

PINELLAS COUNTY GOVERNMENT IS COMMITTED TO PROGRESSIVE PUBLIC POLICY, SUPERIOR PUBLIC SERVICE, COURTEOUS PUBLIC CONTACT, JUDICIOUS EXERCISE OF AUTHORITY AND SOUND MANAGEMENT OF PUBLIC RESOURCES, TO MEET THE NEEDS AND CONCERNS OF OUR CITIZENS TODAY AND TOMORROW.



NON-CONTINUING PROFESSIONAL SERVICES AGREEMENT

RFP TITLE: Tampa Bay Innovation Center Incubator – Professional Architectural Services

RFP CONTRACT NO. 190-0140-NC (SS)

NON-CONTINUING FIRM: Beck Architecture, LLC

PROFESSIONAL ENGINEERING SERVICES NON-CONTINUING SERVICES SAMPLE AGREEMENT

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**SECTION 1
INTENT OF AGREEMENT**

**AGREEMENT FOR PROFESSIONAL ARCHITECTURAL SERVICES FOR
Tampa Bay Innovation Center Incubator – Professional Architectural Services**

THIS AGREEMENT, entered into on the ____ day of ____, 2020, between PINELLAS COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the COUNTY, represented by its Board of County Commissioners, and, Beck Architecture, LLC, with offices in Tampa, Florida hereinafter referred to as the CONSULTANT.

WITNESSETH, That:

WHEREAS, Pinellas County, herein referred to as the COUNTY, requires **PROFESSIONAL ARCHITECTURAL SERVICES** associated with support to develop plans and specifications and perform all other professional architectural services as may be required during the construction of *The Tampa Bay Innovation Center, that will be constructed on a vacant 2.5-acre MOL parcel located at the southwest corner of 11th Avenue South and 4th Street South in Pinellas County, Florida. The purpose of this project is to construct a two-story 45,000 sq. ft. facility to house the Tampa Bay Innovation Center business incubator. The facility will include approximately 30,000 sq. ft. of client space, plus co-working/collaboration space, offices, and a conference/community room. Parking will be under a portion of the building and also at the rear of the facility;*

WHEREAS, this project is partially funded with federal funds, and the CONSULTANT specifically covenants that it will provide design services on behalf of the COUNTY that comply with the United States Department of Commerce Economic Development Administration's ("EDA") "Summary of Construction Standards," "EDA Contracting Provisions for Construction Projects," and all applicable EDA grant requirements;

WHEREAS, the COUNTY desires the CONSULTANT provide **PROFESSIONAL ARCHITECTURAL SERVICES** requisite to the development of the PROJECT; and

WHEREAS, the CONSULTANT has expressed the willingness and ability to provide the aforementioned Services; and

NOW THEREFORE, the COUNTY and the CONSULTANT, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 2 SCOPE OF PROJECT

2.1 PROJECT DESCRIPTION AND PROFESSIONAL REQUIREMENTS

For the purposes of this Agreement the term PROJECT shall include all areas of proposed improvements, all areas that may reasonably be judged to have an impact on the PROJECT, and all PROJECT development phases and the services and activities attendant thereto. It is not the intent of this Agreement to identify the exact limits or details involved in providing satisfactorily completed PROJECT construction documents. The CONSULTANT shall provide the following professional services to prepare construction plans, specifications, and complete applications for and receive all federal, state, and local permits required for construction of the PROJECT. The PROJECT design shall be based on the following data:

All required permits shall be obtained by the CONSULTANT. Plans shall be prepared in accordance with AutoCad Pinellas County Requirements. Exhibit A, Scope of Services is attached. The Summary of Construction Standards, EDA Contracting Provisions for Construction Projects, and the grant requirements ("Grant Document Design Contract Requirements") are also attached hereto as composite Exhibit C.

a) Required Deliverables

- AutoCad file or Revit file (eTransmit) of construction plans and for each transmittal phase. The plans shall be provided electronically, plus two (2) paper prints signed and sealed by a Licensed Professional Architect and/or Professional Engineer certified in the State of Florida.
- All technical specifications required for construction of project.
- Any and all other applicable requirements as set forth in the Grant Document Design Contract Requirements.

2.2 PROJECT PHASES

Time is of the essence. All project phases shall be completed on or before the milestone dates provided in the COUNTY approved PROJECT design schedule referenced in Exhibit A, but in no event later than the timeframes set forth in the Grant Document Design Contract Requirements.

2.3 CONSULTING RESPONSIBILITIES

- A. It is the intention of the COUNTY that the CONSULTANT is held accountable for its work, including checking and review of plans, and that submittals are complete.
- B. The CONSULTANT shall be responsible for the accuracy of the work and shall promptly correct its errors and omissions without additional compensation. Acceptance of the work by the COUNTY will not relieve the CONSULTANT of the responsibility for subsequent correction of any errors and the clarification of any ambiguities.
- C. The CONSULTANT represents that it has secured or will secure, at its own expense, all personnel necessary to complete this Agreement; none of whom shall be employees of or have any contractual relationship with the COUNTY. Primary liaison with the COUNTY will be through the CONSULTANT'S Project Manager. All of the services required hereunder will be performed by the CONSULTANT or under the CONSULTANT'S supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.
- D. The CONSULTANT shall endorse all reports, calculations, contract plans, and survey data. Services shall be prepared under the direction of an architect registered in the State of Florida and qualified in the required discipline. Products or services performed or checked shall be signed and sealed by the CONSULTANT'S Florida registered architect and/or engineer.

- E. The CONSULTANT shall be responsible for the preparation of a PROJECT design schedule, which shows a breakdown of all tasks to be performed, and their relationship in achieving the completion of each phase of work. A bar chart schedule showing overall PROJECT time frames should also be prepared. These schedules must be submitted for COUNTY approval within ten (10) days of the initial PROJECT Notice to Proceed. These schedules will be used to verify CONSULTANT performance in relationship to Fees claimed and to allow the COUNTY'S Project Manager to monitor the CONSULTANT'S efforts. The CONSULTANT shall be responsible for any updates to these schedules and for documenting in writing to the COUNTY any major deviations in the actual versus estimated PROJECT time frames.
- F. The CONSULTANT shall respond, in writing, to all review comments made by the COUNTY, and shall incorporate appropriate design adjustments into the PROJECT, in a timely manner, resulting from the review exchange.

2.4 GENERAL DESIGN CONDITIONS

2.4.1 The CONSULTANT shall coordinate and solicit appropriate input, with the knowledge of the COUNTY.

2.4.2 All design data, plans, and drawings shall be delivered electronically formatted to .DXF or .DWG utilizing Autodesk AutoCad software version 2016 or later or Autodesk Revit Software Version 2016 or later in addition to a full set of documents in Adobe pdf format; as well as providing reproducible hard copies of plans and drawings. All specification and other documents shall be delivered electronically in Adobe pdf format, as well as the reproducible hard copies.

2.4.3 One (1) original and one (1) copy of all deliverables are required unless specific submittal requirements are specified elsewhere in this Agreement.

2.4.4 The CONSULTANT shall develop acceptable alternates to any and all design recommendations that may be declared unacceptable.

2.4.5. This CONSULTANT will ensure that all design deliverables are in compliance with the Grant Document Design Contract Requirements and 2 C.F.R. § 200, *et seq.*

2.5 GOVERNING SPECIFICATIONS REGULATIONS AND PERTINENT DOCUMENTS

The PROJECT shall be designed by the CONSULTANT in accordance with applicable industry standards. The CONSULTANT shall be responsible for utilizing and maintaining current knowledge of any laws, ordinances, codes, rules, regulations, standards, guidelines, special conditions, specifications, the Grant Document Design Contract Requirements, or other mandates relevant to the PROJECT or the services to be performed.

SECTION 3 SERVICES TO BE FURNISHED BY THE CONSULTANT

3.1 SEE EXHIBIT A – SCOPE OF SERVICES.

3.2 BIDDING PHASE

The CONSULTANT shall prepare with the COUNTY'S assistance the necessary bidding information, bidding forms, the conditions of the contract, and the form of agreement between the COUNTY and the Contractor. The CONSULTANT also, shall bear the cost of two (2) complete sets of documents (plans and specifications), two (2) of which shall be signed and sealed by the CONSULTANT as original record sets for the PROJECT. Each sheet in the two (2) construction plans print sets shall be signed, sealed and dated. The title sheet only of the two (2) specifications sets shall be signed, sealed, and dated. Additionally, any required addenda shall be signed, sealed, and dated.

3.2.1 The CONSULTANT, following the COUNTY'S review of the Construction Documents and of the latest Statement of Probable Construction Cost, shall be available to assist the COUNTY in obtaining bids, and in preparing and awarding construction contracts for each bid package. The CONSULTANT shall assist conducting pre-bid conferences, and shall prepare a Bid Tabulation spreadsheet following receipt of bids.

3.2.2 If the Advertisement for bids has not commenced within sixty (60) days after the CONSULTANT submits the approved Construction Documents to the COUNTY, any fixed limit of Construction Cost established as a condition of this Agreement shall be adjusted to reflect any change in the general level of prices which may have occurred during that period of time in construction industry. The adjustment shall reflect changes between the date of submission of the Construction Documents to the COUNTY and the date on which the Advertisement for Bids occurred.

3.2.3 The CONSULTANT shall prepare any required addenda to construction plans and specifications on the PROJECT during the bidding phase affecting the CONSULTANT'S plans and specifications. The CONSULTANT shall also provide any addenda during the Construction Phase in sufficient quantity to distribute to all necessary parties as determined by the COUNTY. Addenda material shall be placed in envelopes by the CONSULTANT for mailing by the COUNTY. The CONSULTANT shall also furnish certified mail receipt material and prepare mailing labels. The COUNTY shall mail all addenda.

3.3 CONSTRUCTION PHASE

All contact and/or communication from the CONSULTANT to the Contractor shall be coordinated through the COUNTY's Project Manager.

A. Construction Consultation Services

1. Processing, review, approval and distribution of shop drawings, product data, samples and other submittals required by the Contract Documents.
2. Maintenance of master file of submittals with duplicate for COUNTY.
3. Construction Field Observation Services consisting of visits to the site as frequent as necessary, but not less than once every week, to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Contract Documents and prepare related reports and communications. Provide written report of each visit. This field observation requirement shall include any sub-consultants at appropriate construction points.
4. Review for comment or approval any and all proposal requests, supplemental drawings and information and change orders.
5. Review for correctness Contractors pay requests for the COUNTY.
6. Prepare, reproduce and distribute supplemental drawings, specifications and interpretations in response to requests for clarification by the Contractor or the COUNTY as required by construction exigencies. Response to any request must be received by the COUNTY within twenty-four (24) hours of request, or the next available working day when the request is prior to a weekend or holiday.
7. Review, upon notice by the Contractor that work is ready for final inspection and acceptance.
8. Notify the COUNTY of any deficiencies found in follow-up reviews.
9. Evaluate all testing results and make recommendations to the COUNTY.

10. Assist in the establishment by the COUNTY of programs of operation and maintenance of the physical plant and equipment.
11. Arrange for and coordinate instructions on operations and maintenance of equipment in conjunction with manufacturer's representatives.
12. Review operation and maintenance manuals prepared by COUNTY'S Contractor.
13. The CONSULTANT shall visit the project as necessary, but at a minimum of three (3) month, six (6) month and upon construction completion in order to certify that the permit conditions have been met satisfactorily. This shall not relieve the CONSULTANT of other needed visits to the project should specific issues arise.
14. Assistance in the training of the facility operation and maintenance personnel in proper operations, schedules, procedures and maintenance inventory.
15. Prepare record drawings, based on information furnished by the Contractors including significant changes in the work made during construction. The CONSULTANT will provide one (1) set of signed and sealed prints and one (1) CADD disk of the record construction documents.
16. Transmit certified record drawings and general data, appropriately identified, to the COUNTY within thirty (30) days following completion of construction.
17. Consult with, and recommend solutions to, the COUNTY during the duration of warranties in connection with inadequate performance of materials, systems, and equipment under warranty.
18. Review facilities or equipment prior to expiration of warranty period(s) to ascertain adequacy of performance, materials, systems and equipment.
19. Document noted defects or deficiencies and assist the COUNTY in preparing instructions to the Contractor for correction of noted defects.
20. The Contractor shall provide the CONSULTANT with all the required project close out material for CONSULTANT'S use in the warranty period services.
21. The Contractor shall have prime responsibility in the warranty period for all services herein. The CONSULTANT shall assist, consult, observe review and document as noted.

3.4 PROVISIONS RELATED TO ALL PHASES

3.4.1 The CONSULTANT will investigate and confirm in writing to the COUNTY, to the best of the CONSULTANT'S knowledge, conformance with all applicable local public and utility regulations.

3.4.2 The CONSULTANT will coordinate work designed by various disciplines.

3.4.3 The CONSULTANT shall submit to the COUNTY design notes and computations to document the design conclusions reached during the development of the construction plans.

- a. Five (5) copies of the design notes and computations shall be submitted to the COUNTY with the design development review plans. When the plans are submitted for final review, the design notes and computations corrected for any COUNTY comments shall be resubmitted. At the PROJECT completion, a final set of the design notes and computations, properly endorsed by the CONSULTANT, shall be submitted with the record set of plans and tracings.
- b. The design notes and calculations shall include, but not be limited to, the following data:
 - 1) Design criteria used for the PROJECT.
 - 2) Roadway geometric calculations
 - 3) Structural calculations.
 - 4) Drainage calculations.
 - 5) Traffic design calculations
 - 6) Traffic control calculations
 - 7) Calculations as required by provisions of the Florida Energy Conservation Manual (Department of General Services), latest revision.
 - 8) Calculations showing probable cost comparisons of various alternatives considered.
 - 9) Documentation of decisions reached resulting from meetings, telephone conversations or site visits.
 - 10) Other PROJECT-related correspondences as appropriate.

3.4.4 Each set of plans for the PROJECT shall be accurate, legible, complete in design, suitable for bidding purposes and drawn to scales acceptable to the COUNTY. The completed plans shall be furnished on reproducible material and in a format, which is acceptable to the COUNTY.

3.4.5 The CONSULTANT shall make such reviews, visits, attend such meetings and conferences and make such contacts as are necessary for the proper preparation of plans and specifications for the PROJECT.

3.4.6 The COUNTY in no way obligates itself to check the CONSULTANT'S work and further is not responsible for maintaining project schedules.

3.4.7 Other CONSULTANT responsibilities shall be as listed below:

- a. Provide necessary sealed drawings to obtain building permits or any utility permit.
- b. Assist the COUNTY in Contractor claims and/or litigation.
- c. Review the Adequacy and completeness of documents submitted by the Contractor to protect the COUNTY against claims by suppliers or third parties.
- d. Ensure compliance with the Grant Document Design Contract Requirements, all EDA grant requirements, and federal laws applicable to design professionals.

3.4.8 The CONSULTANT must be familiar with the intent, thoroughness, safety factors and design assumptions of all structural calculations.

3.4.9 All work prepared and/or submitted shall be reviewed and checked by a CONSULTANT (Architect/Engineer) registered in Florida. All plans shall be signed and sealed by the Professional CONSULTANT in responsible charge.

3.5 PERMIT APPLICATIONS AND APPROVALS

3.5.1 The CONSULTANT shall prepare all permit applications, data and drawings required for submittal BY THE COUNTY for approval of local, state and federal agencies.

3.5.2 The CONSULTANT shall, at no additional cost to the COUNTY, make all reasonable and necessary construction plans revisions required to obtain the necessary permit approvals for construction of the PROJECT.

3.5.3 For the purpose of ensuring the timely approval of all permits necessary for the construction of the PROJECT, the CONSULTANT shall schedule the necessary contacts and liaison with all agencies having permit jurisdiction over the PROJECT, and shall furnish, on a timely basis, such plans, data and information as may be necessary to secure approval of the required permits.

3.6 COORDINATION WITH UTILITY SERVICES AND AFFECTED PUBLIC AGENCIES

3.6.1 The requirements of the various utility services shall be recognized and properly coordinated with the PROJECT design.

3.6.2 Drainage investigations and drainage design shall be coordinated with any city or drainage district that may be affected by or have an effect on the PROJECT.

SECTION 4 SERVICES TO BE FURNISHED BY THE COUNTY

4.1 The COUNTY shall provide the following for the CONSULTANT'S use and guidance:

- A. Copies of existing maps, existing aerial photographs, as-built construction plans and data pertinent to the PROJECT design, which the COUNTY may have in its possession.
- B. Reproducibles of the COUNTY Engineering Department Standard Drawings applicable to the PROJECT.
- C. Sample copies of the COUNTY standard contract documents and specifications.

SECTION 5 PRESENTATIONS, PUBLIC MEETINGS AND TECHNICAL LIAISON

The following services shall be provided at no additional cost to the COUNTY:

5.1 Prior to the commencement of design activities, the COUNTY will conduct with the CONSULTANT a pre-design conference for the purpose of discussing issues relative to the PROJECT, plans preparation and submittal procedures and to convey to the CONSULTANT such items provided for under Section 4 as may be required and available at that time.

5.2 The CONSULTANT shall make presentations to the COUNTY'S Director of Administrative Services or designee or the public as often as reasonably requested and at any point in the PROJECT development should issues arise which make additional presentations other than those listed elsewhere in this Agreement, in the COUNTY'S best interest.

5.3 The CONSULTANT shall participate in Monthly PROJECT Conferences with COUNTY staff personnel. The meetings will be scheduled by the COUNTY at a location provided by the COUNTY.

5.4 The CONSULTANT shall attend, as technical advisor to the COUNTY all meetings or hearings conducted by permitting agencies or public bodies in connection with any permit required for the construction of the PROJECT, and shall prepare all presentation aids, documents and data required in connection with such meetings or hearings, and at the discretion of the COUNTY, shall either plead the COUNTY'S case or provide engineering and technical assistance to the COUNTY in its pleading of the case.

5.5 The CONSULTANT shall keep accurate minutes of all meetings and distribute copies to all attending. These meetings shall be set up through the COUNTY and appropriate COUNTY staff shall attend.

**SECTION 6
PAYMENT GUIDELINES AND CATEGORY OF SERVICES**

6.1 BASIC SERVICES

The services described and provided for under Sections 2, 3 and Exhibit A shall constitute the Basic Services to be performed by the CONSULTANT under this Agreement.

6.2 OPTIONAL SERVICES

Services noted in Exhibit A of this Agreement as "Optional" shall constitute the Optional Services to be performed by the CONSULTANT under this Agreement. Optional Services shall be rendered by the CONSULTANT only upon written authorization by the COUNTY's Director of the Administrative Services, or designee.

6.3 CONTINGENCY SERVICES

When authorized in writing by the COUNTY'S Director of Administrative Services or designee, the CONSULTANT shall furnish services resulting from unforeseen circumstances not anticipated under Basic Services due to minor changes in the PROJECT scope.

Compensation for any Contingency Services assignments shall be negotiated between the COUNTY and the CONSULTANT.

