

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
)
)
)
IN THE MATTER OF: BID PROTEST)
)
MONROE CONSTRUCTION)
COMPANY)
)
v.)
)
UNIVERSITY OF SOUTH CAROLINA)
)
HORIZON 1 FIRST FLOOR)
LABORATORY UPFIT)
PROJECT H27-6071-LC)
_____)

**BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION**

DECISION

CASE NO. 2011-011

**POSTING DATE:
MARCH 3, 2011**

Based on the attached request and supporting documentation from Dr. Harris Pastides, President of the University of South Carolina (USC), and consultation with USC, I find that it is in the best interest of the state that the solicitation and award of this procurement shall not be delayed.

With this invitation for bids, USC attempts to procure a contract for fitting out shell space on the first floor of the Horizon I Research Facility with wet laboratory incubation space for small start-up companies along with laboratory space (hereinafter “the Project”) for Dr. Jochen Lauterbach, USC Endowed Professor. This project is the third phase of a project to fit out shell space in the Horizon I Research Facility with laboratory space.

The following dates and facts are relevant to this decision:

1. On September 13, 2010, USC advertised for bids to construct the Project. Pursuant to this advertisement, bidders were to submit their bids on or before October 12, 2010. The date for receipt of bids was subsequently changed by addenda to October 19, 2010.
2. The solicitation documents and bid form provided for two base bids.
3. Pursuant to the subcontractor listing requirements of SC Code Ann § 11-35-3020(b)(i), the bid form included in the solicitation documents required bidders to list for each base bid the mechanical, plumbing, and electrical subcontractors they intended to use on the project.
4. By the time for receipt of bids, USC had received nineteen bids.

5. Rodgers Builders, Inc., submitted a low bid of \$3,149,000 for base bid two. Monroe Construction Company submitted the third low bid of \$3,230,000 for base bid two.¹
6. On December 3, 2010, USC posted a Notice of Intent to Award a contract to Rodgers for base bid two.
7. On December 13, 2010, Monroe protested USC's Notice of Intent to Award a contract to Rodgers because Rodgers' listed plumbing subcontractor, Hill Plumbing and Electric Company, Inc. was not a licensed pressure and process piping contractor. In its letter of protest, Monroe asserted that plumbing included pressure and process piping and, therefore, Rodgers had to provide the name of a licensed pressure and process piping contractor in addition to a licensed plumbing contractor in the space on the bid form for listing the plumbing subcontractor.
8. On January 27, 2011, the CPOC conducted a hearing on Monroe's protest.
9. On February 4, 2011, the CPOC concluded his administrative review of Monroe's protest and on February 14, 2011, the CPOC posted his decision denying Monroe's protest.
10. On February 23, 2011, Monroe appealed the decision of the CPOC to the Procurement Review Panel.
11. On February 28, 2011, USC personnel met with the CPOC pursuant to SC Code Ann § 11-35-4210(7) to discuss a lifting of the automatic stay on contract award.
12. On March 2, 2011, USC submitted its formal written request to the CPOC to lift the stay on the following grounds:
 - a. The Project is partially funded by a \$1,000,000 grant from the Economic Development Administration, United States Department of Commerce (EDA). Under the terms of the grant, USC was required to begin construction on or before June 11, 2009.
 - b. USC subsequently requested EDA to grant an extension of the deadline for start of construction on two separate occasions for reasons unrelated to this protest. The second amendment extended the deadline to January 11, 2011.
 - c. As a result of Monroe's protest, USC was compelled to seek an additional extension of the deadline for the start of construction from the EDA. USC discussed with EDA a new deadline of June 11, 2011 to accommodate a possible appeal but an EDA representative orally advised USC that it would be difficult for USC to obtain any extension. Moreover, the EDA strongly suggested

¹ Sumwalt Associates, Inc. (Sumwalt) was the second low bidder on base bid two.

that if the EDA agreed to an extension beyond the January 11, 2011 deadline, the extension would be the last granted by the EDA.

d. Subsequent to its conversation with the EDA representative, USC filed a formal request for an extension of the deadline for the start of construction to June 11, 2011. In response, the EDA issued a third amendment extending the deadline for the start of construction to March 11, 2011. This amendment provides in part, “The Recipient further acknowledges that failure to meet the development time schedule may result in the Government’s taking action to terminate the Award in accordance with the regulations set forth at 15 CFR 24.43 (53 Fed. Reg. 8048-9, 8102, March 11, 1988).”

The EDA’s position and representations to USC place USC in a dilemma. USC has very strong reasons to believe that if it does not start construction by March 11, 2011, the EDA will not grant an additional extension and USC will lose a significant portion of the funding for the Project. However, USC has no way of knowing this will in fact happen unless USC sits on its hands and does nothing. On the other hand, USC can assure that it will not lose \$1,000,000 of funding for this very important project by starting construction by March 11, 2011. Faced with such a dilemma, USC has chosen the only course that can guarantee they will not lose the EDA grant and the Project by requesting that the CPOC lift the stay on the award of a contract.

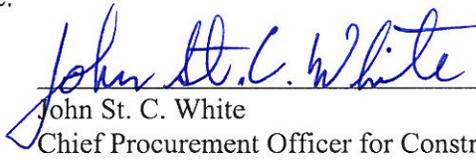
This project is an important part of USC’s plans for both the present and the future. The Horizon I Research Facility is one of two USC owned research buildings in Innovista. Innovista involves the cooperation and contributions of a number of public and private entities, including the University of South Carolina; local, state, and federal government; and the business and economic development community. USC envisions Innovista as the “key to a new economy built on a foundation of technology and knowledge-based jobs.” “Private tenants relocating to Innovista are expected to bring high-paying jobs that will raise the state’s per-capita income.”

