Seal)

State of Commission: California

My Commission Expires: 12/16/15

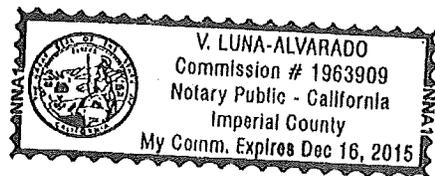


EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PART OF THE WEST HALF OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, SAN BERNARDINO MERIDIAN, AS PER OFFICIAL PLAT THEREOF, LYING EAST OF THE EAST OF THE EAST LINE OF THE RIGHT-OF-WAY OF THE SOUTHERN PACIFIC RAILROAD AS LOCATED MAY 20, 1942, THROUGH AND ACROSS SAID WEST HALF OF SECTION 2, AND SOUTH OF THE SOUTH TOE OF SLOPE OF THE BRAWLEY MAIN CANAL AS LOCATED ON MAY 20, 1942 THROUGH AND ACROSS SAID WEST HALF OF SECTION 2, WHICH SAID PART OR PORTION IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 2; AND THENCE RUNNING SOUTH 89° 59' EAST, 1809.9 FEET ALONG THE SOUTH LINE OF SAID SECTION 2, TO A POINT AT THE INTERSECTION OF THE EAST LINE OF THE RIGHT-OF-WAY OF THE SOUTHERN PACIFIC RAILROAD AFORESAID WITH THE SOUTH LINE OF SAID SECTION 2, TO THE POINT OF BEGINNING:

THENCE CONTINUING SOUTH 89° 59' EAST, 831.4 FEET TO THE QUARTER CORNER BETWEEN SAID SECTIONS 2 AND 11;

THENCE NORTH 00° 01' EAST, A DISTANCE OF 2648 FEET TO A POINT ON THE SOUTH TOE OF THE SLOPE OF THE CENTRAL MAIN CANAL, AS NOW LOCATED;

THENCE NORTH 64° 39' WEST, 326 FEET;

THENCE NORTH 48° 44' WEST, 369 FEET;

THENCE NORTH 38° 15' WEST, 2692.8 FEET;

THENCE NORTH 73° 44' WEST, 409.7 FEET TO AN INTERSECTION WITH THE EAST LINE OF THE RIGHT-OF-WAY OF THE SOUTHERN PACIFIC RAILROAD AFORESAID;

THENCE ALONG SAID RIGHT-OF-WAY SOUTH 18° 54' EAST, 5560.1 FEET, TO THE POINT OF BEGINNING.

NOTE: SAID PROPERTY IS ALSO SHOWN ON LICENSED SURVEY MAP RECORDED IN BOOK 6, PAGE 6 OF LICENSED SURVEY MAPS.

**CITY OF CALEXICO
ACTION ADVISEMENT**

DATE OF MEETING: January 21, 2014

THE CITY COUNCIL OF THE CITY OF CALEXICO on motion by Mayor Pro Tem Moreno, seconded by Mayor Hodge.

Approved the following: Authorization for City Manager to sign Covenant of Purpose and Use between the City of Calexico and United States Department of Commerce Economic Development Administration (EDA) for EDA Project No. 07-01-06185 -- Towncenter/Portico Industrial Development Project.

Voting was follows:

AYES: Hodge, Moreno, Kim, Castro, Hurtado
NOES: None
ABSTAINED: None
ABSENT: None

AGENDA ITEM NO. : 10

OFFICE OF THE CITY CLERK
GABRIELA T. GARCIA, DEPUTY CLERK