6.4 ADDITIONAL SERVICES

When executed by the County Administrator or Board of County Commissioners as an amendment to this Agreement, the CONSULTANT shall provide such additional services as may become necessary because of changes in the Scope of PROJECT. Additional Services shall be classified as any change beyond the Contingency Services upset limit for compensation.

6.5 INVOICING

The CONSULTANT may submit invoices for fees earned on a monthly basis. Such invoicing shall be supported by a Progress Report showing the actual tasks performed and their relationship to the percentage of fee claimed for each phase. Billings within each phase of work shall be for the percentage of work effort completed to date for that phase. The COUNTY shall make payments to the CONSULTANT for work performed in accordance with the Local Government Prompt Payment Act, Section 218.70 *et. seq.*, F.S.

The following services shall be considered reimbursable services, but all only upon prior written approval by the County, and may be filled in full upon their completion and acceptance. Before any reimbursement can be issued, the CONSULTANT must provide copies of supporting receipts/invoices/billing documentation. Self-performed reimbursable work shall be reimbursed at the firm's standard hourly rates for all related services. A breakdown of man hours and billing rates shall be provided with each invoice. An hourly rate sheet is attached (Exhibit B).

- A. Soil Analysis/Geotechnical Investigations (if required).
- B. Contamination Assessments/Hazardous Material Analysis (if required).
- C. Aerial Photography (if required).
- D. Payment of Permit Fees (if required).
- E. Payment of the Public Information Meeting Advertisements (if required).
- F. Payment of the Court Reporter for public meetings (if required).
- G. Printing and Binding Services (if required).

Should an invoiced amount for fees earned appear to exceed the work effort believed to be completed, the COUNTY may, prior to processing of the invoice for payment, require the CONSULTANT to submit satisfactory evidence to support the invoice.

All progress reports shall be mailed to the attention of the designated Project Manager, Tim Lewallen, 509 East Avenue South, Clearwater, FL 33756.

SUPPLIER shall submit invoices for payment due as provided herein with such documentation as required by Pinellas County and all payments shall be made in accordance with the requirements of Section 218.70 *et. seq.*, Florida Statutes, "The Local Government Prompt Payment Act." Invoices shall be submitted to the address below unless instructed otherwise on the purchase order, or if no purchase order, by the ordering department:

Finance Division Accounts Payable
Pinellas County Board of County Commissioners
P. O. Box 2438
Clearwater, FL 33757

Each invoice shall include, at a minimum, the Supplier's name, contact information and the standard purchase order number. The County may dispute any payments invoiced by SUPPLIER in accordance with the County's Dispute Resolution Process for Invoiced Payments, established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.

Fees for contingent or additional services authorized shall be invoiced separately, and shall be due and payable in full upon the presentation of satisfactory evidence that the corresponding services have been performed.

SECTION 7 COMPENSATION TO THE CONSULTANT

7.1 For the BASIC SERVICES provided for in this Agreement, as defined in Section 3, the COUNTY agrees to pay the CONSULTANT as follows:

- A Lump Sum Fee of: Two Hundred Thirty-Two Thousand Seven Hundred Ninety-Two and 00/100 Dollars (\$232,792.00) for Task 1 – Conceptual/SD Design.
- A Lump Sum Fee of: Three Hundred Thousand Seventy and 00/100 Dollars (\$300,070.00) for Task 2 – Design Development.
- A Lump Sum Fee of: Three Hundred Thirty-Eight Thousand Two Hundred Sixty-One and 00/100 Dollars (\$338,261.00) for Task 3 – Construction Documents.
- A Lump Sum Fee of: Thirty-Four Thousand Three Hundred Seventy-Four and 00/100 Dollars (\$34,374.00) for Task 4 – Bidding and Negotiation.
- A Lump Sum Fee of: One Hundred Sixty-Six Thousand Three Hundred Nineteen and 00/100 Dollars (\$166,319.00) for Task 5 – Construction Administration.

The above fees shall constitute the total not to exceed amount of One Million Seventy- One Thousand Eight Hundred Sixteen and 00/100 Dollars (**\$1,071,816.00**) to the CONSULTANT for the performance of Basic Services. All man hours are billed per the established and agreed hourly rates. The hourly rates are fully loaded and include all labor, overhead, expenses and profit of any nature including travel within the Tampa Bay Metropolitan Statistical area. Travel outside of the Tampa Bay Metropolitan Statistical Area will be reimbursed in accordance with Section 112.061 F.S. and/or the County Travel Policy, as approved by the County.

7.2 Total agreement not-to-exceed: One Million Seventy-One Thousand Eight Hundred Sixteen and 00/100 Dollars (**\$1,071,816.00**).

7.3 For any ADDITIONAL SERVICES, the COUNTY agrees to pay the CONSULTANT a negotiated total fee based on the work to be performed as detailed by a written amendment to this Agreement.

7.4 In the event that this Agreement is terminated under the provisions of this contract the total and complete compensation due the CONSULTANT shall be as established by the COUNTY based on the COUNTY'S determination of the percentage of work effort completed to date of termination.

SECTION 8 PERFORMANCE SCHEDULE

Time is of the essence in this Agreement. The CONSULTANT shall plan and execute the performance of all services provided for in this Agreement in such manner as to ensure their proper and timely completion in accordance with the following schedule:

8.1 The services to be rendered by the CONSULTANT shall be commenced upon receipt from the COUNTY of written "NOTICE TO PROCEED."

8.2 All project phases shall be completed on or before the milestone dates provided in the COUNTY approved PROJECT design schedule referenced in 2.3 E.

8.3 The CONSULTANT shall not be held responsible for delays in the completion of the PROJECT design when the COUNTY causes such delays. The COUNTY reviews related to the above submittals shall not exceed twenty-one (21) days.

SECTION 9 AUTHORIZATION FOR CONTINGENT OR ADDITIONAL SERVICES

9.1 The CONTINGENCY services provided for under this Agreement shall be performed only upon prior written authorization from the Director of Administrative Services or designee.

9.2 The ADDITIONAL services provided for under this Agreement shall be performed only upon approval of the County Administrator or Board of County Commissioners.

9.3 The CONSULTANT shall perform no services contemplated to merit compensation beyond that provided for in this Agreement unless such services, and compensation therefore, shall be provided for by appropriate written authorization or amendment(s) to this Agreement.

SECTION 10 FIRMS AND INDIVIDUALS PROVIDING SUBCONSULTING SERVICES

The COUNTY reserves the right to review the qualifications of any and all subconsultants, and to reject any subconsultant in a proper and timely manner, deemed not qualified to perform the services for which it shall have been engaged. Any subconsultant not listed as part of the prime consultants team at time of award must be approved by the Director of Purchasing prior to performing any service.

SECTION 11 SATISFACTORY PERFORMANCE

All services to be provided by the CONSULTANT under the provisions of this Agreement, including services to be provided by subconsultants, shall be performed to the reasonable satisfaction of the COUNTY'S Department of Administrative Services or designee.

SECTION 12 RESOLUTION OF DISAGREEMENTS

12.1 The COUNTY shall reasonably decide all questions and disputes, of any nature whatsoever, that may arise in the execution and fulfillment of the services provided for under this Agreement.

12.2 The decision of the COUNTY upon all claims, questions, disputes and conflicts shall be final and conclusive, and shall be binding upon all parties to this Agreement, subject to judicial review.

SECTION 13 CONSULTANT'S ACCOUNTING RECORDS

13.1 Records of expenses pertaining to all services performed shall be kept in accordance with generally accepted accounting principles and procedures.

13.2 The CONSULTANT'S records shall be open to inspection and subject to examination, audit, and/or reproduction during normal working hours by the COUNTY'S agent or authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by the CONSULTANT or any of his payees pursuant to the execution of the Agreement. These records shall include, but not be limited to, accounting records, written policies and procedures, subconsultant files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this Agreement. They shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. The COUNTY shall not audit payroll and expense records on task assignments paid by lump sum fee.

13.3 For the purpose of such audits, inspections, examinations and evaluations, the COUNTY'S agent or authorized representative shall have access to said records from the effective date of the Agreement, for the duration of work, and until five (5) years after the date of final payment by the COUNTY to the CONSULTANT pursuant to this Agreement.

13.4 The COUNTY'S agent or authorized representative shall have access to the CONSULTANT'S facilities and all necessary records in order to conduct audits in compliance with this Section. The COUNTY'S agent or authorized representative shall give the CONSULTANT reasonable advance notice of intended inspections, examinations, and/or audits.

SECTION 14 OWNERSHIP OF PROJECT DOCUMENTS

Upon completion or termination of this Agreement, all records, documents, tracings, plans, financial payments and records, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by the CONSULTANT under this Agreement shall be delivered to and become the property of the COUNTY. The CONSULTANT, at its own expense, may retain copies for its files and internal use. The COUNTY shall not reuse any design plans or specifications to construct another project at the same or a different location without the CONSULTANT'S specific written verification, adaptation or approval.

SECTION 15 INSURANCE COVERAGE AND INDEMNIFICATION

15.1 The CONSULTANT must maintain insurance in at least the amounts required in the Request for Proposal throughout the term of this contract. The CONSULTANT must provide a Certificate of Insurance in accordance with Insurance Requirements of the Request for Proposal, evidencing such coverage prior to issuance of a purchase order or commencement of any work under this Contract. See Section C Insurance Requirements – Attached.

15.2 If the CONSULTANT is an individual or entity licensed by the state of Florida who holds a current certificate of registration under Chapter 481, Florida Statutes, to practice architecture or landscape architecture, under Chapter 472, Florida Statutes, to practice land surveying and mapping, or under Chapter 471, Florida Statutes, to practice engineering, and who enters into a written agreement with the COUNTY relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction, improvement, alteration, repair, maintenance, operation, management, relocation, demolition, excavation, or other facility, land, air, water, or utility development or improvement, the CONSULTANT will indemnify and hold harmless the COUNTY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement.

SECTION 16
EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

Unless CONSULTANT is exempt from Executive Order 11246, as amended, during the performance of this contract, the CONSULTANT agrees as follows:

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The CONSULTANT will, in all solicitations or advancements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT's legal duty to furnish information.
4. The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the CONSULTANT's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The CONSULTANT will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The CONSULTANT will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the CONSULTANT's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The CONSULTANT will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

In the event that CONSULTANT is exempt from the provisions of Executive Order 11246, as amended, in carrying out the contract, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, or national origin.

**SECTION 17
INDEPENDENT CONTRACTOR STATUS AND COMPLIANCE WITH THE
IMMIGRATION REFORM AND CONTROL ACT OF 1986**

CONSULTANT acknowledges that it is functioning as an independent Consultant in performing under the terms of this Agreement, and it is not acting as an employee of COUNTY. CONSULTANT acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. Section 1324, et seq., and regulations relating thereto. Failure to comply with the above provisions of this contract shall be considered a material breach and shall be grounds for immediate termination of the contract.

**SECTION 18
PROHIBITION AGAINST CONTINGENT FEE**

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement.

**SECTION 19
TRUTH IN NEGOTIATIONS**

By execution of this Agreement, the CONSULTANT certifies to truth-in-negotiations and that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Further, the original contract amount and any additions thereto shall be adjusted to exclude any significant sums where the COUNTY determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Such adjustments must be made within one (1) year following the end of the contract.

**SECTION 20
SUCCESSORS AND ASSIGNS**

The CONSULTANT shall not assign, sublet, or transfer his interest in this Agreement without the written consent of the COUNTY.

**SECTION 21
INTEREST ON JUDGMENTS**

In the event of any disputes between the parties to this Agreement, including without limitation thereto, their assignees and/or assigns, arising out of or relating in any way to this Agreement, which results in litigation and a subsequent judgment, award or decree against either party, it is agreed that any entitlement to post judgment interest, to either party and/or their attorneys, shall be fixed by the proper court at the rate of five percent (5%), per annum, simple interest. Under no circumstances shall either party be entitled to pre-judgment interest. The parties expressly acknowledge and, to the extent allowed by law, hereby opt out of any provision of federal or state statute not in agreement with this paragraph.

**SECTION 22
TERMINATION OF AGREEMENT**

22.1 The COUNTY reserves the right to cancel this Agreement, without cause, by giving thirty (30) days prior written notice to the CONSULTANT of the intention to cancel. Failure of the CONSULTANT to fulfill or abide by any of the terms or conditions specified shall be considered a material breach of contract and shall be cause for immediate termination of the contract at the discretion of COUNTY. Alternatively, at the COUNTY'S discretion, the COUNTY may provide to CONSULTANT thirty (30) days to cure the breach. Where notice of breach and opportunity to cure is given, and CONSULTANT fails to cure the breach within the time provided for cure, COUNTY reserves the right to treat the notice of breach as notice of intent to cancel the Agreement for convenience.

22.2 If COUNTY terminates the Agreement for convenience, other than where the CONSULTANT breaches the Agreement, the CONSULTANT'S recovery against the COUNTY shall be limited to that portion of the CONSULTANT'S compensation earned through date of termination, together with any costs reasonably incurred by the CONSULTANT that are directly attributable to the termination. The CONSULTANT shall not be entitled to any further recovery against the COUNTY, including but not limited to anticipated fees or profit on work not required to be performed.

22.3 Upon termination, the CONSULTANT shall deliver to the COUNTY all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement.

22.4 In the event that conditions arise, such as lack of available funds, which in the COUNTY'S opinion make it advisable and in the public interest to terminate this Agreement, it may do so upon written notice.

**SECTION 23
AGREEMENT TERM**

This Agreement will become effective on the date of final execution by the last party to execute the Agreement, and will remain in effect through the end of project construction close-out, but not later than October 29, 2023.

**SECTION 24
CONFLICT OF INTEREST**

24.1 By accepting award of this Contract, the CONSULTANT, which shall include its directors, officers and employees, represents that it presently has no interest in and shall acquire no interest in any business or activity which would conflict in any manner with the performance of services required hereunder, including as described in the CONSULTANT'S own professional ethical requirements. An interest in a business or activity which shall be deemed a conflict includes but is not limited to direct financial interest in any of the material and equipment manufacturers suppliers, distributors, or contractors who will be eligible to supply material and equipment for the PROJECT for which the CONSULTANT is furnishing its services required hereunder.

24.2 If, in the sole discretion of the County Administrator or designee, a conflict of interest is deemed to exist or arise during the term of the contract, the County Administrator or designee may cancel this contract, effective upon the date so stated in the Written Notice of Cancellation, without penalty to the COUNTY.

**SECTION 25
ENTIRE AGREEMENT**

This Agreement represents, together with all Exhibits and Appendices, the entire written Agreement between the COUNTY and the CONSULTANT and may be amended only by written instrument signed by both the COUNTY and the CONSULTANT.

**SECTION 26
PUBLIC ENTITY CRIMES**

CONSULTANT is directed to the Florida Public Entity Crime Act, Fla. Stat. 287.133, and Fla. Stat. 287.135 regarding Scrutinized Companies, and CONSULTANT agrees that its bid and, if awarded, its performance of the agreement will comply with all applicable laws including those referenced herein. CONSULTANT represents and certifies that CONSULTANT is and will at all times remain eligible to bid for and perform the services subject to the requirements of these, and other applicable, laws. CONSULTANT agrees that any contract awarded to CONSULTANT will be subject to termination by the County if CONSULTANT fails to comply or to maintain such compliance.

**SECTION 27
PUBLIC RECORDS**

Consultant acknowledges that information and data it manages as part of the services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County public records policies. Contractor agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies, including but not limited to the Section 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, the Consultant agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement.

CONTRACTOR'S DUTY

If the contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Pinellas County Board of County Commissioners, Purchasing Department, Operations Manager custodian of public records at 727-464-3311, purchase@pinellascounty.org, Pinellas County Government, Purchasing Department, Operations Manager, 400 S. Ft. Harrison Ave, 6th Floor, Clearwater, FL 33756.

**SECTION 28
CONTRACT PROVISIONS**

The documents comprising this Agreement, which shall be known as the "Contract Documents". The following portions of the Contract Documents are listed for the purposes of determining priority:

EDA Summary of Construction Standards
EDA Contracting Provisions for Construction Projects
EDA grant contract requirements
Agreement

If there is a conflict between the terms of the Contract Documents, then the conflict shall be resolved by priority according to the order in which the Contract Documents are listed above.


**SECTION 29
GOVERNING LAW AND AGREEMENT EXECUTION**

This Agreement shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the parties herein have executed this Agreement as of the day and year first written above.

Firm Name: Beck Architecture, LLC

PINELLAS COUNTY, by and through its
Board of County Commissioners

By: 
Print Name: Joseph Harrington
Title: Principal Architect Date: 09.16.2020

By: _____
Name Date: _____
Chairman

ATTEST:

Ken Burke, Clerk of the Circuit Court

By: _____
Deputy Clerk Date: _____

APPROVED AS TO FORM

By: 
Office of the County Attorney



EXHIBIT 'A' - SCOPE OF SERVICES

**THINK.
DESIGN.
BUILD.**

July 27, 2020

Pinellas County Purchasing and Risk Management Division

Attention: Sue Steele, Lead Procurement Analyst

400 S. Fort Harrison Avenue, 6th Floor

Clearwater, FL 33756

RE: Tampa Bay Innovation Center Incubator – Professional Architectural Services

Contact No. 190-0140-NC (SS)

I. Project Description

Beck Architecture, LLC. and their design consultants (Design Team) shall provide design and engineering services in conjunction with an approximate 45,000 square foot state- of- the- art business incubator to be named The Tampa Bay Innovation Center on a 2.5 acre MOL parcel owned by Pinellas County at the southwest corner of 11th Avenue South and 4th Street South in Pinellas County. The innovation center program shall contain approximately 30,000 square feet of client/ office space, collaboration space, offices and a community center/ conference room. On site parking shall be provided in compliance with local zoning requirements for a business occupancy. The project is partially funded by an EDA grant secured by Pinellas County with the remaining funds being provided by the county. The scope of work is based on the following programmatic considerations:

- Entitlements Planning will need to be performed due to the NSM-1 zoning on the project site
- Pinellas County has vacated the on- site right- of- way with no further work required by the design team
- The project will be required to comply with the 2019 Florida Statue 255.2575 Energy- efficient and sustainable buildings. The project will use LEED v4 Certification as a guide to comply with the Florida Statue. The project will not register with USGBC nor will the project be submitted to USGBC for confirmation of compliance with LEED certification.
- The design team will be required to comply with the EDA's "Summary of Construction Standards", "Contracting Provisions for Construction Projects" and "Grant Document Design Contract Requirements."
- The design schedule milestones are to align with or complete sooner than those listed in the RFP

II. Scope of Work

Conceptual/ Schematic Design

Based on meetings with the Pinellas County Board of County Commissioners (Board) and stakeholders the design team will develop the program and design of the innovation and site and establish the design schedule moving forward.

Tasks:

- Develop Owner Project Requirements as a guide for development of the project.
- Develop the design schedule aligning with the Board's established milestones and EDA grant requirements.