The success of Innovista and this Project is not only important to USC but the State. As a part of its vision for Innovista, USC is raising capital from the private sector pursuant to the South Carolina Research Centers of Economic Excellence Act to “fund endowments for professorships in research areas targeted to create well-paying jobs and enhanced economic opportunities for the people of South Carolina.” SC Code Ann § 2-75-5. Moreover, USC is recruiting top researchers to fill these endowments. This project helps fulfill USC’s vision for Innovista by providing research space for one of USC’s chairs (Dr. Lauterbach) endowed pursuant to the South Carolina Research Centers of Economic Excellence Act

and by providing research space for small start-up companies.

Dr. Lauterbach is the Center of Economic Excellence Chair in Strategic Approaches to the Generation of Electricity at USC. The primary purpose of Dr. Lauterbach's research program at USC is to enhance the economic development of the state by creating cutting-edge technologies in clean energy sources that can be transferred to new knowledge-based companies in the state. Dr. Lauterbach needs adequate and properly-equipped laboratory space to perform the research of his team to create new technologies that can be transferred to for-profit businesses to create well-paying jobs and economic development for the state of South Carolina. The transfer of these technologies will likely be to small and start-up companies which will need wet lab space and would be candidates for locating in the wet lab incubation space to be developed under this Project.

Based on the foregoing, the CPOC finds that the award of the contract without further delay is necessary to protect the best interest of the State.



John St. C. White
Chief Procurement Officer for Construction

3 March 2011
Date

Columbia, South Carolina

STATEMENT OF RIGHT TO ADMINISTRATIVE REVIEW

Written Determination Appeal Notice (Revised October 2010)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:

(b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

Copies of the Panel's decisions and additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Requests must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2010 S.C. Act No. 291, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an action before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



MAR 2 2011

OFFICE OF STATE ENGINEER

HARRIS PASTIDES
PRESIDENT

March 2, 2011

VIA HAND DELIVERY

John St. C. White, P.E.
Chief Procurement Officer for Construction
1201 Main Street, Ste. 600
Columbia, S.C. 29201

Re: Request to Lift Automatic Stay
Appeal of Monroe Construction Company
State Project No. H27-6071-LC

Dear Mr. White:

The University of South Carolina hereby respectfully requests that you exercise your authority as Chief Procurement Officer to lift the automatic stay of the award of the construction contract for the referenced project to Rodgers Builders, Inc. that resulted when Monroe Construction Company appealed your decision to dismiss Monroe's protest.

Enclosed herewith is the Affidavit of R. Steven Etheredge, Assistant Director of Policy and Compliance in the University of South Carolina's Sponsored Awards Management Office. Mr. Etheredge's Affidavit sets forth the factual basis for the University's request.

Thank you for your prompt consideration of this request.

Sincerely,

Harris Pastides

Enclosure (1)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION

IN THE MATTER OF: BID PROTEST)
)
MONROE CONSTRUCTION COMPANY)
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v.)
)
UNIVERSITY OF SOUTH CAROLINA)
)
STATE PROJECT NO. H27-6071-LC)
_____)

CPO CASE NO. 2011-011

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, R. Steven Etheredge, who being duly sworn, deposes and says:

1. He is the Assistant Director of Policy and Compliance in the University of South Carolina's Sponsored Awards Management Office.
2. He has personal knowledge of the \$1,000,000.00 Financial Assistance Award, EDA Investment No. 04-01-06063 ("the grant") by the Economic Development Administration, U.S. Department of Commerce ("EDA"), to the University of South Carolina ("USC") to construct a technology driven incubator located on the Innovista Research Campus at USC. (A copy of the Financial Assistance Award is attached hereto as Exhibit A.) He signed the Financial Assistance Award on behalf of USC.
3. The total estimated cost of the technology driven incubator project was \$2,087,227 at the time the EDA made the award.
4. The EDA awarded the grant to USC on June 11, 2008. Under the terms of the grant, USC was required to begin construction on or before June 11, 2009.

5. The South Carolina state legislature implemented widespread budget cuts during Fiscal Year 2009, and the state funds that USC expected to receive for the project were among the cuts. Consequently, USC was unable to begin construction by June 11, 2009. USC asked the EDA to extend the construction commencement deadline (“the deadline”), and the EDA issued Amendment No. 1 to the Financial Assistance Award on October 7, 2009 in response to USC’s request. (A copy of Amendment No. 1 is attached hereto as Exhibit B.) Amendment No. 1 extended the deadline to June 11, 2010.

6. Amendment No. 1 also amended the scope of work, which it defined as follows: “The new Horizon I Research Facility is a new 125,320 sq. ft. facility, and the current EDA proposal would assist in completing 14,000 to 16,000 sq. ft. of shell space. Twenty wet labs will be constructed on the first floor of this multi-story building. The facility is located on the Innovista campus of USC in Columbia, S.C” (“the project”).

7. USC was compelled to request another extension of the construction commencement deadline after it became clear that USC would not be able to begin construction by June 11, 2010. The primary impediment to timely commencement of construction was the rigorous state project review and approval process and the meeting schedules of the various state bodies that were involved. (A copy of Dr. Harris Pastides’ letter to Mr. Asa R. Williams of the EDA, dated March 19, 2010, sets forth USC’s request for an extension of the construction commencement deadline until November 2010 and is attached as Exhibit C.)

8. On April 8, 2010, the EDA issued Amendment No. 2 to the Financial Assistance Award. Amendment No. 2 extended the deadline to January 11, 2011. (A copy of Amendment No. 2 is attached hereto as Exhibit D.)