- Facilitate meetings with the Board and stakeholders to develop the building program and design utilizing 2D images and 3D models.
- Review applicable zoning requirements for impact to the design of the project and project site.
- Review building code requirements for impact to the program and design of the project.
- Review sustainability criteria for alignment with the project program and design.
- Coordinate efforts of the design team; establish the structural, mechanical and electrical conceptual strategies through narratives.
- Assist the county with the required grant reporting.
- Coordinate the efforts of the preconstruction team to provide a conceptual estimate at the end of the Conceptual/ Schematic design phase.

Deliverable:

- Schematic Design documents including; site plan, building floor plans, ceiling plans and exterior elevations
- Structural, mechanical and electrical systems narrative
- Limited rendered images of the building exterior
- Conceptual estimate

Design Development

Based upon the Board approved conceptual/ schematic design the design team will develop and refine the site and building design to illustrate the scope, relationship, appearance and general quality levels of the proposed building.

Tasks:

- Facilitate meetings with the Board and stakeholders to further develop the building program and design utilizing 2D images and 3D models for review and approval.
- Facilitate meetings with the Board and stakeholders to define the scope of work associated with the selection of furniture, fixtures and equipment.
- Incorporate the Board's Schematic Design review comments.
- Finalize the review of building code requirements for impact to the program and design of the project and resolve outstanding code related issues with the authority having jurisdiction.
- Define and coordinate sustainability criteria for alignment with the project program and design.
- Coordinate efforts of the design team; developing the structural, mechanical and electrical system strategies and site and landscape strategies.
- Facilitate design team meetings to resolve design issues.
- Assist the county with the required grant reporting.
- Coordinate the efforts of the preconstruction team to provide an updated conceptual estimate at the end of the Design Development phase.

Deliverable:

- Design Development documents including; site plan, building floor plans, roof plan, ceiling plans, exterior elevations, interior elevations, building/ wall sections and details
- Design Consultant Design Development documents
- Limited rendered images of the building exterior

- Updated conceptual estimate

Construction Documents

Based upon the Board approved Design Development documents the design team will produce Construction Documents for bidding, permitting and construction of the project.

Tasks:

- Facilitate meetings with the Board and stakeholders to review the status of the project development and resolve outstanding design issues.
- Facilitate meetings with the Board and stakeholders to refine the selection of furniture, fixtures and equipment.
- Facilitate a Preliminary Plan Review with the authority having jurisdiction to review the project ahead of submitting for permit.
- Incorporate the Board's Design Development review comments.
- Coordinate sustainability criteria and their incorporation into the project documents.
- Coordinate efforts of the design team; to complete the documentation of the Construction Documents.
- Facilitate design team meetings to resolve design issues.
- Finalize selection of construction materials and interior finishes.
- Produce 3 part Specifications.
- Assist the county with the required grant reporting.
- Submit the construction documents to the EDA for review and approval.

Deliverable:

- Construction drawings and specifications for permitting, pricing, construction and EDA review.

Bid and Negotiation

Based upon the Board and EDA's approval of the Construction Documents the design team will produce the necessary bidding documents and facilitate the bidding and negotiating with the bidding General Contractors.

Tasks:

- Submit the construction documents for regulatory review and approval- permit.
- Respond to City plan review comments in an effort to secure a building permit for construction of the project.
- Produce the bid form and other bidding documents and make available to the bidding General Contractors.
- Facilitate one pre- bid meeting with the bidding General Contractors.
- Respond to pre- bid Requests for Information.
- Once proposals for construction are received, the design team will provide a bid comparison of the bidding General Contractors for the Board's review and selection of the General Contractor.
- Assist the county with the required grant reporting.

Deliverable:

- Proposal for Construction comparison



Construction Administration

Upon selection of a General Contractor and commencement of construction, the design team will provide Construction Administration services to support the efforts of the Board and General Contractor.

Tasks:

- The design team will make weekly site visits to assess the alignment of the built work with the design documents and progress of the project as it relates to the established construction schedule.
- Provide site visit reports identifying construction progress and any non- conforming work.
- Respond to requests for information.
- Provide shop drawing and submittal review and approvals.
- Review monthly applications for payment submitted by the General Contractor.
- Attend regularly scheduled Owner, Architect, Contractor (OAC) meetings.
- At the completion of the project, generate a ‘punch list’ of any deficient, non- conforming or incomplete work
- Prepare a set of record documents aligned with responses to city comments, requests for information and Architect issued revisions.
- Issue a Certificate of Substantial Completion at the conclusion of construction.
- Review for completeness as noted in the project manual, Operations and Maintenance Manuals provided by the General Contractor.
- Assist the county with the required grant reporting.

Deliverable:

- Record set of construction documents

III. Schedule

The durations stated below are based on the assumption of a mid- September 2020 start of the design phase. Modification to the durations can be made within reason to meet certain dates and critical milestones with additional input from the Board.

Phase of Work	Anticipated Duration
Conceptual/ Schematic Design	10 weeks
Design Development	12 weeks
Construction Documents	10 weeks
Bid and Negotiation	6 weeks
Construction Administration.....	14 months

IV. Qualifications / Exclusions

- Revisions to documents or previously completed or approved phases of work.
- Special submittals to secure regulatory approvals required by the city, county or state, other than the building permit.
- Physical models of the proposed design.
- Renderings or marketing collateral for fundraising purposes.
- Computer- based animations, special or enhanced presentation drawings or renderings, models or other media representations of the design not previously identified in this Scope of Work.



- Meetings and/ or travel in addition to what is required for accomplishing the basic services included in this Scope of Work.
- LEED certification at any level.
- Project delivery to be through a design/ bid/ build delivery method.
- Preparation of as- built documents.

We look forward to working with you on this exciting project, if you have any questions please do not hesitate to contact me for clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Harrington". The signature is stylized and fluid, with a large initial "J" and "H".

Joe Harrington, AIA
Principal Architect

Project Fee Proposal - Beck Architecture, LLC.																
Conceptual/ Schematic Design																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Principal Hours	Assoc. Principal Hours	Project Exec. Hours	Sr. Project Arch Hours	Project Arch Hours	Sr Project Coord. Hours	Project Coord. Hours	Tech Staff Hours	Dir Of Precon Hours	Sr Precon Manag Hours	Position Hours	Position Hours	Position Hours	Position Hours	Total	
Basic Design Services																
Task Conceptual/ Schematic Design															0	
1 Development of Owner Project Requirements	10	10			16		16								36	
2 Design Schedule Development															16	
3 Building Programming	12	28					16								56	
4 Zoning Review							16								16	
5 Preliminary Code Review						10									10	
6 Preliminary Sustainability Goals and Coordination	4	8			12										24	
7 Conceptual Site Development	4	22													26	
8 Conceptual Building Development	4	40													44	
9 Conceptual Interiors Development	4	20													24	
10 Design Process and Presentations			20				20								40	
11 Conceptual Design Documentation						50	40								90	
12 Systems (Struct., MEPFP) Planning	2				12	20									34	
13 QAD/QC Process					12	16									28	
14 Stakeholder Design Meetings	12	12													36	
15 Document/ Distribute Meeting Minutes						12									12	
16 Assst with Grant Reporting	4					10									14	
17 Project Management						10									10	
															0	
Subtotal Hours	56	160	0	0	96	112	92	0	0	0	0	0	0	0	516	
Rate	\$ 276.00	\$ 256.00	\$ 248.00	\$ 196.00	\$ 188.00	\$ 148.00	\$ 132.00	\$ 115.00	\$ 195.00	\$ 164.00	\$ -	\$ -	\$ -	\$ -		
Subtotal Direct Labor	\$ 15,456	\$ 40,960	\$ -	\$ -	\$ 18,048	\$ 16,576	\$ 12,144	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 103,184	
Subtotal Burdened Labor @		1.00													\$ 103,184	

Project Fee Proposal - HC Beck, Ltd. (Preconstruction)																
Conceptual/ Schematic Design																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Principal Hours	Assoc. Principal Hours	Project Exec. Hours	Sr. Project Arch Hours	Project Arch Hours	Sr Project Coord. Hours	Project Coord. Hours	Tech Staff Hours	Dir Of Precon Hours	Sr Precon Manag Hours	Position Hours	Position Hours	Position Hours	Position Hours	Total	
Basic Design Services																
Task Conceptual/ Schematic Design															0	
1 Preconstruction/ Estimating Coordination					8				20	120					148	
															0	
Subtotal Hours	0	0	0	0	8	0	0	0	20	120	0	0	0	0	148	
Rate	\$ 276.00	\$ 256.00	\$ 248.00	\$ 196.00	\$ 188.00	\$ 148.00	\$ 132.00	\$ 115.00	\$ 195.00	\$ 164.00	\$ -	\$ -	\$ -	\$ -		
Subtotal Direct Labor	\$ -	\$ -	\$ -	\$ -	\$ 1,504	\$ -	\$ -	\$ -	\$ 3,900	\$ 19,680	\$ -	\$ -	\$ -	\$ -	\$ 25,084	
Subtotal Burdened Labor @		1.00													\$ 25,084	

Project Fee Proposal - Beck Architecture, LLC. (Interiors/ FF&E)																
Conceptual/ Schematic Design																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Principal Hours	Assoc. Principal Hours	Project Exec. Hours	Sr. Project Arch Hours	Project Arch Hours	Sr Project Coord. Hours	Project Coord. Hours	Tech Staff Hours	Dir Of Precon Hours	Sr Precon Manag Hours	Position Hours	Position Hours	Position Hours	Position Hours	Total	
Basic Design Services																
Task Conceptual/ Schematic Design															0	
1															0	
															0	
Subtotal Hours	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Rate	\$ 276.00	\$ 256.00	\$ 248.00	\$ 196.00	\$ 188.00	\$ 148.00	\$ 132.00	\$ 115.00	\$ 195.00	\$ 164.00	\$ -	\$ -	\$ -	\$ -		
Subtotal Direct Labor	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal Burdened Labor @		1.00													\$ -	

Project Fee Proposal - VHB Engineers																									
Conceptual/ Schematic Design																									
Tampa Bay Innovation Center #190-0140-NC (SS)																									
Beck Project #172769																									
7/27/2020																									
Scope/Task	Principal (PE) Hours	Sr. Civil Engineer (PE) Hours	Project Manager (PE) Hours	Civil Designer (EI) Hours	Civil Designer Hours	Sr. Planner (AICP) Hours	Planner (AICP) Hours	Sr. Trans. Planner Hours	Trans. Engineer (PE) Hours	Trans. Planner Hours	Traffic Counts Hours	Graphics Hours	Sr. Env. Scientist Hours	Env. Scientist Hours	Admin Hours	Subconsultant George F Young					Subconsultant NOVA				Total
																Senior PSM Hours	Two Person Survey Team Hours	CADD Tech Hours	PE/Senior Project Manager Hours	CADD Hours	Staff Engineer Hours	Field Engineering Technician Hours	Additional Hours		
Basic Design Services																									
Task Conceptual/ Schematic Design																									
1 Initial Research	1.0	1.0	2.0	4.0	1.0	0.5	1.0	0.5		1.0			0.5	1.0	1.0								14.5		
2 Preliminary Agency Meetings				6.0	1.0	3.0		3.0															16		
3 Site Constraints & Opportunities Analysis				2.0	2.0																		25		
4 Project Communication & Meetings - Analysis Phase	2.0	2.0	4.0			2.0		2.0															12		
5 Schematic Site Plan	2.0	4.0	12.0	14.0	30.0	1.0		1.0							1.0								65		
6 Topographic Survey	1.0	1.0	1.0												5.0	25.0	19.0						52		
7 Geotechnical Investigation	1.0	1.0	1.0	1.0											1.0					2.0	5.0	7.0	10.0	\$ 5,360.00	29
8 Environmental/Ecological/Wildlife Services													3.0	20.0	1.0									24	
9 Traffic Impact Analysis (TIA)				4.0				10.0	22.0	42.0	\$2,000.00	10.0			1.0									89	
10 Entitlements Planning	1.0		2.0			20.0	34.0	4.0	2.0	1.0		8.0			18.0									90	
Subtotal Hours	8.00	10.00	34.00	22.00	51.00	26.50	35.00	20.50	24.00	44.00	2,000.00	18.00	6.50	21.00	23.00	5.00	25.00	19.00	2.00	5.00	7.00	10.00	\$ 5,360.00	417	
Rate	\$ 227.40	\$ 164.84	\$ 127.81	\$ 111.20	\$ 108.88	\$ 172.14	\$ 84.97	\$ 246.34	\$ 114.69	\$ 82.58	\$ 1.00	\$ 68.93	\$ 183.62	\$ 86.01	\$ 83.06	\$ 134.24	\$ 121.66	\$ 81.81	\$ 135.00	\$ 75.00	\$ 85.00	\$ 75.00			
Subtotal Direct Labor	\$ 1,819.20	\$ 1,648.40	\$ 4,345.54	\$ 2,446.40	\$ 5,552.88	\$ 4,561.71	\$ 2,973.95	\$ 5,049.87	\$ 2,752.56	\$ 3,633.52	\$ 2,000.00	\$ 1,240.74	\$ 1,193.53	\$ 1,806.21	\$ 1,910.38	\$ 671.20	\$ 3,041.50	\$ 1,654.39	\$ 270.00	\$ 375.00	\$ 595.00	\$ 750.00	\$ 5,360.00	\$ 55,562.08	
Subtotal Burdened Labor @		1.00																						\$ 55,562.08	

30% Design Fee

Project Fee Proposal - Siebein Associates, Inc.																
Conceptual/ Schematic Design																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Total
	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Basic Design Services																
Task Conceptual/ Schematic Design																
1																0
Subtotal Hours	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Rate	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal Direct Labor	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal Burdened Labor @		1.00														\$ -

Project Fee Proposal - Beck Sustainability																
Conceptual/ Schematic Design																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Director of Sustainability	Sustainability Project Manager	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Total
	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Basic Design Services																
Task Conceptual/ Schematic Design																
1	4	4														8
2	1	2														3
3	1	4														5
4																0
5																0
6																0
7																0
8																0
9																0
10																0
11																0
12																0
13																0
14																0
Subtotal Hours	6.00	10.25	-	-	-	-	-	-	-	-	-	-	-	-	-	16
Rate	\$ 185.00	\$ 135.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal Direct Labor	\$ 1,110	\$ 1,384	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,494
Subtotal Burdened Labor @		1.00														\$ 2,494

FEE SUMMARY **EXHIBIT 'A1' - HOURLY COST SUMMARY**

Project Fee Proposal - Summary Sheet									
Tampa Bay Innovation Center #190-0140-NC (SS)									
Beck Project #172769									
7/27/2020									
Basic Design Services									
Basic Design and Engineering Services		Conceptual/ SD	Design Dev.	Const. Docs	Bid/ Negotiations	Construction Administration	Total	% Construction Cost	
	Beck Architecture, LLC.	\$ 103,184	\$ 156,058	\$ 154,072	\$ 25,688	\$ 77,760	\$ 516,762	4.86%	
	Walter P Moore	\$ 12,000	\$ 20,000	\$ 32,000	\$ 1,000	\$ 15,000	\$ 80,000	0.75%	
	VoltAir (MEFPF)	\$ 17,784	\$ 31,762	\$ 60,300	\$ 4,642	\$ 30,512	\$ 145,000	1.36%	
	Design Phase Sub Total	\$ 132,968	\$ 207,820	\$ 246,372	\$ 31,330	\$ 123,272	\$ 741,762	6.98%	
Additional Design and Engineering Services									
	Enhanced CA- Beck Architect, LLC	\$ -	\$ -	\$ -	\$ -	\$ 11,800	\$ 11,800	0.11%	
	VHB Engineers	\$ 55,552	\$ 16,967	\$ 42,114	\$ 1,144	\$ 15,945	\$ 131,722	1.24%	
	Phil Graham Landscape Architecture	\$ 13,235	\$ 14,790	\$ 7,240	\$ 1,160	\$ 3,315	\$ 39,740	0.37%	
	HC Beck, Ltd. (Preconstruction)	\$ 25,084	\$ 16,184	\$ -	\$ -	\$ -	\$ 41,268	0.39%	
	Beck Architecture, LLC. (Interiors/ FF&E)	\$ -	\$ 20,096	\$ 30,024	\$ -	\$ -	\$ 50,120	0.47%	
	VoltAir (Data/ Low Voltage)	\$ 3,459	\$ 3,309	\$ 6,543	\$ -	\$ 3,189	\$ 16,500	0.16%	
	Siebein Associates, Inc.	\$ -	\$ 10,905	\$ -	\$ -	\$ -	\$ 10,905	0.10%	
	Beck Sustainability	\$ 2,494	\$ 10,000	\$ 5,968	\$ 740	\$ 8,798	\$ 28,000	0.26%	
	Additional Design Services Phase Sub Total	\$ 99,824	\$ 92,251	\$ 91,889	\$ 3,044	\$ 43,047	\$ 330,055	3.11%	
Total Design Fees		\$ 232,792	\$ 300,070	\$ 338,261	\$ 34,374	\$ 166,319	\$ 1,071,816	10.09%	



Project Fee Proposal - Beck Architecture, LLC.																
Design Development																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Principal Hours	Assoc. Principal Hours	Project Exec. Hours	Sr. Project Arch Hours	Project Arch Hours	Sr Project Coord. Hours	Project Coord. Hours	Tech Staff Hours	Dir Of Precon Hours	Sr Precon Manag Hours	Position Hours	Position Hours	Position Hours	Position Hours	Total	
Basic Design Services																
Task	Design Development															
1						9.50										10
2		6.00				6.00										12
3	6.00	10.00				6.00										22
4	8.00	10.00				48.00										66
5	10.00					48.00										58
6						48.00										48
7	8.00	10.00														18
8							14.00									14
9					12.00	200.00	400.00									612
10						6.00										6
11						10.00										10
12						9.00										9
13						3.00										3
14						9.00										9
15					8.00	6.00										14
16	12.00	12.00				12.00										36
17						16.00										16
18	4.00					10.00										14
19						24.00										24
																0
Subtotal Hours	48	48	0	0	82	409	414	0	0	0	0	0	0	0	0	1001
Rate	\$ 276.00	\$ 256.00	\$ 248.00	\$ 196.00	\$ 188.00	\$ 148.00	\$ 132.00	\$ 115.00	\$ 195.00	\$ 164.00	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal Direct Labor	\$ 13,248	\$ 12,288	\$ -	\$ -	\$ 15,416	\$ 60,458	\$ 54,648	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 156,058
Subtotal Burdened Labor @		1.00														\$ 156,058

Project Fee Proposal - HC Beck, Ltd. (Preconstruction)																
Design Development																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Principal Hours	Assoc. Principal Hours	Project Exec. Hours	Sr. Project Arch Hours	Project Arch Hours	Sr Project Coord. Hours	Project Coord. Hours	Tech Staff Hours	Dir Of Precon Hours	Sr Precon Manag Hours	Position Hours	Position Hours	Position Hours	Position Hours	Total	
Basic Design Services																
Task	Design Development															
1					8				8	80						96
Subtotal Hours	0	0	0	0	8	0	0	0	8	80	0	0	0	0	96	
Rate	\$ 276.00	\$ 256.00	\$ 248.00	\$ 196.00	\$ 188.00	\$ 148.00	\$ 132.00	\$ 115.00	\$ 195.00	\$ 164.00	\$ -	\$ -	\$ -	\$ -		
Subtotal Direct Labor	\$ -	\$ -	\$ -	\$ -	\$ 1,504	\$ -	\$ -	\$ -	\$ 1,560	\$ 13,120	\$ -	\$ -	\$ -	\$ -	\$ 16,184	
Subtotal Burdened Labor @		1.00													\$ 16,184	

Project Fee Proposal - Beck Architecture, LLC. (Interiors/ FF&E)																
Design Development																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Principal Hours	Assoc. Principal Hours	Project Exec. Hours	Sr. Project Arch Hours	Project Arch Hours	Sr Project Coord. Hours	Project Coord. Hours	Tech Staff Hours	Dir Of Precon Hours	Sr Precon Manag Hours	Position Hours	Position Hours	Position Hours	Position Hours	Total	
Basic Design Services																
Task	Design Development															
1		4		36												40
2		4		48												52
3							12									12
Subtotal Hours	0	8	0	84	0	0	12	0	0	0	0	0	0	0	104	
Rate	\$ 276.00	\$ 256.00	\$ 248.00	\$ 196.00	\$ 188.00	\$ 148.00	\$ 132.00	\$ 115.00	\$ 195.00	\$ 164.00	\$ -	\$ -	\$ -	\$ -		
Subtotal Direct Labor	\$ -	\$ 2,048	\$ -	\$ 16,464	\$ -	\$ -	\$ 1,584	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,096	
Subtotal Burdened Labor @		1.00													\$ 20,096	

60% Design Fee

Project Fee Proposal - VHB Engineers																
Design Development																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Principal (PE)	Sr. Civil Engineer (PE)	Project Manager (PE)	Civil Designer (EI)	Civil Designer	Sr. Planner (AICP)	Planner (AICP)	Sr. Trans. Planner	Trans. Engineer (PE)	Trans. Planner	Graphics	Sr. Env. Scientist	Env. Scientist	Admin	Total	
Task	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Basic Design Services																
Design Development																
1 Design Development Plans	2.0	8.0	24.0	12.0	42.0									1.0	89.0	
2 Stormwater Management System Analysis & Design	1.0	10.0	16.0	16.0	4.0										47.0	
Subtotal Hours	3.0	18.0	40.0	28.0	46.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1.0	136.0	
Rate	\$ 227.40	\$ 164.84	\$ 127.81	\$ 111.20	\$ 108.88	\$ 172.14	\$ 84.97	\$ 246.34	\$ 114.69	\$ 82.58	\$ 68.93	\$ 183.62	\$ 86.01	\$ 83.06		
Subtotal Direct Labor	\$ 682.20	\$ 2,967.12	\$ 5,112.40	\$ 3,113.60	\$ 5,008.48	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 83.06	\$ 16,966.86	
Subtotal Burdened Labor @		1.00													\$ 16,966.86	

Project Fee Proposal - Phil Graham Landscape Architecture																
Design Development																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Principal In Charge	Project Designer	Project Manager	Full Time Technical	Clerical	Arborist	Position	Position	Position	Position	Position	Position	Position	Position	Total	
Task	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Basic Design Services																
Design Development																
1 Prepare 60% Construction Documents, Draft Specifications & Cost Opinion	2.0	26.0	7.0	50.0											85.0	
2 Provide Revisions to Documents Presented Per Directives	2.0	8.0	3.0	12.0											25.0	
3 Design Team Communications, Meetings & Workflow Conferences	2.0	6.0	8.0	4.0											20.0	
4 Deliver Task Documents in Required Format(s)		5.0	4.0	4.0	1										14.00	
Subtotal Hours	6.00	45.00	22.00	70.00	1.00	-	-	-	-	-	-	-	-	-	144.00	
Rate	\$ 185.00	\$ 135.00	\$ 105.00	\$ 75.00	\$ 45.00	\$ 125.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Subtotal Direct Labor	\$ 1,110.00	\$ 6,075.00	\$ 2,310.00	\$ 5,250.00	\$ 45.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,790.00	
Subtotal Burdened Labor @		1.00													\$ 14,790.00	

Project Fee Proposal - Walter P Moore																
Design Development																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Principal	Project Manager	Senior Engineer	Engineer	Graduate Engineer	Technical Designer	Technical Modeller	Position	Position	Position	Position	Position	Position	Position	Total	
Task	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Basic Design Services																
Design Development																
1 Coordination Meetings	2.0	6.0	4.0	4.0											16.0	
2 3-D Structural Analysis Model			4.0	10.0	8.0										22.0	
3 Beam, Column, Slab Design Development				12.0	12.0										24.0	
4 Prepare General Notes			2.0												2.0	
5 Prepare Specifications		2.0	4.0												6.0	
6 Prepare Revit Model						10.0	23.9								33.9	
7 Prepare Design Development Drawings and Details			2.0	6.0	6.0	10.0	12.0								36.0	
8 Foundation Options Study			2.0	6.0											8.0	
Subtotal Hours	2.00	8.00	18.00	38.00	26.00	20.00	35.90	-	-	-	-	-	-	-	147.9	
Rate	\$ 220.00	\$ 190.00	\$ 165.00	\$ 140.00	\$ 130.00	\$ 130.00	\$ 105.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		
Subtotal Direct Labor	\$ 440.00	\$ 1,520.00	\$ 2,970.00	\$ 5,320.00	\$ 3,380.00	\$ 2,600.00	\$ 3,769.50	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 19,999.50	
Subtotal Burdened Labor @		1.00													\$ 19,999.50	

60% Design Fee

Project Fee Proposal - VoltAir (MEFPF)																
Design Development																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Project Manager	IT Director	Sr. Professional Mechanical Engineer	Sr. Professional Electrical Engineer	Sr. Mechanical Designer	Sr. Electrical Designer	IT Designer I	Administrative	Position	Position	Position	Position	Position	Position	Position	Total
	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Basic Design Services																
Task Design Development																
1 Floor Plans	6.0		8.0	8.0	32.0	32.0										86.0
2 Legends	2.0		1.0	1.0	4.0	4.0										12.0
3 Details	2.0		4.0	4.0	8.0	8.0										26.0
4 Calculations	2.0		8.0	8.0	14.0	14.0										46.0
5 Coordination (including Design Meetings)	10.0		10.0	10.0	4.0	5.67										39.7
6 Specifications	2.0		8.0	8.0				24.0								42.0
7 QA/QC	4.0		8.0	8.0	2.0	0.0										22.0
Subtotal Hours	28.00	-	47.00	47.00	64.00	63.67	-	24.00	-	-	-	-	-	-	-	273.67
Rate	\$ 135.85	\$ 122.66	\$ 135.85	\$ 135.85	\$ 104.79	\$ 104.79	\$ 47.52	\$ 75.42	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal Direct Labor	\$ 3,803.80	\$ -	\$ 6,384.95	\$ 6,384.95	\$ 6,706.56	\$ 6,671.98	\$ -	\$ 1,810.08	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 31,762.32
Subtotal Burdened Labor @		1.00														\$ 31,762.32

Project Fee Proposal - VoltAir (Low Voltage)																
Design Development																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Project Manager	IT Director	Sr. Professional Mechanical Engineer	Sr. Professional Electrical Engineer	Sr. Mechanical Designer	Sr. Electrical Designer	IT Designer I	Administrative	Position	Position	Position	Position	Position	Position	Position	Total
	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Basic Design Services																
Task Design Development																
1 Floor Plans		4.0					18.0									22.0
2 Legends		1.0					7.0									8.0
3 Details		2.0					6.4									8.4
4 Calculations		2.0					0.0									2.0
5 Coordination (including Design Meetings)		0.0					4.67									4.7
6 Specifications		4.0														4.0
7 QA/QC																
Subtotal Hours	-	13.00	-	-	-	-	36.07	-	-	-	-	-	-	-	-	49.1
Rate	\$ 135.85	\$ 122.66	\$ 135.85	\$ 135.85	\$ 104.79	\$ 104.79	\$ 47.52	\$ 75.42	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal Direct Labor	\$ -	\$ 1,594.70	\$ -	\$ -	\$ -	\$ -	\$ 1,714.05	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,308.75
Subtotal Burdened Labor @		1.00														\$ 3,308.75

Project Fee Proposal - Siebein Associates, Inc.																
Design Development																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task	Sr. Principal Consultant 2	Principal Consultant 4	Sr. Consultant 6	Consultant 1	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Position	Total
	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Preconstruction/Estimating																
Task Design Development																
1 Acoustical Criteria	2.0	2.0	8.0	8.0												20.0
2 Acoustical Analysis for Reverberation and Finishes	2.0	4.0	24.0													30.0
3 Acoustical Analysis for Sound Isolation and STC	3.0	4.0		24.0												31.0
Subtotal Hours	7.00	10.00	32.00	32.00	-	-	-	-	-	-	-	-	-	-	-	81.0
Rate	\$ 275.00	\$ 210.00	\$ 110.00	\$ 105.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal Direct Labor	\$ 1,925	\$ 2,100	\$ 3,520	\$ 3,360	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,905
Subtotal Burdened Labor @		1.00														\$ 10,905

Project Fee Proposal - Beck Architecture, LLC.																
Construction Documents																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task		Principal	Assoc.	Project	Sr. Project	Project	Sr Project	Project	Tech	Dir Of	Sr Precon	Position	Position	Position	Position	Total
		Hours	Principal	Exec.	Arch	Arch	Coord.	Coord.	Staff	Precon	Manag	Hours	Hours	Hours	Hours	
Basic Design Services																
Task	Construction Documents															
1	Sustainability Coordination					12	6									18
2	Site Design Completion and Coordination	2					12									14
3	Exterior Envelope Design Completion	4	12				36									52
4	Floor Plan Completion		8				36									44
5	Roof and Site Drainage Completion						36									36
6	Interiors Design Completion	2	8			14										24
7	Construction Drawing Documentation						270	336								606
8	Landscape Design Coordination		8				12									20
9	Structural Design Coordination						12									12
10	MEPP Design Coordination						12									12
11	Acoustical Coordination						12									12
12	Specification Coordination					16	12									28
13	QA/QC Process		4			12										16
14	Stakeholder Design Meetings	12				12										24
15	Document/ Distribute Meeting Minutes					18										18
16	Preliminary Plan Review / City Meetings	2				2										4
17	Assist with Grant Reporting	4				10										14
18	Project Management					36										36
Subtotal Hours		26	40	0	0	132	456	336	0	0	0	0	0	0	0	990
Rate		\$ 276.00	\$ 256.00	\$ 248.00	\$ 196.00	\$ 188.00	\$ 148.00	\$ 132.00	\$ 115.00	\$ 195.00	\$ 164.00	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal Direct Labor		\$ 7,176	\$ 10,240	\$ -	\$ -	\$ 24,816	\$ 67,488	\$ 44,352	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 154,072
Subtotal Burdened Labor @			1.00													\$ 154,072

Project Fee Proposal - HC Beck, Ltd. (Preconstruction)																
Construction Documents																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task		Principal	Assoc.	Project	Sr. Project	Project	Sr Project	Project	Tech	Dir Of	Sr Precon	Position	Position	Position	Position	Total
		Hours	Principal	Exec.	Arch	Arch	Coord.	Coord.	Staff	Precon	Manag	Hours	Hours	Hours	Hours	
Basic Design Services																
Task	Construction Documents															
1																0
Subtotal Hours		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rate		\$ 276.00	\$ 256.00	\$ 248.00	\$ 196.00	\$ 188.00	\$ 148.00	\$ 132.00	\$ 115.00	\$ 195.00	\$ 164.00	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal Direct Labor		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal Burdened Labor @			1.00													\$ -

Project Fee Proposal - Beck Architecture, LLC. (Interiors/ FF&E)																
Construction Documents																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task		Principal	Assoc.	Project	Sr. Project	Project	Sr Project	Project	Tech	Dir Of	Sr Precon	Position	Position	Position	Position	Total
		Hours	Principal	Exec.	Arch	Arch	Coord.	Coord.	Staff	Precon	Manag	Hours	Hours	Hours	Hours	
Basic Design Services																
Task	Construction Documents															
1	Interiors Finish Selection and Documentation				36			48								84
2	FF&E Selection and Documentation				48			48								96
3	Construction Drawing Documentation						6									6
Subtotal Hours		0	0	0	84	0	6	96	0	0	0	0	0	0	0	186
Rate		\$ 276.00	\$ 256.00	\$ 248.00	\$ 196.00	\$ 188.00	\$ 148.00	\$ 132.00	\$ 115.00	\$ 195.00	\$ 164.00	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal Direct Labor		\$ -	\$ -	\$ -	\$ 16,464	\$ -	\$ 888	\$ 12,672	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30,024
Subtotal Burdened Labor @			1.00													\$ 30,024

90% Design Fee

Project Fee Proposal - VHB Engineers																
Construction Documents																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task		Principal (PE)	Sr. Civil Engineer (PE)	Project Manager (PE)	Civil Designer (EI)	Civil Designer	Sr. Planner (AICP)	Planner (AICP)	Sr. Trans. Planner	Trans. Engineer (PE)	Trans. Planner	Graphics	Sr. Env. Scientist	Env. Scientist	Admin	Total
Task	Construction Documents	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
1	Site Construction Plans	6.0	8.0	36.0	44.0	58.0									1.0	153.0
2	Site Construction Specifications	4.0	1.0	4.0											4.0	13.0
3	Local Site Permits	4.0	2.0	8.0	12.0	4.0		1.0		0.50	0.50				2.0	34.0
4	State Site Permits	2.0	4.0	8.0	10.0	4.0									2.0	30.0
5	Site Permit Processing	6.0	8.0	12.0	20.0	24.0		1.0		1.00	1.00		0.50	1.0	4.0	78.5
6	Project Communication & Meetings - Permitting Phase	4.0	4.0	12.0	2.0	2.0										24.0
Subtotal Hours		26.0	27.0	80.0	88.0	92.0	0.0	2.0	0.0	1.5	1.5	0.0	0.5	1.0	13.0	332.5
Rate		\$ 227.40	\$ 164.84	\$ 127.81	\$ 111.20	\$ 108.88	\$ 172.14	\$ 84.97	\$ 246.34	\$ 114.69	\$ 82.58	\$ 68.93	\$ 183.62	\$ 86.01	\$ 83.06	
Subtotal Direct Labor		\$ 5,912.40	\$ 4,450.68	\$ 10,224.80	\$ 9,785.60	\$ 10,016.96	\$ -	\$ 169.94	\$ -	\$ 172.04	\$ 123.87	\$ -	\$ 91.81	\$ 86.01	\$ 1,079.78	\$ 42,113.89
Subtotal Burdened Labor @			1.00													\$ 42,113.89

Project Fee Proposal - Phil Graham Landscape Architecture																
Construction Documents																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task		Principal In Charge	Project Designer	Project Manager	Full Time Technical	Clerical	Arborist	Position	Position	Position	Position	Position	Position	Position	Position	Total
Task	Construction Documents	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
1	Prepare 95% Construction Documents, Proof Written Specifications	3	6	3	12											24.0
2	Provide Revisions to Documents Presented per Directives	1	2	2	1											6.0
3	Prepare 100% Construction Documents, Final Written Specifications	1	4	2	9											16.0
4	Design Team Communications, Meetings & Workflow Conformances	1.5	2.5	5	2											11.0
5	Deliver Task Documents in Required Format(s)		4	2	3	1										10.0
Subtotal Hours		6.50	18.50	14.00	27.00	1.00	-	-	-	-	-	-	-	-	-	67
Rate		\$ 185.00	\$ 135.00	\$ 105.00	\$ 75.00	\$ 45.00	\$ 125.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal Direct Labor		\$ 1,202.50	\$ 2,497.50	\$ 1,470.00	\$ 2,025.00	\$ 45.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,240.00
Subtotal Burdened Labor @			1.00													\$ 7,240.00

Project Fee Proposal - Walter P Moore																
Construction Documents																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task		Principal	Project Manager	Senior Engineer	Engineer	Graduate Engineer	Technical Designer	Technical Modeller	Position	Position	Position	Position	Position	Position	Position	Total
Task	Construction Documents	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
1	Coordination Meetings	2.0	6.0	6.0	4.0											18.0
2	Complete 3-D Structural Analysis Model			6.0	12.0	16.0										34.0
3	Complete Beam, Column, Slab Design Development			8.0	24.0	24.0										56.0
4	Complete General Notes			4.0												4.0
5	Complete Specifications		2.0	8.0												10.0
6	100% Construction Documents - Revit Model						20.0	25.62								45.62
7	Prepare Drawings for Permit Submittal		2.0	4.0	4.0	4.0	4.0	8.0								26.0
8	Quality Control Review	2.0	2.0	2.0	8.0	8.0	8.0	8.0								38.0
Subtotal Hours		4.00	12.00	38.00	52.00	52.00	32.00	41.62	-	-	-	-	-	-	-	231.62
Rate		\$ 220.00	\$ 190.00	\$ 165.00	\$ 140.00	\$ 130.00	\$ 130.00	\$ 105.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal Direct Labor		\$ 880.00	\$ 2,280.00	\$ 6,270.00	\$ 7,280.00	\$ 6,760.00	\$ 4,160.00	\$ 4,370.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 32,000.10
Subtotal Burdened Labor @			1.00													\$ 32,000.10

90% Design Fee

Project Fee Proposal - VoltAir (MEFPF)																
Construction Documents																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task		Project Manager	IT Director	Sr. Professional Mechanical Engineer	Sr. Professional Electrical Engineer	Sr. Mechanical Designer	Sr. Electrical Designer	IT Designer I	Administrative	Position	Position	Position	Position	Position	Position	Total
Basic Design Services		Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Task	Construction Documents															
1	MEP Construction Documents															0.0
2	Floor Plans	8.0		12.0	12.0	72.0	72.0									176.0
3	Legends	8.0		2.0	2.0	16.0	16.0									44.0
4	Details	8.0		4.0	4.0	12.0	12.0									40.0
5	Finalize Calculations	8.0		8.0	8.0	8.0	8.0									40.0
6	Coordination	8.0		10.0	10.0	24.0	24.0									76.0
7	Specifications	8.0		20.0	20.0	8.0	8.0		28.0							92.0
8	QA/QC	8.0		16.0	16.0	8.0	8.0									56.0
Subtotal Hours		56.00	-	72.00	72.00	148.00	148.00	-	28.00	-	-	-	-	-	-	524.0
Rate		\$ 135.85	\$ 122.66	\$ 135.85	\$ 135.85	\$ 104.79	\$ 104.79	\$ 47.52	\$ 75.42	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal Direct Labor		\$ 7,607.60	\$ -	\$ 9,781.20	\$ 9,781.20	\$ 15,508.92	\$ 15,508.92	\$ -	\$ 2,111.76	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 60,299.60
Subtotal Burdened Labor @			1.00													\$ 60,299.60

Project Fee Proposal - VoltAir (Low Voltage)																
Construction Documents																
Tampa Bay Innovation Center #190-0140-NC (SS)																
Beck Project #172769																
7/27/2020																
Scope/Task		Project Manager	IT Director	Sr. Professional Mechanical Engineer	Sr. Professional Electrical Engineer	Sr. Mechanical Designer	Sr. Electrical Designer	IT Designer I	Administrative	Position	Position	Position	Position	Position	Position	Total
Basic Design Services		Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	
Task	Construction Documents															
1	MEP Construction Documents															0.0
2	Floor Plans		8.0					48.0								56.0
3	Legends		1.0					8.0								9.0
4	Details		1.0					4.0								5.0
5	Finalize Calculations		1.0													1.0
6	Coordination		8.0					8.0								16.0
7	Specifications		8.0													8.0
8	QA/QC		0.0													0.0
Subtotal Hours		-	27.00	-	-	-	-	68.00	-	-	-	-	-	-	-	95.0
Rate		\$ 135.85	\$ 122.66	\$ 135.85	\$ 135.85	\$ 104.79	\$ 104.79	\$ 47.52	\$ 75.42	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal Direct Labor		\$ -	\$ 3,311.82	\$ -	\$ -	\$ -	\$ -	\$ 3,231.36	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,543.18
Subtotal Burdened Labor @			1.00													\$ 6,543.18



**THINK.
DESIGN.
BUILD.**

**EXHIBIT B
ARCHITECTURE HOURLY BILLING RATE AND REIMBURSABLE SCHEDULE
Beck Architecture, LLC Doc. 2018v.1**

Hourly Rates

PRINCIPAL:	\$ 276
ASSOCIATE PRINCIPAL:	\$ 256
PROJECT EXECUTIVE:	\$ 248
SR. PROJECT MANAGER/SR. PROJECT ARCHITECT/SR. DESIGNER:	\$ 196
PROJECT MANAGER/PROJECT ARCHITECT/PROJECT DESIGNER:	\$ 188
SENIOR PROJECT COORDINATOR/PROJECT DESIGNER:	\$ 148
PROJECT COORDINATOR:	\$ 132
OTHER TECHNICAL STAFF:	\$ 115
DIRECTOR OF PRECONSTRUCTION:	\$ 195
SENIOR PRECONSTRUCTION MANAGER:	\$ 164

Reimbursables

Reimbursable expenses are in addition to compensation for basic and additional services and include actual expenditures made by architectural staff or any professional consultants in the interest of the project. These expenses are defined as the following:

1. Costs of transportation and lodging while traveling outside the Tampa Bay Metropolitan Statistical Area in connection with the project (including mileage at the most current IRS-approved rates).