9. USC obtained all necessary approvals and proceeded to solicit bids from contractors for the project. On December 3, 2010, USC issued a Notice of Intent to Award that identified Rodgers Builders, Inc. (“Rodgers”) as the responsible bidder with the lowest responsive bid. However, on December 13, 2010, Monroe Construction Company (“Monroe”) protested USC’s Intent to Award the contract for the project to Rodgers.

10. Once again USC was compelled to seek an extension of the deadline from the EDA. Representatives of USC met with Mr. Asa R. Williams of the EDA in Columbia on January 27, 2011 to discuss the status of the project and the grant. The deadline established by Amendment No. 2 had already past. The meeting participants discussed extending the deadline to June 11, 2011, but Mr. Williams indicated that it would be difficult for USC to obtain any extension, and he advised USC to direct its official request to Mr. H. Philip Paradice, Jr., Director of the EDA’s Atlanta Regional Office. He also asked USC to identify the date by which USC expected the Chief Procurement Officer for Construction (“CPO”) to post a decision on the protest. Mr. Williams strongly suggested that if the EDA consented to another extension beyond the January 11, 2011 deadline, then that extension would be the last extension the EDA would grant for the project.

11. Also on January 27, 2011, the CPO held an administrative hearing to consider Monroe’s protest. The CPO posted his decision on February 14, 2011, in which he dismissed Monroe Construction Company’s protest.

12. On February 15, 2011, USC formally asked the EDA to extend the deadline to June 11, 2011. USC’s request letter stated in part, “We fully realize that construction must begin before June 11, 2011 or the grant will be forfeited.” (A copy of Dr. Pamela K. Benicewicz’s letter to Mr. H. Philip Paradice, Jr. is attached hereto as Exhibit E.)

13. The EDA issued Amendment No. 3 to the Financial Assistance Award on February 18, 2011. However, the EDA refused to extend the deadline to June 11, 2011. Instead, Amendment No. 3 extended the deadline to March 11, 2011. Amendment No. 3 also provides in part, “The Recipient further acknowledges that failure to meet the development time schedule may result in the Government’s taking action to terminate the Award in accordance with the regulations set forth at 15 CFR 24.43 (53 Fed. Reg. 8048-9, 8102, March 11, 1988).” (A copy of Amendment No. 3 is attached hereto as Exhibit F.)

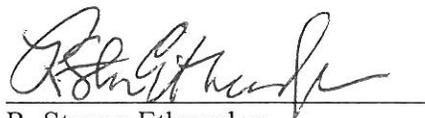
14. Given the foregoing, USC is convinced that the EDA will terminate the grant if USC does not initiate construction by March 11, 2011, which is next Friday.

15. If USC loses the grant, then USC will be unable to provide wet lab incubation space in the Horizon I Research Facility for small start-up companies in the foreseeable future. This in turn would impair economic development in Columbia and throughout South Carolina.

16. A construction delay beyond March 11, 2011 will also postpone the upfit of laboratory space for Dr. Joachim Lauterbach, USC Endowed Professor, and thereby negatively impact both Dr. Lauterbach’s and his team’s research programs. Dr. Lauterbach’s research program would continue to be hampered by lack of adequate laboratory space. USC hired Dr. Lauterbach as an Endowed Professor under the South Carolina Centers of Economic Excellence Program. He and his team have over \$11,000,000 in external research funding that is designed to enhance the economic development of the State of South Carolina through creation of clean energy sources. Further delay of these research activities will negatively impact economic development in South Carolina.

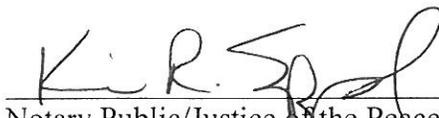
17. Dr. Pamela K. Benicewicz is USC's director of the project. She has secured additional grant funding from both the U.S. Small Business Administration (\$100,000) and Engenuity/HUD (\$335,000) for the project. These grants are designed to help fund incubation activities of small and/or startup technology companies. The ongoing construction delay is preventing USC from fulfilling its obligations under these grants.

FURTHER AFFIANT SAYETH NOT.


R. Steven Etheredge

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 2nd DAY OF MARCH, 2011.


Notary Public/Justice of the Peace
My Commission Expires: My Commission Expires
October 19, 2015

FINANCIAL ASSISTANCE AWARD

AWARD PERIOD

From date of approval to 40 months after approval
6/18/08 - 10/10/2011

RECIPIENT NAME
University of South Carolina

AWARD NUMBER
04-01-06063

STREET ADDRESS
901 Sumter Street, 5th Floor

FEDERAL SHARE OF COST
\$1,000,000

CITY, STATE, ZIP CODE
Columbia, South Carolina 29208

RECIPIENT SHARE OF COST
\$1,087,227

AUTHORITY
Public Works and Economic Development Act of 1965, as amended, (42 U.S.C. §3121, *et seq.*)

TOTAL ESTIMATED COST
\$2,087,227

CDFA NO. AND PROJECT TITLE
11.300 Public Works Program / Technology Incubator

BUREAU	FUND	FCFY	PROJECT TASK	ORGANIZATION	OBJECT CLASS
20	40	08	0406063-000	04	4110

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 declare this Award null and void.