THINK.
DESIGN.
BUILD.

EXHIBIT B
SUSTAINABILITY GROUP HOURLY BILLING RATE SCHEDULE
HC Beck, Ltd.

Hourly Rates

DIRECTOR OF SUSTAINABILITY:	\$ 185
SUSTAINABILITY PROJECT MANGER:	\$ 135



EXHIBIT B
Vanasse Hangen Brustlin, Inc.
HOURLY BILLING RATES

The following are the hourly rates proposed for VHB'S various employee classifications for the Pinellas County project titled "Tampa Bay Innovation Center Incubator – Professional Architectural Services 190-0140-NC (SS)". The hourly rates include all labor, direct/indirect overhead, margins/profits, customary expenses such as copies, postage, etc., and travel within the Tampa Bay Metropolitan Statistical Area.

Principal (PE)	\$227.40
Sr. Civil Engineer (PE)	\$164.84
Project Manager (PE)	\$127.81
Civil Designer (EI)	\$111.20
Civil Designer	\$108.88
Sr. Planner (AICP)	\$172.14
Planner (AICP)	\$84.97
Sr. Trans. Planner	\$246.34
Trans. Engineer (PE)	\$114.69
Trans. Planner	\$82.58
Graphics	\$68.93
Sr. Env. Scientist	\$183.62
Env. Scientist	\$86.01
Admin	\$83.06

Vanasse Hangen Brustlin, Inc. (VHB)

Signature: 

Date: May 12, 2020

Name: John A. Eveland, P.E.

Title: Associate

Engineers | Scientists | Planners | Designers

501 E Kennedy Blvd
 Suite 1010
 Tampa, FL 33602
P 813.327.5450
F 813.209.2365

EXHIBIT B

**George F. Young, Inc.
HOURLY BILLING RATES**

The following are the hourly rates proposed for George F. Young, Inc. various employee classifications for the Pinellas County project titled "Tampa Bay Innovation Center Incubator – Professional Architectural Services 190-0140- NC (SS)". The hourly rates include all labor, direct/indirect overhead, margins/profits, customary expenses such as copies, postage, etc., and travel within the Tampa Bay Metropolitan Statistical Area.

Senior PSM	\$134.24
Two Person Survey Team	\$121.66
CADD Technician	\$81.81

George F. Young, Inc.

Signature: 

Name: Nicholas M. Circello, PSM

Date: May 18, 2020

Title: V.P. Survey



EXHIBIT B
NOVA Engineering and Environmental, LLC
HOURLY BILLING RATES

The following are the hourly rates proposed for NOVA'S various employee classifications. The hourly rates include all labor, direct/indirect overhead, margins/profits, customary expenses such as copies, postage, etc., and travel within the Tampa Bay Metropolitan Statistical Area.

Principal	\$ 220.00
PE/Senior Project Manager	\$ 135.00
Project Manager	\$ 120.00
CADD	\$ 75.00
Staff Engineer	\$ 85.00
Field Engineering Technician	\$ 75.00
Administrative	\$ 75.00

NOVA Engineering & Environmental LLC

Signature: 

Date: May 18, 2020

Name: Brian Schnier

Title: Business Unit Manager



Fee Rates – Public Sector

BY PROJECT ROLE

Principal-in-Charge

Lead Designer

Project Manager

Full Time Technical

Administration

HOURLY RATE

\$185.00

\$135.00

\$105.00

\$ 75.00

\$ 45.00

EXHIBIT B



CODE CONSULTANTS, INC.

2043 Woodland Pkwy, Suite 300
St. Louis, Missouri 63146
314-991-2633 phone

**The Fire Protection and
Life Safety Experts**

- Code Consultation
- Fire and Egress Modeling
- Accessibility Consultation
- Fire Sprinkler Design
- Fire Alarm Design
- Information and Communications Technology

**Code Consultants, Inc.
Tampa Bay Innovation Center Project
Hourly Rates**

Position	Fully Loaded Rates
Accessibility Director	\$200.00
Manager	\$180.00
Sr. Consultant	\$160.00
Consultant	\$140.00
Graphics Technician	\$90.00



**walter
p moore**

Exhibit B

BILLING RATE SCHEDULE

Structural Engineering

<u>Category</u>	<u>Rate</u>
Principal/Senior Project Manager.....	\$220.00
Project Manager.....	\$190.00
Senior Engineer.....	\$165.00
Engineer.....	\$140.00
Graduate Engineer.....	\$130.00
Senior Field Representative.....	\$105.00
Senior Technical Designer.....	\$160.00
Technical Designer.....	\$130.00
Graduate Technical Designer.....	\$115.00
Senior Technical Modeler.....	\$135.00
Technical Modeler.....	\$105.00
Senior Administrative Assistant.....	\$115.00
Administrative Assistant.....	\$90.00

Date: _____

Name of Services: MEPF Engineering

Name of Firm: Voltair Consulting Engineers, Inc

Personnel Hourly Rates

Billing Rates

Title	Rates
Principal	197.16
Engineering Director	183.38
IT Director	122.66
Senior Professional Engineer	135.85
Engineer I	83.35
Engineer II	100.14
Senior Designer	104.79
IT Designer I	47.52
BIM Manager	106.72
CADD	106.72
Clerical	75.42

May 20, 2020

Tampa Bay Innovation Hub Incubator project
St. Petersburg, Florida
Beck Architecture, LLC

Table 1. Siebein Associates, Inc. Hourly Billing Rates

<u>Person</u>	<u>Hourly rate</u>
Senior Principal Consultant 2	\$ 275.00 per hour
Principal Consultant 4	\$ 210.00 per hour
Senior Consultant 1	\$ 150.00 per hour
Senior Consultant 6	\$ 110.00 per hour
Consultant 1	\$ 105.00 per hour
Consultant 2	\$ 100.00 per hour
Administrative 4	\$ 65.00 per hour
Technical Staff 3	\$ 45.00 per hour



UNITED STATES DEPARTMENT OF COMMERCE
Economic Development Administration
Atlanta Regional Office

Suite 1820
 401 West Peachtree St., N.W.
 Atlanta, Georgia 30308-3510

JUL 29 2019

In reply refer to:
 Investment No. 04-79-07380

Ms. Karen Williams Seel
 Chairperson
 Pinellas County Board of County Commissioners
 Office of Management and Budget
 315 Court Street
 Clearwater, Florida 33756

Dear Ms. Seel:

I am pleased to inform you that the Department of Commerce's Economic Development Administration (EDA) has approved your application for a \$7,463,295 EDA investment for the Tampa Bay Innovation Center Incubator.

Enclosed are two signed copies of the Financial Assistance Award. Your agreement to the terms and conditions of the award should be indicated by the signature of your principal official on each of the signed copies of the Financial Assistance Award. One of the executed copies should be returned to H. Philip Paradice, Jr., Regional Director, Atlanta Regional Office, Economic Development Administration, 401 West Peachtree Street, N.W, Suite 1820, Atlanta, Georgia 30308-3510. If not signed and returned within 30 days of receipt, EDA may declare the Award null and void.

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

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

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

Sincerely,

H. Philip Paradice, Jr.
 Regional Director

Enclosures: Form CD-450 Financial Assistance Award (2)
 Exhibit A – Special Award Conditions
 Attachment No. 1 – Form ED-508 Budget
 EDA Standard Terms and Conditions for Construction Projects, dated February 12, 2016
 OIG Fraud Awareness Training



GRANT COOPERATIVE AGREEMENT

FINANCIAL ASSISTANCE AWARD

FEDERAL AWARD ID NUMBER
04-79-07380

RECIPIENT NAME
Pinellas County Board of Commissioners

PERIOD OF PERFORMANCE
51 months after date of EDA approval

STREET ADDRESS
315 Court Street

FEDERAL SHARE OF COST
\$ **7,463,295**

CITY, STATE, ZIP CODE
Clearwater, Florida 33756-5165

RECIPIENT SHARE OF COST
\$ **4,536,705**

AUTHORITY
Public Works and Economic Development Act of 1965, as amended

TOTAL ESTIMATED COST
\$ **12,000,000**

CFDA NO. AND NAME
11.307 Economic Adjustment Program

PROJECT TITLE
Innovation Center Incubator

This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.

- DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS
- R & D AWARD
- FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE
- SPECIFIC AWARD CONDITIONS (See attached Exhibit "A")
- LINE ITEM BUDGET (See Attachment 1)
- 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101
- 48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES
- MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIFIC AWARD CONDITION.
- OTHER(S): EDA Standard Terms and Conditions for Construction Projects, dated February 12, 2016



SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

H. Philip Paradice, Jr., Director, Atlanta Regional Office

[Handwritten Signature]

DATE
7-29-19

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

Karen Williams Seel, Chair, Pinellas County Board of County Commissioners

[Handwritten Signature: Karen Seel]

DATE
8/20/19

ATTEST: KEN BURKE / CLERK

By: *[Handwritten Signature]*
Deputy Clerk

EXHIBIT "A"

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

Public Works and Development Facilities

Investment No.: 04-79-07380

Recipient: Pinellas County Board of County Commissioners, Florida

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 day 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 as provided in the CD-450.

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. **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-425, "*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 as 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-425 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.
4. **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).
5. **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 and an Owners Certification as to Eminent Domain.

6. **NONRELOCATION:** In signing this award of financial assistance, Recipient(s) attests that EDA funding is not intended by the Recipient to assist its efforts to induce the relocation of existing jobs that are located outside of its jurisdiction to within its jurisdiction in competition with other jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for those purposes, EDA retains the right to pursue appropriate enforcement action in accord with the Standard Terms and Conditions of the Award, including suspension of disbursements and termination of the award for convenience or cause.
7. **REFUND CHECKS, INTEREST OR UNUSED FUNDS:** Treasury has given the EDA two options for having payments deposited to our account with it:

The first one is Pay.Gov. This option allows the payee to pay EDA through the Internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.

The second option is Paper Check conversion. All checks must identify on their face the name of the DoC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the Federal Project Officer. This option allows the payee to send a check to NOAA's accounting office, who processes EDA's accounting functions at the following address: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Finance Office, AOD, EDA Grants, 20020 Century Boulevard, Germantown, MD 20874. The accounting staff will scan the checks in encrypted file to the Federal Reserve Bank, and the funds will be deposited in EDA's account. While this process will not be an issue with most payees who are corporations, it could be an issue for individuals sending EDA funds. Please make note of the following.

Notice to Customers Making Payment by Check

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

You will not receive your original check back. Your original check will be destroyed, but a copy of it will be maintained in our office. If the EFT cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, we will charge you a one-time fee of \$25.00, which will be collected by EFT.

8. **SCOPE OF WORK:** Recipient(s) agrees to undertake, prosecute and complete the Scope of Work (SOW) for this Project funded by this Award which SOW is approved and agreed to by the Government as subsequently amended in mutually agreed upon written change order(s) and/or SOW amendment(s), if any. The SOW shall be as set forth and described in a.) the application submitted by Recipient(s) and/or Recipient's authorized representative(s) to the Government for this Award together with b.) all enclosures, materials, documents and other

submittals accompanying and supporting the application, c.) all additional materials, documents and/or correspondence requested by the Government and submitted by Recipient(s) and/or Recipient's authorized representative(s) in support and furtherance of the application and d.) such change(s) and/or SOW amendments, if any, requested in writing by the Recipient(s) and/or Recipient's authorized representative subsequent to the date of this Award and approved and agreed to in writing by the Government. To the extent such additional materials, documents and/or correspondence amends and/or clarifies the application, such amendment or clarification shall be controlling. It is agreed that the Recipient(s) and Government intend that the SOW describes a discrete, detailed and specific project that is funded and authorized by this Award and to that end the application and the above described additional information shall be fairly construed to and shall describe the SOW. The scope of work for this project is further described below:

The purpose of this project is to construct a two-story 45,000 sq. ft. facility to house the Tampa Bay Innovation Center business incubator. The facility will include approximately 30,000 sq. ft. of client space, plus co-working/collaboration space, offices, and a conference/community room. Parking will be under a portion of the building and also at the rear of the facility.

9. **CONSTRUCTION PERMITS:** Prior to the first disbursement of funds under this Award, the Recipient shall obtain the permits described in item 3 of the Certificate of Engineer, Part One of the above referenced CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY, AND EASEMENTS.

10. **REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE**

A. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph B of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

Reached its final disposition during the most recent five-year period; and

Is one of the following:

- (a) A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
- (b) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (c) An administrative proceeding, as defined in paragraph E. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (d) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph B.3.(a), (b), or (c) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph A of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
 2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
 3. Total value of currently active grants, cooperative agreements, and procurement contracts includes:
 - (a) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (b) The value of all expected funding increments under a Federal award and options, even if not yet exercised.
11. **WASTE, FRAUD AND ABUSE:** Consistent with 2 CFR part 200, Recipient personnel responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or sub-grantees, will complete the training PowerPoint titled "Compliance with EDA Disaster Assistance Program Requirements" and return the signed Certificate of Training Completion (page 38 or subsequent certification pages if there are more than one of the training) to EDA along with the signed CD-450 within 30 days of receipt.

Further, Recipient will monitor award activities for common fraud schemes, such as:

- false claims for materials and labor,
- bribes related to the acquisition of materials and labor,
- product substitution,
- mismarking or mislabeling on products and materials, and
- time and materials overcharging.

Should Recipient detect any suspicious activity, Recipient will contact EDA staff listed above and the Office of Inspector General, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible.

12. **CONSTRUCTION PERMITS:** Prior to the first disbursement of funds under this Award, the Recipient shall obtain the permits described in item 3 of the Certificate of Engineer, Part One of the above referenced CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY AND EASEMENTS.
13. **USEFUL LIFE:** Prior to first disbursement, the useful life of this project for purposes of the First Priority Unsubordinated Lien required by paragraph L.3 of the Standard Terms and Conditions, is hereby determined to be 20 years.
14. **ARCHITECT/ENGINEER AGREEMENT:** Prior to invitation for bids, the Recipient shall submit to the Government for approval an Architect/Engineer agreement that meets the requirements of Section IV E of the "Summary of EDA Construction Standards, July 2018" as well as the competitive procurement standards of 2 C.F.R. § 200.317 or 200.318, as applicable. The fee for basic Architect/Engineer services shall be a lump sum or an agreed maximum and no part of the fees for other services shall be based upon a cost-plus-a-percentage-of-cost or a cost using a multiplier.
15. **PLANS & SPECIFICATIONS:** Recipient agrees to and shall cause the following to be placed in the project plans and specifications: "If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the project shall cease all activities involving subsurface disturbance in the vicinity of the discovery. The applicant shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section at (850)-245-6333. Project activities shall not resume without verbal and/or written authorization. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes."
16. **CERTIFICATION FOR AWARDS OVER \$5 MILLION:** Prior to the disbursement of any funds under this Award, the Recipient must submit to EDA its Certification for Awards Over \$5 Million as required by the EDA FY2018 Disaster Supplemental NOFO. The Recipient must certify that it:
 - A. has filed all Federal tax returns required during the three years preceding the certification;
 - B. has not been convicted of a criminal offense under the Internal Revenue Code of 1986, as amended;and has not been notified, more than 90 days prior to the certification, of any Federal tax assessment for which liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

17. **EVIDENCE OF GOOD TITLE:** Within 90 calendar days of the date of EDA's signature upon the CD-450, Recipient shall provide evidence satisfactory to the Government that Recipient has acquired good and marketable title to land, free of all encumbrances, as well as rights-of-way, and easements necessary for the completion of the project in accordance with 13 C.F.R. 314.

18. **ESTABLISHMENT OF LEASE AND OPERATING AGREEMENT:** Within 90 calendar days of the date of EDAs signature upon the CD-450, Recipient shall provide to the Government a legally sufficient and executed Lease and Operating Agreement signed by both Recipient and Star-Tec Enterprises, Inc., a Florida non-profit corporation, doing business as Tampa Bay Innovation Center, for the purposes of operating the improved land. Should any tenant leases for the property currently be in effect, documentation should also be submitted to the Government showing those leases have been assigned under the Lease and Operating Agreement."