- Department of Commerce Financial Assistance Standard Terms and Conditions
- Special Award Conditions (see attached Exhibit A)
- Line Item Budget (see attached Attachment No. 1)
- 15 CFR Part 14, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations
- 15 CFR Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations
- OMB Circular A-122, Cost Principles for Nonprofit Organizations
- OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- OMB Circular A-21, Cost Principles for Educational Institutions
- 48 CFR Part 31, Contract Cost Principles and Procedures
- Other(s): EDA Standard Terms and Conditions for Construction Projects, dated October 2007

SIGNATURE OF DEPARTMENT OF COMMERCE GRANT OFFICER

H. Philip Paradise, Jr.

TITLE

Director, Atlanta Region

DATE

6/11/08

TYPED NAME AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

Daniel L. Christinus

TITLE

R. Steven Etheredge, Director
Pre-Award Services

Sponsored Program Administrator

DATE

6/18/08

EXHIBIT "A"

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

Public Works and Development Facilities

Investment No.: 04-01-06063

Recipient: University of South Carolina

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
Start of Construction..... 12 Months from Date of Grant Award
Construction Period..... 24 Months

Project Closeout - All Project closeout documents including final financial information and any required program reports shall be submitted to the Government not more than 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 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 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. **AUDIT REQUIREMENTS:** Applicable audit requirements are contained in OMB Circular A-133. Any references to audit requirements contained in 15 CFR Part 29a and 15 CFR 29b in the terms and conditions governing this project are replaced by OMB Circular A-133.
4. **PERFORMANCE MEASURES:** The recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act of 1993. Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA will advise recipients in writing within a reasonable period prior to the time of submission of the reports, and in the event that there are any modifications in the performance measures.
5. **REPORT ON UNLIQUIDATED OBLIGATIONS:** All Recipients of an EDA grant award of more than \$100,000 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. 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). Noncompliance with these requirements will result in the suspension of disbursements under this Award. Financial reports are to be submitted to the Project Officer.

6. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS GOVERNMENT CONTRACTORS LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS: Pursuant to E.O. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federal Funded Construction Projects," 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 Project(s).
7. ENGINEERING CERTIFICATE/CERTIFICATE OF TITLE: The Recipient, prior to Solicitation of bids for construction of this Project, shall furnish to the Government an acceptable Engineering Certificate showing all lands, rights-of-way and easements necessary for construction of this Project along with an acceptable Certificate of Title on said lands, rights-of-way and easements showing good and merchantable title free of mortgages or other foreclosable liens.
8. CONSTRUCTION START: 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.
9. USEFUL LIFE: The useful life of this project for purposes of the Covenant of Use, Purpose, and Ownership required by paragraph M.4. of the Standard Terms and Conditions, is hereby determined to be 20 years.
10. LEASE OF BUILDING: A master lease form for the incubator space funded by this grant award shall be subject to the prior written approval of the Economic Development Administration (EDA). Prior to EDA granting said approval, it must be satisfied, inter alia, that said lease arrangement is consistent with the authorized general and special purpose of the grant award; that said lease arrangement will provide adequate employment and economic benefits for the area in which the property is located; that said lease arrangement is consistent with EDA policies concerning, but not limited to, non-discrimination, and that the proposed Lessee is providing adequate compensation to the Lessor for said lease arrangement. Adequate compensation should be based on fair rental value as determined by a local commercial real estate broker.

11. LEGAL: Recipient shall provide the Government, for prior approval, any Operation & Management Agreement to be executed between the Recipient and the USC Research Foundation for the incubator space funded through this Financial Assistance Award.

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

PUBLIC WORKS PROJECT COST CLASSIFICATIONS

EDA Investment No. 04-01-06063

State: South Carolina

County: Richland

<u>Cost Classification</u>	<u>Proposed</u>	<u>Approved</u>
Administrative and legal expenses	\$	\$
Land, structures, and rights-of-way appraisals, etc.		
Relocation expenses and payments (Cost incidental to transfer of titles)		
Architectural and engineering fees		
Other architectural and engineering fees		
Project inspection fees and audit		
Site Work		
Demolition and removal		
Construction	1,982,866	1,982,866
Equipment		
Contingencies	104,361	104,361
TOTAL PROJECT COSTS	\$2,087,227	\$2,087,227

Remarks:

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

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

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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 SI-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 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-269A, "Financial Status Report" to EDA 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 report will be as 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-269A 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.
- e. *Quarterly Financial Reporting.* For a Recipient that does not request disbursement at least once quarterly, Form SF-271 must be submitted at least once quarterly to the Project Officer for financial reporting purposes.

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 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 the 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 10 years after the Project Closeout date. Data used by the Recipient in preparing reports shall be accurate and from independent sources whenever possible. See 13 C.F.R. § 302.16.
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 non-payment 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 will 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. **Non-Compliance 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) 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 Award funds, provided such costs are otherwise eligible. See 13 C.F.R. § 302.10.
13. **Commencement of Construction.**
 - a. *Delayed Construction Starts.* If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. If significant construction has not been commenced within three years of the Award date, an extension must be approved by the Assistant Secretary.
 - b. *Early Construction Starts.* The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For Project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the Terms and Conditions of this Award. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA's review and concurrence. See 13 C.F.R. § 305.11.
 - c. *Project Sign.* The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with the 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 314.2-314.4.

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 sub-recipients 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, payable to the U.S. Treasury.

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.**

Establishing 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) and 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 to 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 l 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 a 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. **Government-wide 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(s) in contracting, hiring, and firing, and the payment of a TERO fee generally are allowable provisions under federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for

proper and efficient performance and administration" of an Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

L. Codes of Conduct and Sub-Award, 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 conflict 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 have 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 continued inability or unwillingness of a subrecipient 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.mbd.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. § 314.71) 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. § 314.81.