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

PUBLIC WORKS PROJECT COST CLASSIFICATIONS

EDA Investment No. 04-79-07380

State: Florida

County: Pinellas

<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	825,000	825,000
Other architectural and engineering fees		
Project inspection fees and audit	50,000	50,000
Site Work	950,000	950,000
Demolition and removal		
Construction	9,677,000	9,677,000
Equipment		
Miscellaneous		
Contingencies	498,000	498,000
TOTAL PROJECT COSTS	\$ 12,000,000	\$ 12,000,000

Remarks:

Sample

CERTIFICATION FOR AWARDS IN EXCESS OF \$5 MILLION

Instructions:

1. Please copy all text underneath the line, below, onto a copy of the organizational stationary to include letterhead.
2. Replace all areas with brackets with the information or statement requested.
3. Return the document to your identified EDA Representative.

CERTIFICATION FOR AWARDS OVER \$5 MILLION FROM THE UNITED STATES ECONOMIC DEVELOPMENT ADMINISTRATION

- (1) [Name of Entity] certifies that it has has not (check one) filed all Federal tax returns required during the three years preceding this certification;
- (2) [Name of Entity] certifies that it has has not (check one) been convicted of a criminal offense under the Internal Revenue Code of 1986, as amended; and/or
- (3) [Name of Entity] certifies that it has has not (check one) been notified, more than 90 days prior to this certification, of any Federal tax assessment for which liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

By: [Signature]

[Typed name and title of the signing individual]

[Typed phone number of the signing individual]

[Typed email address of the signing individual]

Date: [Date of signature]

**BOARD OF COUNTY
COMMISSIONERS**

Dave Eggers
Pat Gerard
Charlie Justice
Janet C. Long
Kathleen Peters
Karen Williams Seel
Kenneth T. Welch



Barry A. Burton
County Administrator

Mr. H. Philip Paradice, Jr., Regional Director
U.S. Department of Commerce
Economic Development Administration
401 West Peachtree St., NW, Suite 1820
Atlanta, GA 30308-3510

RE: EDA Investment No. 04-79-07380

Dear Mr. Paradice:

**CERTIFICATION FOR AWARDS OVER \$5 MILLION FROM THE UNITED STATES ECONOMIC
DEVELOPMENT ADMINISTRATION**

- (1) Pinellas County certifies that it has filed all Federal tax returns required during the three years preceding this certification;
- (2) Pinellas County certifies that it has not been convicted of a criminal offense under the Internal Revenue Code of 1986, as amended; and
- (3) Pinellas County certifies that it has not been notified, more than 90 days prior to this certification, of any Federal tax assessment for which liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

By: Karen Williams Seel
Karen Williams Seel
Chairperson, Board of County Commissioners
(727) 464-3278
kseel@pinellascounty.org

Date: 8/20/19

ATTEST: KEN BURKE, CLERK
By: Nancy D. Long
Deputy Clerk



Pinellas County Administration
315 Court St. • Room 601
Clearwater, FL 33756
Main: (727) 464-3485
FAX: (727) 464-4384
V/TDD: (727) 464-4062
www.pinellascounty.org

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

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

Title II of the Public Works and
Economic Development Act of 1965
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components



February 12, 2016

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

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

Title II of the Public Works and
Economic Development Act of 1965
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components

PREFACE

This document sets out the Standard Terms and Conditions for Construction Projects (hereinafter referred to as the “Construction Standard Terms and Conditions” or “Construction ST&Cs”) applicable to Economic Development Administration (“EDA”) financial assistance awards. A Recipient of an EDA construction financial assistance award must, in addition to the assurances made as part of the Application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the Project to comply with all applicable statutes, regulations, executive orders, Office of Management and Budget (“OMB”) circulars, provisions of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 CFR part 200) (“Uniform Guidance”), provisions of these Construction ST&Cs, the EDA-approved Project budget and scope of work, any other incorporated terms and conditions, and approved Applications (collectively, “Terms and Conditions of the 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 (Fed. Reg.)*), executive orders, OMB circulars, EDA’s Construction ST&Cs, and special award conditions. A special award condition may amend or take precedence on a case-by-case basis over a Construction ST&C when warranted by specific Project circumstances.

Some of these Construction ST&Cs contain, by reference or substance, a summary of the pertinent statutes or regulations published in the *Federal Register* or the Code of Federal Regulations (“CFR”), executive orders, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (*e.g.*, Forms SF-424B and SF-424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, executive order, OMB circular, or assurance.

**ECONOMIC DEVELOPMENT ADMINISTRATION
STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

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

A. GENERAL REQUIREMENTS AND RESPONSIBILITIES.

1. Purpose.

The Economic Development Administration's ("EDA's") grants for (i) public works (42 U.S.C. § 3141) and (ii) construction economic adjustment assistance (42 U.S.C. § 3149) Projects awarded under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) ("PWEDA") 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 ST&Cs 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 ST&Cs apply to construction projects of revolving loan funds ("RLFs") awarded between January 1, 1975 and February 10, 1999 under EDA's Title IX Economic Adjustment Assistance Program, as well as to RLFs funded after February 11, 1999 under section 209 of PWEDA (42 U.S.C. § 3149).

2. Authority and Policies.

EDA is a bureau within the U.S. Department of Commerce ("DOC" or "Department") established under PWEDA. *See* 13 CFR § 300.1 ("Overview of eligibility requirements"). 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 purposes 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 non-Federal entity. The implementation of any such regulatory, administrative, or programmatic change in administering this Award requires EDA's prior 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 ST&Cs 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 ST&Cs, the following words and phrases shall have the following meanings:

- a. "Application" means all forms, documentation, and any information submitted to the Government as part and in furtherance of a request for an Award and includes submissions made in response to information requested by the Government after submission of the initial Application;
- b. "Assistant Secretary" refers to the Assistant Secretary of Commerce for Economic Development;
- c. "Award" refers to the Federal financial assistance that a Recipient receives directly from EDA (*see also* 2 CFR § 200.38);
- d. "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 have been completed by the Recipient and EDA (*see also* 2 CFR § 200.16);
- e. "Contract" means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the Project or program under this Award. As defined at 2 CFR § 200.22, the term does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (*see also* 2 CFR § 200.22);
- f. "Contractor" means an entity that receives a contract as defined in this section and at 2 CFR § 200.22 (*see also* 2 CFR § 200.23);
- g. "Department" or "DOC" refers to the U.S. Department of Commerce;
- h. "Government" or "Federal Government" refers to EDA;
- i. "Grants Officer" refers to the official responsible for all business management and administrative aspects of this Award and, under these Construction ST&Cs, is the Regional Director in the appropriate Regional Office;
- j. "Non-Federal entity" is a State, local government, Indian tribe, institution of higher education ("IHE"), or nonprofit organization that carries out a Federal award as a recipient or subrecipient (*see also* 2 CFR § 200.69);
- k. "Pass-through entity" is a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (*see also* 2 CFR § 200.74);
- l. "Project" refers to the activity for which the EDA grant was awarded;
- m. "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;

- n. "Recipient" is a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term "Recipient" does not include subrecipients (*see also* 2 CFR § 200.86);
- o. "Regional Office" refers to an EDA Regional Office;
- p. "Subaward" means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity (*see also* 2 CFR § 200.92);
- q. "Subrecipient" is a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency (*see also* 2 CFR § 200.92); and
- r. "Terms and Conditions of the Award" is defined in the first paragraph of the Preface above.

Capitalized terms used but not otherwise defined in these Construction ST&Cs have the meanings ascribed to them in EDA's regulations at 13 CFR §§ 300.3 ("Definitions"), 302.20 ("Civil rights"), 307.8 ("Definitions"), and 314.1 ("Definitions").

4. Grant Recipient as Trustee.

The Recipient holds grant funds and any EDA-assisted Project property in trust for the purposes 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 property acquired or improved, in whole or in part, with the EDA investment. *See* 13 CFR § 314.2 ("Federal Interest").

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

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

5. Reaffirmation of Application and Award Acceptance.

The Recipient acknowledges that the Recipient's Application for this Award may have been submitted to the Government and signed by the Recipient, or by an authorized representative of the Recipient, electronically without providing an original "wet" signature. In addition, the Recipient, or an authorized representative of the Recipient, may have accepted the Award electronically, which includes drawing down any funds at any time under this Award. Regardless of who submitted the Application to the Government or the means by which the Recipient submitted the Application or accepted the Award, the Recipient hereby reaffirms and states that:

- a. All data in the Application were true and correct when the Application was submitted and remain true and correct as of the date of this Award;

- b. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and
- c. The Recipient has read, understood, and will comply with all terms of this Award, including the assurances and certifications submitted with, or attached to, the Application.

The Recipient agrees to immediately notify the Grants Officer of any material changes to the Application within 30 calendar days of the date the Recipient becomes aware of such changes.

6. Noncompliance with Award Provisions.

Failure to comply with the provisions of this Award may be grounds for appropriate enforcement action pursuant to 2 CFR § 200.338 (“Remedies for noncompliance”), including but not limited to:

- a. The imposition of additional Award conditions in accordance with 2 CFR § 200.207 (“Specific conditions”);
- b. Temporarily withholding Award payments pending the correction of the deficiency;
- c. The disallowance of Award costs and the establishment of an account receivable;
- d. Wholly or partially suspending or terminating this Award;
- e. Initiating suspension or debarment proceedings in accordance with 2 CFR parts 180 (“OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)”) and 1326 (“Nonprocurement Debarment and Suspension”);
- f. Withholding further Federal awards for the Project or program; and
- g. Such other remedies as may be legally available. *See also* 2 CFR §§ 200.339 (“Termination”) through 200.342 (“Effects of suspension and termination”).

In addition, failure to comply with the provisions of this Award may adversely impact the availability of funding under other active EDA or Federal awards and may also have a negative impact on the Recipient’s eligibility for future EDA or other Federal awards.

B. FINANCIAL REQUIREMENTS.

1. Financial Reports.

- a. During the period of performance, the Recipient shall submit financial reports as follows or as otherwise specified in the special award conditions.
 - i. *Reports on Award Reimbursements.* In accordance with 2 CFR § 200.327 (“Financial reporting”), the Recipient shall submit a “Federal Financial Report” (Form SF-425 or any successor form) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 calendar days following the end of each reporting period, and instructions for completing and submitting Form SF-425 will be discussed during the Project kick-off meeting. Recipients may contact their EDA Project Officer with questions on how to complete or submit the report, if necessary, but they are required to submit reports on time and are encouraged to pose such questions sufficiently

before the deadline to allow for complete, accurate, and timely submission of required reports.

- ii. *Reports on Award Advances.* While EDA generally does not advance funds, when the agency does so, the Recipient must submit Form SF-425 within 15 business days following the end of each quarter for an award under \$1 million, 15 business days following the end of each month for an award totaling \$1 million or more, or as otherwise specified in a special award condition.
- b. The Recipient must submit a final financial report using Form SF-425 within 90 calendar days of the expiration date of the Award.
- c. Noncompliance with the financial reporting requirements will result in appropriate enforcement action under this Award, including but not limited to suspension of Award payments or disallowance of costs.
- d. Financial reports should be submitted to the Project Officer in electronic format, unless otherwise specified in the special award conditions.

2. Disbursements.

- 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.
 - i. *State Recipients.* Consistent with 2 CFR § 200.305(a) ("Payment"), for States, payments are governed by Treasury-State Cash Management Improvement Act agreements and default procedures codified at 31 CFR part 205 ("Rules and Procedures for Efficient Federal-State Funds Transfers") and *Treasury Financial Manual Volume I*, 4A-2000 ("Overall Disbursing Rules for All Federal Agencies").
 - ii. *Recipients Other than States.* Consistent with 2 CFR § 200.305(b), for Recipients other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.
- 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.
 - i. *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.
 - ii. *Interim Disbursement Requests.* All requests for interim disbursement shall be submitted using Form SF-271 and include substantiating invoices and/or vouchers.

iii. *Final Disbursement Request.* See section C.19 “Project Closeout Procedures” in these Construction ST&Cs.

3. Federal and Non-Federal Cost Sharing.

- a. For purposes of this Award, the Federal share is the amount of EDA funds invested under the Award, while the non-Federal share, or “Matching Share,” means non-EDA funds and any in-kind contributions that are approved by EDA and provided by the Recipient or by third parties as a condition of the Award. Awards that include a Federal and non-Federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal share and Matching Share shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. See 13 CFR §§ 305.10 (“Bid underrun and overrun”) and 308.1 (“Use of funds in projects constructed under projected cost”). As noted below in section B.4 “Budget Revisions and Transfers of Funds Among Cost Categories” of these Construction ST&Cs, 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 general 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 non-Federal cost share commitment over the Award period of performance; failure to do so may result in the assignment of special award conditions or other further action as specified in section A.6 “Noncompliance with Award Provisions” of these Construction ST&Cs.
- c. The Recipient must create and maintain sufficient records justifying the required Matching Share to facilitate questions, audits, and other inquiries necessary to meet EDA’s requirements to safeguard Federal funds, and must provide these records if requested by EDA, auditors, or other Federal parties. See also section C.17 “Record-Keeping Requirements” of these Construction ST&Cs. EDA may disallow undocumented costs. See 2 CFR § 200.306 for additional requirements regarding cost sharing.
- d. The Recipient shall show that the Matching Share is committed to the Project, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA Investment Assistance. See 13 CFR § 301.5 (“Matching share requirements”).

4. Budget Revisions and Transfers of Funds Among Budget Categories.

The EDA-approved budget is the budget plan for the Project. The Recipient must notify EDA of deviations from the budget or program plans in accordance with 2 CFR § 200.308 (“Revision of budget and 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). If prior written approval is not required under 2 CFR § 200.308, the Recipient may request the Grants Officer’s review of and guidance on proposed revisions to the budget.

- a. Requests for budget revisions to the EDA-approved budget in accordance with the provisions below must be submitted through the Project Officer to the Grants Officer, who shall make the final determination on such requests and notify the Recipient in writing.
- b. In accordance with 2 CFR § 200.308(g), EDA's prior written approval and an amendment executed by the Grants Officer and the Recipient using Form CD-451 or any successor form are required for budget revisions when:
 - i. The revision results from changes in the scope or the objective of the Project;
 - ii. The need arises for additional EDA funds to complete the Project;
 - iii. The Federal share exceeds \$150,000 and the cumulative amount of transfers among direct cost categories exceeds or is expected to exceed 10 percent of the total budget as last approved by EDA; and
 - iv. A revision is desired that involves specific costs for which prior written approval requirements may be imposed consistent with applicable cost principles listed in subpart E of 2 CFR part 200 ("Cost Principles").
- 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 transfers from non-construction to construction or vice versa. *See* 2 CFR § 200.308(g)(5).
- 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. *See* 2 CFR § 200.308.
- e. *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 EDA determines that the use is consistent with the original purpose of the approved EDA investment. *See* 13 CFR § 308.1 ("Use of funds in projects constructed under projected cost").
- f. *Additional EDA Funding in Case of Project Overrun Amounts.* In accepting this Award, the Recipient agrees to fund any overrun amounts from non-Federal sources. Additional EDA assistance for the Project may not be approved.

5. Indirect Costs and Facilities and Administrative Costs.

- a. Indirect costs, or facilities and administrative ("F&A") costs for educational institutions, are generally not applicable under this Award. See the definition of indirect costs at 2 CFR § 200.56 ("Indirect (facilities & administrative (F&A)) costs").
- b. When indirect costs are applicable, they will not be allowable charges against the Award unless approved under the Award and specifically included as a line item in the Award's approved budget.
- c. Excess indirect costs may not be used to offset unallowable direct costs.

- d. Under 2 CFR § 200.306(c) (“Cost sharing or matching”), unrecovered indirect costs, including indirect costs on cost sharing or matching, may be included as part of cost sharing or matching only with the prior written approval of EDA.
- e. *Cognizant Agency for Indirect (F&A) Costs.* OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas, including reviewing and approving indirect cost rates applicable to Federal grants.
 - i. *Determining the Cognizant Agency for Non-Commercial Organizations.* In accordance with 2 CFR § 200.19 (“Cognizant agency for indirect costs”), the cognizant agency for indirect costs is the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. Approved rates must be accepted by other agencies, unless a Federal statute or regulation requires use of a different rate or a Federal agency awarding head or delegate approves a different rate in accordance with 2 CFR § 200.414(c) (“Indirect (F&A) costs”).

If indirect costs are permitted, but the Recipient has not previously established an indirect cost rate with a Federal agency, the Recipient may consult Appendices III–VII to 2 CFR part 200 for information on determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans:
 - (1) Appendix III to 2 CFR part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
 - (2) Appendix IV to 2 CFR part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
 - (3) Appendix V to 2 CFR part 200 – State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;
 - (4) Appendix VI to 2 CFR part 200 – Public Assistance Cost Allocation Plans; and
 - (5) Appendix VII to 2 CFR part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.
 - ii. *General Review Procedures When DOC Is the Cognizant Agency.*
 - (1) Within 90 days of the Award start date the Recipient shall submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow the agency to perform the indirect cost rate proposal review.
 - (2) The Recipient may use the fixed rate proposed in the indirect cost plan as a provisional rate until DOC provides a response to the submitted plan.
 - iii. *When DOC Is Not the Oversight or Cognizant Agency.* When the cognizant Federal agency is not DOC, the non-Federal entity 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 entity fails to submit 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 is a finding of 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. 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 Award budget, including all budget revisions approved in writing by the Grants Officer; or
 - ii. The Federal share of the total indirect costs allocable to the Award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the Award end date.
- h. In accordance with 2 CFR § 200.414(g) (“Indirect (F&A) costs”), any Recipient that has a negotiated indirect cost rate may apply to the entity’s cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.
- i. Any Recipient that has never received a negotiated indirect cost rate, except for those Recipients described in Paragraph D.1.b of Appendix VII to 2 CFR part 200 (specifically, a governmental department or agency that receives more than \$35 million in direct Federal funding), may elect to charge a *de minimis* rate of 10 percent of modified total direct costs. See 2 CFR § 200.414(f).

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 may result in the rejection of the Application, the disallowance of costs, or other adverse consequences as a result of noncompliance with EDA or Federal law, including but not limited to procurement requirements, civil rights requirements, Federal labor standards, or environmental and historic preservation requirements. The Grants Officer must authorize pre-award costs in writing, and such costs must also be allowable under relevant Federal cost principles and the specific Award terms and be included in the EDA approved budget. Pre-award costs not included in the authorized budget are not allowable and may not be reimbursed. See 13 CFR § 302.8 (“Pre-approval Investment Assistance costs”).

7. Incurring Costs or Obligating Federal Funds Beyond the Project Expiration Date.

- a. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the Project, program, or activities beyond the authorized period of performance documented in the Award agreement, unless a written time extension of this Award is granted by the Grants Officer. The only costs that are authorized for a period of up to 90 calendar days following the end date of the period of performance are those strictly associated with Closeout activities. Closeout activities are generally limited to the preparation of final progress, financial, and required Project audit reports unless otherwise approved in writing by the Grants Officer. The Grants Officer may approve extensions of the 90 calendar-day Closeout period upon a request by the Recipient as provided in 2 CFR § 200.343 (“Closeout”), as applicable.