- 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. § 314.71. 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 in 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 that 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 interest 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 accord 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 above 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.*), 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*," unless the Project is exempted under section 5I 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-133, "Audits of States, Local Governments and Nonprofit Organizations," and the related *Compliance Supplement*
14. OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments"

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

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

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

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

EDA FORMS:

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

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

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



UNITED STATES DEPARTMENT OF COMMERCE
Economic Development Administration
Atlanta Regional Office
Suite 1820
401 West Peachtree St., N.W.
Atlanta, Georgia 30308-3510

October 14, 2009

In reply refer to:
EDA Investment No. 04-01-06063
University of South Carolina. SC

Mr. R. Steven Etheredge
Director, Pre-Award Services
University of South Carolina
901 Sumter Street, 5th Floor
Columbia, South Carolina 29208

Dear Mr. Etheredge:

The Economic Development Administration (EDA) approves the action requested by the University of South Carolina to modify the Scope of Work and extend the Project Development Time Schedule of the technology incubator. This action was necessary because the Recipient has experienced budget cuts from the Stat of South Carolina.

Enclosed are three signed copies of the AMENDMENT TO FINANCIAL ASSISTANCE AWARD. Your acceptance of the terms and conditions of the award should be indicated by the signature of your principal official on all three signed copies. Two of the executed copies should be returned to the Director, Atlanta Regional Office, Economic Development Administration, 401 West Peachtree Street, N.W., Suite 1820, Atlanta, Georgia 30308-3510 no later than October 30, 2009.

Should you have any questions, please contact Asa R. Williams at 404-730-3821, or email awilliams3@eda.doc.gov.

Sincerely,



H. Philip Paradice, Jr.
Director, Atlanta Region

Enclosures: Amendment to Financial Assistance Award (3)
Amendment "A" - Exhibit No. 1(3)

cc: Mr. Tommy Coggins, Director
Office of Sponsored Awards
208 Osborne Administration Building
University of South Carolina
Columbia, South Carolina 29208



GRANT COOPERATIVE AGREEMENT

AMENDMENT TO FINANCIAL ASSISTANCE AWARD

CFDA NO. AND PROJECT TITLE
11.300 Public Works Program / Technology incubator

AWARD NUMBER
04-01-06063

RECIPIENT NAME
University of South Carolina

AMENDMENT NUMBER
1

STREET ADDRESS
901 Sumter Street, 5th Floor

EFFECTIVE DATE
October 7, 2009

CITY, STATE, ZIP CODE
Columbia, South Carolina 29208

EXTEND WORK COMPLETION TO
51 Months

BUREAU	FUND	FCFY	PROJECT-TASK	ORGANIZATION	OBJECT CLASS
20	40	10	0406063-001	04	4110

COSTS ARE REVISED AS FOLLOWS:	PREVIOUS ESTIMATED COST	ADD	DEDUCT	TOTAL ESTIMATED COST
FEDERAL SHARE OF COST	\$0.00	\$0.00	\$0.00	\$0.00
RECIPIENT SHARE OF COST	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL ESTIMATED COST	\$0.00	\$0.00	\$0.00	\$0.00

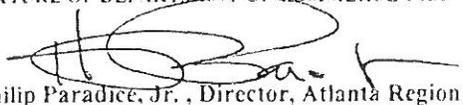
REASON(S) FOR AMENDMENT

A no cost change in the Scope of Work and extend the Project Development Time Schedule.

This Amendment 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 Amendment provisions checked below and attached, as well as previous provisions incorporated into the Award. Upon acceptance by the Recipient, two signed Amendment 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 Amendment.

- Special Award Conditions
- Line Item Budget
- Other(s) Scope of Work

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER



H. Philip Paradise, Jr., Director, Atlanta Region

DATE
10/14/09

TYPED NAME, TYPED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL



R. Steven Etheredge, Director, Pre-Award Services

DATE
10/20/09

EXHIBIT "A"

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

Public Works and Development Facilities
Amendment No. 1

Investment No.: 04-01-06063

Recipient: University of South Carolina, SC

The following amended award condition(s) is added:

AMENDED 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
Start of Construction.....24 Months from Date of Grant Award
Construction Period..... 24 Months

Project Closeout - All Project closeout documents including final financial information and any required program reports shall be submitted to the Government not more than 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 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 15 CFR 24.43 (53 Fed. Reg. 8048-9, 8102, March 11, 1988).

AMENDED SCOPE OF WORK

The new Horizon I Research Facility is a new 125,320 sq. ft. facility, and the current EDA proposal would assist in completing 14,000 to 16,000 sq. ft. of shell space. Twenty wet labs will be constructed on the first floor of this multi-story building. The facility is located on the Innovista campus of USC in Columbia, S.C.



March 19, 2010

HARRIS PASTIDES
PRESIDENT

Asa R. Williams, Civil Engineer/Project Manager
U.S. Department of Commerce
Economic Development Administration
Atlanta Regional Office
401 W. Peachtree St. N.W., Suite 1820
Atlanta, GA 30308-3510

Subject: EDA AWARD 04-01-06063
University of South Carolina Wet-Lab Facility (IdeaLabs)

Dear Mr. Williams,

Thank you for visiting with us on Tuesday, March 16, to discuss the status of the above referenced EDA Award to build a wet-lab facility in the new Horizon I building at the University of South Carolina (USC). Attached you will find the schedule for project completion, as well as a schematic of the floor plan. I believe that these two items have also been provided to you in pdf format via e-mail by our architects.

I understand that one project extension has already been requested by the university, indicating a construction start date of June 2010. As you can see from the attached schedule, due to the rigorous approval process and the limited number of times per year these boards meet, the current schedule indicates that construction cannot begin until November of this year. Please understand that Phase I (Planning/Design) of the project has been approved by all required parties - from the USC Buildings and Grounds Committee, the USC Board of Trustees, through the South Carolina Commission of Higher Education, the Joint Bond Review Committee, and the SC Budget and Control Board. Phase II (Construction) of the project has been approved by all university boards. The final approval meeting with the SC Budget and Control Board is scheduled for June 15, 2010.

March 19, 2010

Page two

Mr. Williams, you have, and understandably so, expressed concern at the current status of the project, as it indicates another four or five month delay in construction commencement. As I stated during our meeting, we have the funds fully committed and sequestered for this project, and fully expect the SC Budget and Control Board to give its approval during its June meeting. If we didn't have this expectation, we would not have requested to be on their agenda.

If this schedule is unacceptable to you, we are open to any other suggestion you might have that would allow us to begin construction in June, thus preventing our loss of the EDA award. Several ideas were discussed during your visit, and we are more than willing to work with you in pursuing these approaches as you deem necessary.

Please let us know how we might best work with you to insure the success of this project. Thank you again for your personal visit, and consideration of our needs.

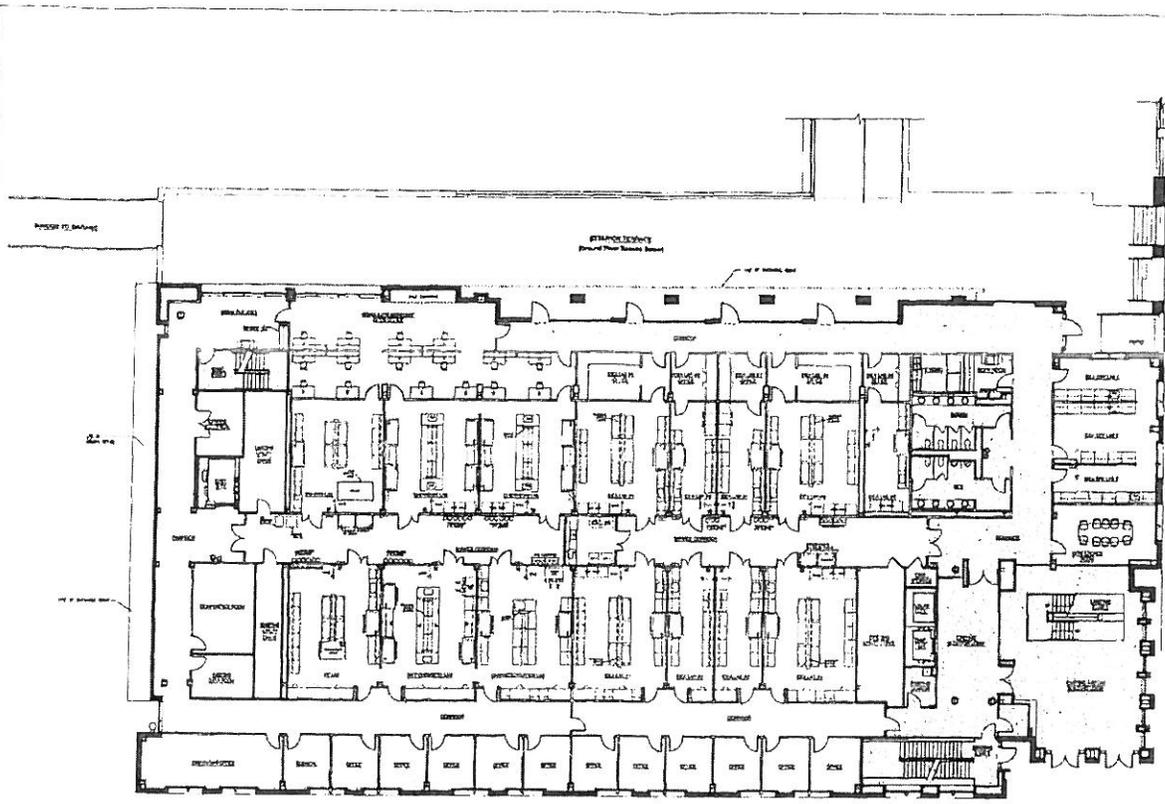
Sincerely,

A handwritten signature in cursive script that reads "Harris Pastides".

Harris Pastides

Enclosures

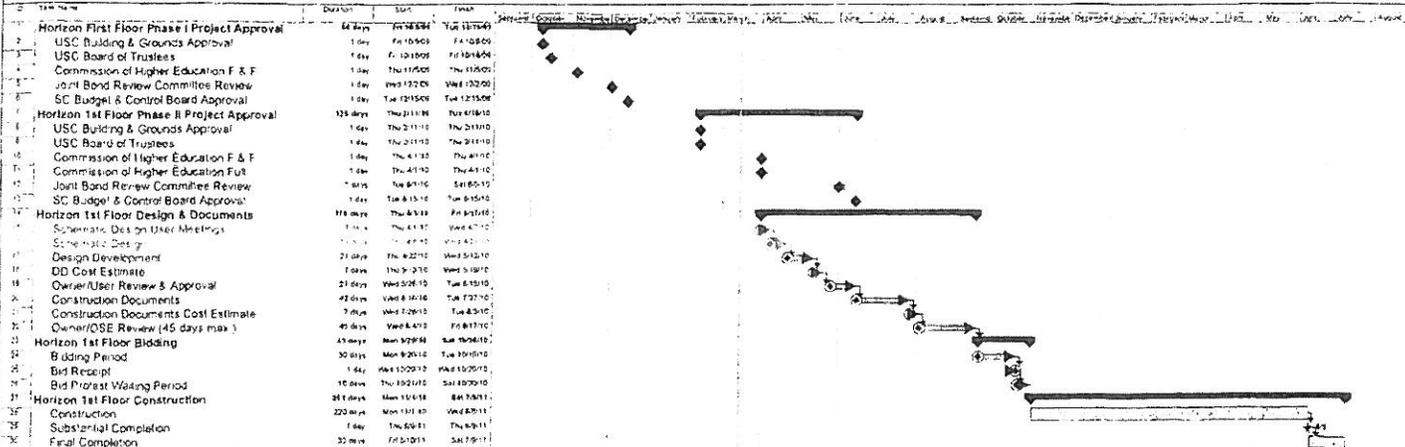
HP/pb



FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"