- b. The Recipient shall adhere to the development time schedule and time limits set out in the special award conditions if they differ from those provided in these Construction ST&Cs.
- c. Neither DOC nor EDA has any obligation to provide any additional prospective funding. Any amendment of the Award to increase funding and to extend the period of performance is at the sole discretion of DOC and/or EDA.

8. Time Extensions.

- a. Unless otherwise authorized in 2 CFR § 200.308 (“Revision of budget and program plans”), or a special award condition, any extension of the period of performance 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 of the period of performance.
- 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 and to suspend or terminate this Award if the Recipient fails to proceed with reasonable diligence to accomplish the Project as intended.

9. Tax Refunds.

Refunds of Federal Insurance Contributions Act (“FICA”) or Federal Unemployment Tax Act (“FUTA”) taxes received by the Recipient during or after the period of performance 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 the Award period of performance.

10. Program Income.

For Projects that generate rental revenue (*e.g.*, buildings or real property constructed or improved for the purpose of renting or leasing space), the Recipient agrees, for the estimated useful life (as

determined by EDA) of the EDA-assisted facility, 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 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.
- c. Any income in excess of paragraphs a. and b. of this section must be deducted from total allowable Project costs in accordance with 2 CFR § 200.307(e).

See 2 CFR § 200.307 (“Program income”).

C. PROGRAMMATIC REQUIREMENTS.

1. Project Progress and Performance Reporting.

- a. Project progress reports must be submitted in accordance with the procedures set out in 2 CFR § 200.328 (“Monitoring and reporting program performance”), 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 reports; 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 CFR § 302.18 (“Post-approval requirements”).
- b. Unless otherwise specified in this Award, the Project progress report will contain the following information for each Project program, function, or activity:
 - i. A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;
 - ii. An explanation of any delays or failures to meet the Project timetable or Project goals; and
 - iii. Any other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

Project progress reports shall be submitted for each calendar quarter to the Project Officer. Each Project progress report must be submitted in accordance with the deadlines outlined in the special award conditions, or, where not otherwise specified, Project progress reports will be due on a quarterly basis not later than January 31, April 30, July 31, and October 31 for the immediate previous quarter. The final Project progress report shall be submitted to EDA no more than 90 calendar days after the Project Closeout date. This reporting requirement begins with the Recipient’s acceptance of this Award and ends when EDA approves Project Closeout.

The Recipient shall submit quarterly Project progress reports to the EDA Project Officer electronically unless otherwise specified in the special award conditions.

2. Reporting on Real Property.

The Recipient must submit reports (using Form SF-429 “Real Property Status Report” or any successor form) at least annually on the status of real property in which EDA retains an interest, unless the Federal interest in the real property extends 15 years or longer. When EDA’s interest extends for a period of 15 years or more, EDA, at its option, may require the Recipient to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or annual reporting for the first three years of the Award and thereafter every five years). *See* 2 CFR § 200.329 (“Reporting on real property”) and section L.3.h “EDA’s Interest in Award Property” of these Construction ST&Cs.

3. Interim Reporting of Significant Project Developments.

The Recipient must report any event that will or may have a 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 taken or 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* 2 CFR § 200.328(d) (“Monitoring and reporting program performance”).

4. Government Performance and Results Act Reporting.

In addition to quarterly Project progress reports, EDA may require the Recipient to report on Project performance beyond the Project Closeout date for Government Performance and Results Act (“GPRA”) purposes. In no case shall the Recipient be required to submit any report more than ten years after the Project Closeout date. Data used by the Recipient in preparing reports shall be accurate and, whenever possible, from independent sources. *See* 13 CFR § 302.16 (“Accountability”).

5. Unsatisfactory Performance.

Failure to perform the work in accordance with the Terms and Conditions of the Award and maintain at least satisfactory performance may result, at EDA’s discretion, in the assignment of additional award conditions pursuant to 2 CFR § 200.207 (“Specific conditions”) or other appropriate enforcement actions as specified in 2 CFR § 200.338 (“Remedies for noncompliance”). *See also* section A.6 “Noncompliance with Award Provisions” of these Construction ST&Cs.

6. Programmatic Changes.

- a. In accordance with 2 CFR § 200.308 (“Revisions of budget and program plans”), the Recipient shall report programmatic changes, including all changes to the scope of the Award, to the Project Officer. In accordance with section B.4 “Budget Revisions and Transfers of Funds Among Budget Categories” of these Construction ST&Cs, certain budget revisions require the prior written approval of EDA. In these cases, the Project Officer will

forward the request to the Grants Officer, who makes the final decision on approving the request. In addition, the Recipient shall request prior written approvals for certain items of cost in accordance with 2 CFR § 200.407 (“Prior written approval (prior approval)”).

- b. Any changes made to the Project without EDA’s approval are made at the Recipient’s risk of nonpayment of costs, suspension, termination, or other EDA action with respect to the Award. *See* 13 CFR § 302.7(b) (“Amendments and changes”).
- c. *Contract Change Orders.* After construction contracts for the Project have been executed, it may become necessary to alter them, which requires a formal contract change order that must be issued by the Recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. Work on the Project may continue pending EDA review and approval of the change order, but all such work shall be at the Recipient’s risk as to whether the cost of the work is eligible for EDA participation until the Recipient receives EDA’s written approval for the change order. *See* 13 CFR § 305.13 (“Contract change orders”).

7. Other Federal Awards with Similar Programmatic Activities.

The Recipient shall immediately notify the Project Officer and the Grants Officer in writing if, after 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.

8. Beneficiary Compliance.

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 CFR §§ 314.4 (“Unauthorized use of property”) and 314.5 (“Federal share”). Where the Government determines that the failure of a beneficiary to comply with EDA requirements affects a portion of the property benefited by the Award, the Recipient will reimburse the Government proportionately.

9. Prohibition Against Assignment by the Recipient.

The Recipient shall not transfer, pledge, mortgage, or otherwise assign the Award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express prior written approval of the Grants Officer, which approval may be provided in a special award condition.

10. Disclaimer Provisions; Hold Harmless Requirement.

- a. The United States expressly disclaims any and all responsibility or liability to the Recipient, subrecipient, or third persons for the actions of the Recipient, subrecipient, 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 or any subaward by the Recipient or subrecipient does not in any way constitute an agency relationship between the United States and the Recipient or subrecipient.
- 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 CFR § 302.19 (“Indemnification”).

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 (*e.g.*, conducting a title search or preparing plans and specifications) may be eligible Project costs and may be paid out of Award funds, provided such costs are otherwise eligible. *See* 13 CFR § 302.10 (“Attorneys’ and consultants’ fees, employment of expeditors, and post-employment restriction”).

13. Recipient’s Duty to Refrain from Employing Certain Government Employees.

- a. Pursuant to section 606(2) of PWEDA (42 U.S.C. § 3216), for the two-year period beginning on the date EDA executes this Award, any Recipient that is a nonprofit organization, District Organization, or for-profit entity agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:
 - i. On the date the Government executes this Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Department, and
 - ii. Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the awarding of Investment Assistance under PWEDA.

- b. In addition to the types of Recipients noted in paragraph a above, EDA may require another Eligible Applicant to execute an agreement to abide by the above-described post-employment restriction on a case-by-case basis—for example, when an institution of higher education implements activities under or related to the Investment Assistance through a separate nonprofit organization or association.
- c. The two-year period and associated restrictions referenced above also shall apply beginning on the date that EDA executes any cost amendment to this Award that provides additional funds to the Recipient.

See also 13 CFR § 302.10 (“Attorneys’ and consultants’ fees, employment of expeditors, and post-employment restriction”).

14. Commencement of Construction and Project Sign.

- 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.
- 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 CFR § 305.11 (“Contract awards; early construction start”).
- c. *Project Sign.* The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. *See* 13 CFR § 305.12 (“Project sign”).

15. Efficient Administration of Project.

The Recipient agrees to properly and efficiently administer, operate, and maintain the Project for its estimated useful life, as required by section 504 of PWEDA (42 U.S.C. § 3194). If the Government determines, at any time during the estimated useful life of the facility, that the Project is not being properly and efficiently administered, operated, and maintained, the Government may terminate this Award (if it is still active) and/or may take appropriate enforcement action to protect the Federal Interest in the Project, including requiring the Recipient to repay the Federal Share. *See* 13 CFR §§ 302.12 (“Project administration, operation and maintenance”), 302.18 (“Post-approval requirements”), and 314.2 (“Federal interest”) through 314.5 (“Federal share”).

16. Conflicts-of-Interest Rules.

- a. An “Interested Party” is defined in 13 CFR § 300.3 (“Definitions”) 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 CFR § 300.3 as “a person’s spouse (or domestic partner or significant other), 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.
- b. The Recipient must disclose in writing any potential conflicts of interest to EDA or the pass-through entity. In addition, the Recipient must maintain written standards of conduct to 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 in the administration of an award. *See* 13 CFR § 302.17(a) and (b) (“Conflicts of interest”), 2 CFR § 200.112 (“Conflict of interest”), as applicable, and Forms SF-424B (“Assurances – Non-Construction Projects”) and SF-424D (“Assurances – Construction Projects”).
- c. An Interested Party must not receive any direct or indirect financial or personal interests or benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest or benefit may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance, services, 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 CFR § 302.17(a) and (b).
- d. Procurement-related conflicts of interest. In addition, in accordance with 2 CFR § 200.318(c) (“General procurement standards”), the Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. *See* 2 CFR §§ 200.317–200.326 (“Procurement Standards”).

17. Record-Keeping Requirements.

- a. *Records.* The Recipient must maintain records that document compliance with the Terms and Conditions of this Award. At a minimum, the Recipient’s records must fully disclose:
 - i. The amount and disposition of EDA investment assistance;
 - ii. All Project expenditures and procurement actions;
 - iii. The total cost of the Project that the Award funds;
 - iv. Copies of all reports and disbursement requests submitted to EDA;

- v. The benefits/impacts of the Project, as reported through GPRA and other reports to EDA;
 - vi. The amount and nature of the portion of Project costs provided by non-EDA sources;
 - vii. Contractor compliance with applicable Federal requirements; and
 - viii. Such other records as EDA determines will facilitate an effective audit.
- b. *Records Retention.* In general and in accordance with 2 CFR § 200.333 (“Retention requirements for records”), all records pertinent to this Award must be 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. When the Recipient is notified in writing by EDA, the cognizant agency for either audit or indirect costs, the oversight agency for audit, or the relevant pass-through entity to extend the retention period, it must retain the records as directed.
 - iii. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition of the relevant real property or equipment.
 - iv. When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the Recipient.
 - v. Records for program income transactions after the period of performance. In some cases Recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the Recipient’s fiscal year in which the program income is earned.
 - vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
 - (1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.
 - (2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
- c. *Monitoring and Reporting Obligations.* The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer if records are lost,

destroyed, or are otherwise no longer available, or if the Recipient anticipates that it will not be able to comply with the record retention requirements under the Award for the general retention periods noted above. See 13 CFR § 302.14 (“Records”), as applicable.

18. Termination Actions.

- a. In accordance with 2 CFR § 200.339 (“Termination”), this Award may be terminated in whole or in part as follows:
 - i. *Termination by EDA for the Recipient’s Failure to Comply with the Terms and Conditions of the Award.* EDA may terminate this Award, in whole or in part, if the Recipient fails to comply with the Terms and Conditions of the Award, including if:
 - (1) Any representation made by the Recipient to the Federal awarding agency in connection with the Application for Federal assistance is incorrect or incomplete in any material respect;
 - (2) The Project has changed substantially, without EDA approval, so as to affect significantly the accomplishment of the Project as intended (including an unauthorized use of property as provided in 13 CFR § 314.4 (“Unauthorized use of property”));
 - (3) The Recipient has violated commitments it made in its Application and supporting documents or has violated any of the Terms and Conditions of the Award;
 - (4) The conflicts-of-interest rules at 13 CFR § 302.17 (“Conflicts of interest”) are violated; or
 - (5) The Recipient fails to report immediately to the Federal awarding agency any change of authorized representative acting in lieu of or on behalf of the Recipient.
 - ii. *Termination by EDA for Cause.* EDA may terminate this Award for cause if required by a circumstance beyond EDA’s control, such as a Congressional mandate.
 - iii. *Termination by the Recipient.* The Recipient may terminate this Award in whole or in part upon sending the EDA Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if EDA determines in the case of partial termination that the reduced or modified portion of the EDA Award will not accomplish the purposes for which the EDA Award was made, EDA may terminate the Award in its entirety.
 - iv. *Termination Upon Mutual Agreement.* EDA and the Recipient may mutually agree to terminate this Award in whole or in part. In such cases, EDA and the Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
- b. If the Award is wholly or partially terminated, the Recipient remains responsible for compliance with the requirements in 2 CFR §§ 200.343 (“Closeout”) and 200.344 (“Post-closeout adjustments and continuing responsibilities”).

19. Project Closeout Procedures.

As noted above in section C.15 "Efficient Administration of Project" of these Construction ST&Cs, 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 CFR § 302.12 ("Project administration, operation and maintenance"). 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 charged against this Award (Federal and non-Federal shares) are for eligible activities and represent allowable costs, 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 subpart F of 2 CFR part 200 ("Audit Requirements"), if applicable, does not contain any material findings (if the Recipient's currently valid audit does contain material findings, the Recipient shall submit the applicable audit preferably via e-mail to the Project Officer, who will review with the Grants Officer);
 - v. The Recipient's certification that its currently valid audit (in accordance with subpart F of 2 CFR part 200), 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 allowable and unallowable. If a balance of this Award is due to the Recipient, the balance will be paid by wire transfer. If the Recipient has received an amount in excess of the amount due the Recipient, the Recipient must refund the excess to EDA. The Recipient shall contact the Project Officer for refund instructions.

As noted above, if the Recipient's currently valid audit completed pursuant to subpart F of 2 CFR part 200 contains material findings, the Recipient shall submit the audit, preferably via e-mail, to the Project Officer, who will review with the Grants Officer before final disbursement. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the Project Officer.

- b. The Recipient shall submit, within 90 calendar days after the Project Closeout date, all financial, performance, and other reports as required by the Terms and Conditions of this Award. The Grants Officer may extend the 90 calendar day Closeout period upon a written request from the Recipient.

- c. As required under GPRA and in accordance with a schedule that will be provided by EDA, the Recipient must submit additional Performance Measurement Reports, generally three, six, and nine years after the date of the Award to accurately and completely report the impacts of the Project, especially in terms of job creation and private investment leveraging.
- d. 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 within 90 calendar days of the expiration date of this Award, whichever occurs earlier.
- e. In accordance with 2 CFR § 200.344 “Post-closeout adjustments and continuing responsibilities,” the Closeout of this Award does not affect any of the following:
 - i. The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;
 - ii. The Recipient’s obligation to return any funds due as a result of later corrections or other transactions;
 - iii. Audit requirements per subpart F of 2 CFR part 200; and
 - iv. Requirements for property management and disposition, records retention, and performance measurement reports. *See* subpart D of 2 CFR part 200 (“Post Federal Award Requirements”), as applicable.

20. Freedom of Information Act.

EDA is responsible for meeting its Freedom of Information Act (“FOIA”) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 CFR part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of Applications and other information submitted by applicants and Recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain Application and other submitted information publicly available. Accordingly, as set forth in 15 CFR § 4.9, the Recipient should identify in its Application any “business information” it believes to be protected from disclosure pursuant to 5 U.S.C. § 552(b)(4).

D. ADDITIONAL REQUIREMENTS RELATING TO CONSTRUCTION PROJECTS.

The Recipient and any subrecipients must, in addition to other statutory and regulatory requirements detailed in these Construction ST&Cs 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, Uniform Guidance, and local law requirements.

1. **The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141–3144, 3146, 3147; 42 U.S.C. § 3212)**, which requires minimum wages for mechanics and laborers employed on Federal Government public works projects to be based on the wages that 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)**, which provides 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 (54 U.S.C. § 300101 *et seq.*), and the Advisory Council on Historic Preservation Guidelines (36 CFR part 800)**, which require stewardship of historic properties in projects involving Federal funds.
4. **The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 *et seq.*)**, which requires 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. **The 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 CFR part 24 (“Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs”), which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a project financed wholly or in part with Federal financial assistance.
7. **The Energy Conservation and Production Act (42 U.S.C. § 6834 *et seq.*)**, which establishes energy efficiency performance standards for the construction of new residential and commercial structures undertaken with Federal financial assistance.
8. **Compliance with Local Construction Requirements.** The Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

E. NONDISCRIMINATION 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 nondiscrimination requirements below.

1. Statutory Provisions.

- a. **Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*)** and DOC implementing regulations published at 15 CFR part 8 (“Nondiscrimination in Federally Assisted Programs of the Department of Commerce—Effectuation of Title VI of the Civil Rights Act of 1964”), which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance. *See* the Department’s Title VI compliance provisions at 15 CFR §§ 8.7 (“Cooperation, compliance reports and reviews and access to records”) through 8.15 (“Effect on other laws; supplementary instructions; coordination”).

- b. **Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*)**, which prohibits discrimination on the basis of sex under Federally assisted education programs or activities.
- c. **Pub. L. No. 92-65, 42 U.S.C. § 3123**, which proscribes discrimination on the basis of sex in EDA assistance provided under PWEDA; **Pub. L. No. 94-369, 42 U.S.C. § 6709**, which proscribes discrimination on the basis of sex under the Local Public Works Program; and the Department's implementing regulations at 15 CFR §§ 8.7 ("Cooperation, compliance reports and reviews and access to records") -8.15 ("Effect on other laws; supplementary instructions; coordination").
- d. **The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) (ADA)**, which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereof, as well as public or private entities that provide public transportation.
- e. **Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794)**, and DOC implementing regulations published at 15 CFR part 8b ("Prohibition of Discrimination Against the Handicapped in Federally Assisted Programs Operated by the Department of Commerce"), which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 CFR § 8b.18(c) ("New construction"), Recipients must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act ("ADA") (28 CFR part 35 ("Nondiscrimination on the Basis of Disability in State and Local Government Services"); 75 *Fed. Reg.* 56164, as amended by 76 *Fed. Reg.* 13285) and Title III of the ADA (28 CFR part 36 ("Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities"); 75 *Fed. Reg.* 56236, as amended by 76 *Fed. Reg.* 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects.

- f. **The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*)** and DOC implementing regulations published at 15 CFR part 20 ("Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance"), which prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.
- g. Other applicable Federal statutes, regulations, and executive orders, and other applicable nondiscrimination laws.

2. Other Provisions.

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

- b. Executive Order 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency ("LEP"), and develop and implement a system to provide those services so that LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 ("Guidance to Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", 68 *Fed. Reg.* 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that Recipients provide meaningful access to their LEP applicants and beneficiaries.