Horizon I First Floor Upfit Schedule



Project Summary: DSR Mon 3/15/01

Task Progress Summary Setup Up Critical Task Setup Up Milestone Setup Up Progress External Task Group By Summary
Critical Task Progress Summary Setup Up Critical Task Setup Up Milestone Setup Up Progress External Task Group By Summary
Rollup Task Rollup Milestone Rollup Progress Project Summary Deadline

Page 1



UNITED STATES DEPARTMENT OF COMMERCE
Economic Development Administration
Atlanta Regional Office
Suite 1820
401 West Peachtree St., N.W.
Atlanta, Georgia 30308-3510

April 8, 2010

In reply refer to:
EDA Investment No. 04-01-06063
University of South Carolina, SC

Mr. Harris Pastides
President
University of South Carolina
Osborne Administration Building, suite 202
Columbia, South Carolina 29208

Dear Mr. Pastides:

The Economic Development Administration (EDA) approves the action requested by the University of South Carolina to extend the Project Development Time Schedule of the technology incubator. This action was necessary because the Recipient has experienced various delays in the review process from the State of South Carolina.

Enclosed to Dr. Benicewicz are three signed copies of the AMENDMENT TO FINANCIAL ASSISTANCE AWARD. Your acceptance of the terms and conditions of the award should be indicated by your signature on all three signed copies. Two of the executed copies should be returned to the Director, C/O Asa Williams, Atlanta Regional Office, Economic Development Administration, 401 West Peachtree Street, N.W., Suite 1820, Atlanta, Georgia 30308-3510 no later than May 9, 2010.

Should you have any questions, please contact Asa R. Williams at 404-730-3821, or email awilliams3@eda.doc.gov.

Sincerely,

/s/ H. Philip Paradise, Jr.

H. Philip Paradise, Jr.
Director, Atlanta Region

Enclosures: Amendment to Financial Assistance Award (3)
Amendment "A" - Exhibit No. 1(3)

cc: Pamela K. Benicewicz, Ph.D.
Associate Vice President for Research
Osborne Administration Building, Suite 202
University of South Carolina
Columbia, South Carolina 29208



GRANT COOPERATIVE AGREEMENT

**AMENDMENT TO
FINANCIAL ASSISTANCE AWARD**

CFDA NO. AND PROJECT TITLE
11.300 Public Works Program / Technology incubator

AWARD NUMBER
04-01-06063

RECIPIENT NAME
University of South Carolina

AMENDMENT NUMBER
2

STREET ADDRESS
901 Sumter Street, 5th Floor

EFFECTIVE DATE
Date of Award Amendment Approval

CITY, STATE, ZIP CODE
Columbia, South Carolina 29208

EXTEND WORK COMPLETION TO
51 Months

BUREAU 20	FUND 40	FCFY 10	PROJECT-TASK 0406063-001	ORGANIZATION 04	OBJECT CLASS 4110
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COSTS ARE REVISED AS FOLLOWS:	PREVIOUS ESTIMATED COST	ADD	DEDUCT	TOTAL ESTIMATED COST
FEDERAL SHARE OF COST	\$0.00	\$0.00	\$0.00	\$0.00
RECIPIENT SHARE OF COST	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL ESTIMATED COST	\$0.00	\$0.00	\$0.00	\$0.00

REASON(S) FOR AMENDMENT

A no cost change in the Project Development Time Schedule.

This Amendment 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 Amendment provisions checked below and attached, as well as previous provisions incorporated into the Award. Upon acceptance by the Recipient, two signed Amendment 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 Amendment.

- Special Award Conditions (See attached Exhibit A)
 Line Item Budget
 Other(s) _____

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

H. Philip Paradise, Jr., Director, Atlanta Region

DATE

4/9/10

TYPED NAME, TYPED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

Harris Pastides, President, University of South Carolina

DATE

4/13/10

EXHIBIT "A"

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

Public Works and Development Facilities
Amendment No. 2

Investment No.: 04-01-06063

Recipient: University of South Carolina, SC

The following amended award condition(s) is added:

AMENDED 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
Start of Construction.....31 Months from Date of Grant Award
Construction Period..... 24 Months

Project Closeout - All Project closeout documents including final financial information and any required program reports shall be submitted to the Government not more than 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 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 15 CFR 24.43 (53 Fed. Reg. 8048-9, 8102, March 11, 1988).



Date: February 15, 2011

H. Philip Paradice, Jr., Director
U.S. Department of Commerce
Economic Development Administration
Atlanta Regional Office
401 West Peachtree Street, N.W., Suite 1820
Atlanta, Georgia 30308-3510

Office of the Vice President
for Research and Graduate Education

Re: EDA Award Number: 04-01-06063
Columbia, SC

Subject: **Request for Start of Construction Extension**

Dear Mr. Paradice:

Mr. Asa Williams of your office met with project representatives at the University of South Carolina (USC) on Thursday, January 27th to discuss the status of the above referenced EDA award, the purpose of which is to build a wet-lab facility in the new Horizon I building at USC. As he indicated during this meeting, our grant from the EDA is now at risk because project construction did not begin on or before 1/11/11 per the terms of the contract. However, as we indicated during the meeting, we had met all of the EDA requirements needed to begin construction by this date. We announced a bid award in early December. Unfortunately, as we notified Mr. Williams on Dec. 16th, USC received a bid award protest. A meeting was immediately scheduled with the State Engineer and a hearing held on January 27th. The State Engineer promised a written decision by February 14th. On February 14th, the State Engineer dismissed the protest. We are therefore requesting an extension of the construction start date so that we may continue with the project. We fully realize that construction must begin before June 11, 2011 or the grant will be forfeited.

Mr. Paradice, we are fully committed to completion of this project, as it represents a significant piece of our university's economic development strategy. As you know, an economy that is based on the innovations and inventions that come from our higher educational institutions is often referred to as a "knowledge-based economy". The argument goes, as the federal government spends millions of dollars on basic scientific research in universities, new jobs will be created by the inventions that result from this research, thereby promoting state and regional economic development from the nearby universities. The difficulty is that, traditionally, the translation of scientific discoveries into marketable products has been non-existent (the research remains in the labs) or excessively slow. At USC we are trying to create a faster path from the lab to the market. One approach we are taking is to build wet-lab space in a building (Horizon I) that is devoted to the research efforts of CoEE endowed chairs. CoEEs, or Centers of Economic Excellence, were established by the SC legislature in 2002 (please see <http://www.sccoee.org/>). Thirty million dollars a year has been allocated to the three major research institutions of the state, portions of which when matched by a non-state source (typically an industry or

H. Philip Paradice, Jr., Director

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February 15, 2011

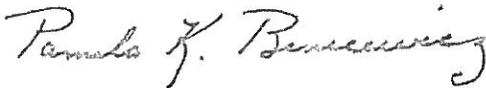
private investor), are used to establish an endowment which supports a CoEE. These endowments are typically between \$4 and \$10 million dollars. A world-renowned scientist or engineer from outside the state is then recruited to run the center. In Horizon I alone there are currently three endowed chairs (one for the Solid Oxide Fuel Cell CoEE, one for the Polymer Nanocomposite CoEE, and one for the Generation of Clean Electricity CoEE). Plans for housing at least three or four more CoEE endowed chairs in this building are moving forward (recruitments are underway). The wet-lab space being funded by the EDA grant will be housed in this building. This will provide nearby, economical space for the researchers to locate startup businesses requiring wet-lab space that they may be associated with, or a place for close collaborations with industrial partners where wet-lab space is required. No such space currently exists in Columbia.

It is clear that to spur innovation and ultimately create jobs universities must make it easy for scientists and engineers to build businesses that can take their breakthroughs in the lab to the market. A bridge must be built between the researchers and entrepreneurs and/or business-savvy people. At the University of South Carolina, we are exploring and implementing new ways to accomplish this. It is evident that if the means by which technology is commercialized can be improved, new science-related jobs will be created, and not just for holders of doctoral degrees. Many of the jobs will in fact go to the employees of science-based startup companies. USC has been awarded two additional grants, one from the EDA for the "Innovista Innovation Center" and one from the SBA for the "Innovista Center for Entrepreneurial Development". These are being utilized to help bridge the gap between the researchers and entrepreneurs, to create a one-stop shop to provide education and services for our researchers to learn about technology commercialization, and a place for entrepreneurs to find technology that they might wish to advance.

Clearly the University of South Carolina fully supports the commercialization of its technology by nurturing science and engineering startups and collaborations with industrial partners and entrepreneurs. Our Research park, Innovista, provides the physical place and the vision of what we are trying to achieve. It is grants such as those provided by the EDA that are crucial to helping us achieve our goals. We hope that you will view our request favorably.

Should you require additional information please contact me at (803) 777-5455.

Sincerely,



Pamela K. Benicewicz, Ph.D.

Associate Vice President, Research & Graduate Education

PB/sp

GRANT COOPERATIVE AGREEMENT

**AMENDMENT TO
FINANCIAL ASSISTANCE AWARD**

CFDA NO. AND PROJECT TITLE
11.300 Public Works Program / Technology incubator

AWARD NUMBER
04-01-06063

RECIPIENT NAME
University of South Carolina

AMENDMENT NUMBER
3

STREET ADDRESS
901 Sumter Street, 5th Floor

EFFECTIVE DATE
Date of Award Amendment Approval

CITY, STATE, ZIP CODE
Columbia, South Carolina 29208

EXTEND WORK COMPLETION TO
58 Months

BUREAU	FUND	FCFY	PROJECT-TASK	ORGANIZATION	OBJECT CLASS
20	40	10	0406063-001	04	4110

COSTS ARE REVISED AS FOLLOWS:	PREVIOUS ESTIMATED COST	ADD	DEDUCT	TOTAL ESTIMATED COST
FEDERAL SHARE OF COST	\$0.00	\$0.00	\$0.00	\$0.00
RECIPIENT SHARE OF COST	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL ESTIMATED COST	\$0.00	\$0.00	\$0.00	\$0.00

FEDERAL SHARE OF COST

\$0.00

\$0.00

\$0.00

\$0.00

RECIPIENT SHARE OF COST

\$0.00

\$0.00

\$0.00

\$0.00

TOTAL ESTIMATED COST

\$0.00

\$0.00

\$0.00

\$0.00

REASON(S) FOR AMENDMENT

A no cost change in the Project Development Time Schedule.

This Amendment 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 Amendment provisions checked below and attached, as well as previous provisions incorporated into the Award. Upon acceptance by the Recipient, two signed Amendment 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 Amendment.

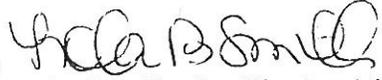
Special Award Conditions (See attached Exhibit A)

Line Item Budget

Other(s) _____

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

DATE


H. Philip Paradise, Jr., Director, Atlanta Region

2-18-11

TYPED NAME, TYPED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

DATE


Harris Pastides, President, University of South Carolina

2/21/11

EXHIBIT "A"

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

Public Works and Development Facilities
Amendment No. 3

Investment No.: 04-01-06063

Recipient: University of South Carolina, SC

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