3. Title VII Exemption for Religious Organizations.

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

F. AUDITS.

Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), an audit of the Award may be conducted at any time. The Department's Inspector General, 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. This right also includes timely and reasonable access to the Recipient's personnel for the purpose of interview and discussion related to such documents. *See* 2 CFR § 200.336 ("Access to records"). When the Office of the Inspector General ("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. 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 subpart F of 2 CFR part 200 ("Audit Requirements"). Recipients that expend \$750,000 or more in Federal awards during their fiscal year shall have an audit conducted for that year in accordance with the requirements set forth in subpart F of 2 CFR part 200. Within the earlier of 30 calendar days after receipt of the auditor's report, or nine months after the end of the audit period, a copy of the audit shall be submitted electronically to the Federal Audit Clearinghouse website at <http://harvester.census.gov/sac/>.

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

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

Within 90 days of the end of the fiscal year of a Recipient subject to subpart F of 2 CFR part 200, the entity is responsible for notifying the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, the Recipient expended during its fiscal year.

A Recipient that expends less than \$750,000 in Federal awards during its fiscal year is exempt from Federal audit requirements for that year, except as noted at 2 CFR § 200.503 (“Relation to other audit requirements”), but records must be available for review and audit by EDA, DOC, or other designated Government officials.

Failure to provide audit reports within the timeframes specified may result in appropriate enforcement action, up to and including termination of the Award, and may jeopardize eligibility for receiving future DOC awards.

- b. Unless otherwise specified in the Terms and Conditions of this Award, for-profit hospitals, commercial entities, and other organizations that are not subject to subpart F of 2 CFR part 200 (“Audit Requirements”) shall have a program specific audit performed by an independent auditor when the Federal share amount awarded is \$750,000 or more over the duration of the period of performance. An audit is required at least once every two years using the following schedule for audit report submission:
- i. For Awards where the period of performance is less than two years, an audit is required within 90 calendar days of the end of the period of performance to cover the entire Project (the Project Closeout period is included in the 90 days);
 - ii. For Awards with a two- or three-year period of performance, an audit is required within 90 calendar days after the end of the first year to cover Year 1, which is the period of time when Federal funding is available for obligation by the Recipient, and within 90 calendar days of the end of the period of performance to cover Year 2 and Year 3 (if applicable) (the Project Closeout period is included in the 90 days); or
 - iii. For Awards with a four- to five-year period of performance, an audit is required within 90 calendar days after the end of the first year to cover Year 1, within 90 calendar days after the end of the third year to cover Year 2 and Year 3, and within 90 calendar days of the end of the period of performance to cover Year 4 and Year 5 (if applicable) (the Project Closeout period is included in the 90 days).
- c. EDA’s Public Works and Economic Adjustment Assistance programs generally have specific audit guidelines that will be incorporated into the Award and may be found in the annual Compliance Supplement, which is Appendix XI to 2 CFR part 200 and is available on OMB’s website (https://www.whitehouse.gov/omb/circulars_default). When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 CFR § 200.507

("Program-specific audits"). The Recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer.

- d. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. In accordance with 2 CFR § 200.331(d)(3) ("Requirements for pass-through entities"), pass-through entities are responsible for issuing a management decision for any audit findings pertaining to the Federal Award provided to a subrecipient.

2. Requirement to Submit a Copy of the Audit to EDA.

If the Recipient's currently valid audit required under subpart F of 2 CFR part 200 ("Audit Requirements") contains material findings, the Recipient must submit a copy of the audit to the Project Officer, who will review it with the Grants Officer. *See also* section C.19.a.iv "Project Closeout Procedures" of these Construction ST&Cs.

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 has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt after an audit:
 - i. The Recipient has 30 business days from the date of the transmittal of the "Draft Audit Report" to submit written comments and documentary evidence.
 - ii. The Recipient has 30 business days from the date of the transmittal of the "Final Audit Report" to submit written comments and documentary evidence. There will be no extension of this deadline.
 - iii. EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an "Audit Resolution Determination Letter." The Recipient has 30 business days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.
 - iv. An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
 - v. The EDA or DOC, as applicable, shall review the Recipient's appeal. EDA shall notify the Recipient of the results in an Appeal Determination Letter. After the opportunity to

appeal has expired or after the appeal determination has been rendered, EDA or DOC will not accept any further documentary evidence from the Recipient. No other EDA or DOC administrative appeals are available.

G. DEBTS.

1. Payment of Debts Owed the Federal Government.

- a. The Recipient must promptly pay any debts determined by the Federal Government to be owed by the Recipient. Any funds paid to the Recipient in excess of the amount to which the Recipient is finally determined to be entitled under the terms of the Award constitute a debt to the Federal Government. In accordance with 2 CFR § 200.345 (“Collection of amounts due”), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:
 - i. Making an administrative offset against other request for reimbursement;
 - ii. Withholding advance payments otherwise due to the Recipient; or
 - iii. Taking any other action permitted by Federal statute.
- b. DOC debt collection procedures are set out in 15 CFR part 19. In accordance with 2 CFR § 200.345 (“Collection of amounts due”), failure to pay a debt owed to the Federal Government shall result in the assessment of interest, penalties and administrative costs under 31 U.S.C. § 3717 and 31 CFR § 901.9. DOC entities will transfer any DOC debt that is more than 180 calendar days delinquent to the U.S. Department of the Treasury’s Financial Management Service for debt collection services, a process known as “cross-servicing,” pursuant to 31 U.S.C. § 3711(g), 31 CFR § 285.12, and 15 CFR § 19.9, and may take further action as specified in section A.6 “Noncompliance with Award Provisions” of these Construction ST&Cs. Funds for payment of a debt must not come from other Federally sponsored programs, and DOC may conduct on-site visits, audits and other reviews to verify that other Federal funds have not been used to pay a debt.

2. Late Payment Charges.

- a. Interest shall be charged on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act, 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”). The CVFR is available online at <http://www.fms.treas.gov/cvfr/index.html> and also published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. Penalties shall accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.
- c. Administrative charges (*i.e.*, the costs of processing and handling a delinquent debt) shall be determined by the DOC entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

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

Pursuant to 31 U.S.C. § 3720B and 31 CFR § 901.6, unless waived, DOC 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 United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).

The Recipient shall comply with the provisions of 2 CFR part 1326 ("Nonprocurement Debarment and Suspension") (published in the *Federal Register* on December 21, 2006, 71 *Fed. Reg.* 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions through either primary or lower-tier covered transactions, and which set forth the responsibilities of Recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors. In addition, as provided in section K.4.b "Applicability of Provisions to Subawards, Contracts, and Subcontracts" of these Construction ST&Cs, in accordance with subpart C of 2 CFR part 1326, the Recipient must include a term or condition in lower tier transactions (subawards, contracts, and subcontracts) requiring lower tier participants to comply with subpart C (entitled "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons") of the OMB guidance in 2 CFR part 180 "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)."

I. DRUG-FREE WORKPLACE.

The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102), and DOC's implementing regulations found at 15 CFR part 29 ("Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)") which require that the Recipient take steps to provide a drug-free workplace.

J. LOBBYING RESTRICTIONS.

1. *Statutory and Regulatory Provisions.* The Recipient shall comply with 2 CFR § 200.450 ("Lobbying"), which incorporates the provisions of 31 U.S.C. § 1352; the "New Restrictions on Lobbying" published at 55 *Fed. Reg.* 6736 (February 26, 1990); and OMB guidance and notices on lobbying and restrictions. In addition, the Recipient must comply with the DOC's regulations published at 15 CFR part 28, which implement the "New Restrictions on Lobbying." These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal government in connection with an award, and require disclosure of the use of

non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred to improperly influence are unallowable. See 2 CFR § 200.450(b) and (c).

2. *Disclosure of Lobbying Activities.* Any Recipient that receives more than \$100,000 in Federal funding shall 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 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 any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Project Officer.
3. *Special Provisions Relating to Indian Tribes.* As set out in 31 U.S.C. § 1352, special provisions are applicable to Indian tribes, tribal organizations, and other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with DOC policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Federal awards granted to American Indian and Alaska Native tribal governments generally may provide for preference in contracting, hiring, firing, and the payment of a TERO fee. 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 the performance of the Federal award," as provided under 2 CFR § 200.403 ("Factors affecting allowability of costs").

K. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS.

1. Code of Conduct for Recipients.

- a. *General conflicts-of-interest requirements.* The Recipient must comply with EDA's regulation at 13 CFR § 302.17 ("Conflicts of interest"), which articulates EDA's requirements to prevent conflicts of interest, which generally exist when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests or there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. In addition, in accordance with 2 CFR § 200.112 ("Conflict of interest"), the Recipient must disclose to EDA in writing any potential conflict of interest. In addition, pursuant to the certification in Form SF-424D, paragraph 7, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflicts of interest or personal gain in the administration of this Award.
- b. *Procurement-related conflicts of interest.* In addition, in accordance with 2 CFR § 200.318 ("General procurement standards"), the Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts.

2. Applicability of Award Provisions to Subrecipients.

- a. The Recipient or pass-through entity shall require all subrecipients, including lower tier subrecipients, under the Award to comply with the provisions of this Award, including applicable provisions of the Uniform Guidance (2 CFR part 200), and all associated terms and conditions. *See* 2 CFR §§ 200.330 (“Subrecipient and contractor determinations”) through 200.332 (“Fixed amount subawards”) and 2 CFR § 200.101(b)(1) (“Applicability”), which describes the applicability of 2 CFR part 200 to various types of Federal awards.
- b. In accordance with 2 CFR § 200.331 (“Requirements for pass-through entities”), all pass-through entities must:
 - i. *Subaward Identification.* Clearly identify every subaward to the subrecipient at the time of the subaward, including subsequent subaward modification. In accordance with 2 CFR § 200.331(a), required information includes:
 - (1) All Award information data elements set out at 2 CFR § 200.331(a)(1);
 - (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal Award is used in accordance with Federal statutes, regulations and the Terms and Conditions of the Award;
 - (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency, including identification of required financial and performance reports;
 - (4) Indirect cost rate information in accordance with 2 CFR § 200.331(a)(4);
 - (5) Access requirements for the subrecipient’s records and financial statements in accordance with 2 CFR § 200.331(a)(5); and
 - (6) Appropriate terms and conditions concerning closeout of the subaward.
 - ii. *Risk-Based Subrecipient Evaluation.* Evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring in accordance with 2 CFR § 200.331(b).
 - iii. *Subaward Conditions.* Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in 2 CFR § 200.207 (“Specific conditions”).
 - iv. *Subrecipient Monitoring.* In accordance with 2 CFR § 200.331(d), monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal requirements, and that the subaward performance goals are achieved. Subrecipient monitoring must include:
 - (1) Reviewing financial and programmatic reports required by the pass-through entity;
 - (2) Following up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means; and

- (3) Issuing a management decision for audit findings pertaining to the Award provided to the subrecipient from the pass-through entity as required by 2 CFR § 200.521 (“Management decision”).
- v. *Utilizing Risk-Based Monitoring Tools.* In accordance with 2 CFR § 200.331(e), depending on the Recipient’s evaluation of each subrecipient’s risk, utilize appropriate monitoring tools, including training and technical assistance, performing on-site reviews, and arranging agreed-upon-procedures engagements as described in 2 CFR § 200.425 (“Audit services”).
- vi. *Subrecipient Audits.* Verify that every subrecipient is audited as required by subpart F of 2 CFR part 200 (“Audit Requirements”) when it is expected that the subrecipient’s Federal awards expended during the fiscal year equaled or exceeded the threshold set forth in 2 CFR § 200.501 (“Audit requirements”).
- vii. *Necessary Adjustments to the Pass-Through Entity’s Records.* Consider whether the results of the subrecipient’s audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity’s own records.
- viii. *Enforcement Action.* Consider taking enforcement action against noncompliant subrecipients as described in 2 CFR § 200.338 (“Remedies for noncompliance”) and in applicable program regulations.

See also 2 CFR § 200.331 for the full text of requirements for pass-through entities.

3. Competition and Codes of Conduct for Subawards.

- a. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition.
- 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 or 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 for a subaward, contract, or subcontract, as applicable:

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 subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on 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 CFR 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) requiring lower tier participants to comply with subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)."
- c. Required subaward and contractual provisions:
- i. 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 CFR part 28 ("New Restrictions on Lobbying"). The Recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Project Officer within 30 days following the end of the calendar quarter.
 - ii. In addition to other provisions required by the Federal agency or Recipient, in accordance with 2 CFR § 200.326 ("Contract provisions"), all contracts made by the Recipient under this Award must contain the applicable provisions set out in Appendix II to 2 CFR part 200 ("Contract Provisions for Non-Federal Entity Contracts Under Federal Awards"), which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. See Appendix II to 2 CFR part 200 for a full explanation of these requirements.

5. Pilot Program for Enhancement of Employee Whistleblower Protections.

The National Defense Authorization Act (“NDAA”) for Fiscal Year 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program for whistleblower protection. It applies to all DOC awards, subawards, and contracts under awards issued beginning July 1, 2013 through January 1, 2017. This term implements that law.

In accordance with 41 U.S.C. § 4712, an employee of a Recipient or contractor under a Federal award or subaward may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award or subaward or contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority related to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award or subaward or contract under a Federal award or subaward. These persons or bodies include:

- a. A Member of Congress or a representative of a committee of Congress.
- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Recipients and contractors under Federal awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

6. Small Businesses, Minority Business Enterprises, and Women’s Business Enterprises.

In accordance with 2 CFR § 200.321 (“Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”), the Recipient must take all necessary affirmative steps to ensure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. DOC encourages Recipients to utilize small businesses, minority business enterprises, and women’s business enterprises in contracts under financial assistance awards. The Minority Business Development Agency (“MBDA”) within DOC will assist Recipients in matching qualified minority business enterprises with contract opportunities. For further information, the Recipient may visit MBDA’s website at <http://www.mbda.gov> or contact MBDA via telephone or mail:

U.S. Department of Commerce
Minority Business Development Agency
Herbert C. Hoover Building
14th Street and Constitution Avenue, N.W.

Washington, D.C. 20230
(202) 482-0101

7. Subaward to or Contract with a Federal Agency.

- a. The Recipient, contractor and/or subcontractor shall not subgrant or subcontract any part of the approved Project to any agency or employee of DOC or any other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.
- b. The Recipient must submit requests for approval of such action to the Project Officer, who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Administration and Transactions for review prior to making the final determination. The Grants Officer will notify the Recipient in writing of the final determination.

8. EDA Contracting Provisions for Construction Projects.

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

L. PROPERTY.

1. Standards.

With respect to any property acquired or improved in whole or in part with EDA investment assistance under this Award, the Recipient shall comply with the Property Standards set forth at 2 CFR §§ 200.310 (“Insurance coverage”) through 200.316 (“Property trust relationship”), and EDA’s regulations at 13 CFR part 314. Property acquired or improved in whole or in part by the Recipient under this Award may consist of real property; personal property, including equipment and supplies; and intangible property, such as money, notes, and security interests. Any property reports required under 2 CFR §§ 200.310 through 200.316, such as periodic inventories and requests for disposition instructions, must be submitted to the Grants Officer through the Project Officer on Form SF-428 and/or SF-429, as applicable. *See also* section C.2 “Reporting on Real Property” of these Construction ST&Cs.

2. Title.

- a. Title to equipment, supplies, and intangible property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient. The use, management and disposition of equipment, supplies, and intangible property acquired in whole or in part under this Award shall be in accordance with 2 CFR §§ 200.313 (“Equipment”), 200.314 (“Supplies”), and 200.315 (“Intangible property”), as applicable, and EDA regulations at 13 CFR part 314. *See also* section O.4 “Intellectual Property Rights” of these Construction ST&Cs.
- b. Title to real property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient, subject to the condition that the Recipient uses the real property

for the authorized purpose of the Project. *See* 2 CFR § 200.311 (“Real property”) and EDA regulations at 13 CFR part 314.

3. EDA’s Interest in Award Property.

- a. *General - Evidence of Title.* As stated in section A.4 “Grant Recipient as Trustee” of these Construction ST&Cs, real property, equipment, and intangible property acquired or improved under this Award must be held in trust by the Recipient as trustee for the beneficiaries of the Project for which the property was acquired or improved. This trust relationship exists throughout the duration of the property’s estimated useful life, as determined by the Grants Officer in consultation with the Project Officer, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest).

Before advertising for construction bids or at such other time as EDA requires, the Recipient must furnish evidence, satisfactory in form and 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 CFR § 314.7(c) (“Title”)) 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 at 13 CFR § 314.6(b) (“Encumbrances”) 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 CFR § 314.6.

- b. *Recording EDA’s Interest in Real 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 CFR §§ 314.1 (“Definitions”) and 314.8(a) (“Recorded statement for real property”). *See also* 2 CFR § 200.316 (“Property trust relationship”).
 - 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 may require an opinion of counsel for the Recipient to substantiate that the document was validly executed and properly recorded. *See* 13 CFR § 314.8(b).
 - iii. Facilities in which the EDA investment is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs L.3.b.i and ii above. *See* 13 CFR § 314.8(c).

- iv. In extraordinary circumstances and at EDA's sole discretion, EDA may choose to accept another instrument to protect EDA's interest in the Project property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord with section L.3.b.i above is not reasonably available. The terms and provisions of the relevant instrument shall be satisfactory to EDA in EDA's sole judgment. The costs and fees for escrow services or letters of credit shall be paid by the Recipient. *See* 13 CFR § 314.8(d).
- c. *Recording EDA's Interest in Personal Property.* For all Projects involving the acquisition or improvement of significant items of personal property, including but not limited to ships, machinery, equipment, removable fixtures, or structural components of buildings, the Recipient shall execute a security interest, covenant, or other statement of EDA's reversionary interest in the personal property acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law (usually accomplished by filing a Uniform Commercial Code Financing Statement (Form UCC-1), as provided by State law), with continuances re-filed as appropriate. EDA may require an opinion of counsel for the Recipient to substantiate that the Form UCC-1 or other filing was validly executed and properly recorded. *See* 13 CFR § 314.9 ("Recorded statement for personal property").
- d. The Recipient acknowledges that the Government retains an undivided equitable reversionary interest in 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 at 13 CFR § 314.7(c) ("Title"). *See* 13 CFR § 314.2(a) ("Federal interest").
- e. The Recipient agrees that if 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 purposes of the Award during the Project's estimated useful life without EDA's written approval, the Government will be entitled to recover the Federal Share, as defined at 13 CFR § 314.5 ("Federal share"). If, during the Project's estimated useful life, the property is no longer needed for the purposes of the Award, as determined by EDA, EDA may permit its use for other acceptable purposes consistent with those authorized by PWEDA and 13 CFR Chapter III. *See* 13 CFR § 314.3(b) ("Authorized use of property").
- f. For purposes of any lien or security interest, the amount of the Federal Share shall be the portion of the current fair market value of any property (after deducting any actual and reasonable selling and repair expenses incurred to put the property into marketable condition) attributable to EDA's participation in the Project. *See* 13 CFR § 314.5 ("Federal share").
- g. 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.
- h. In accordance with 2 CFR § 200.329 ("Reporting on real property"), the Federal awarding agency or pass through entity must require a non-Federal entity to submit reports (using Form SF-429 "Real Property Status Report" or any successor form) at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal Interest in the real property extends 15 years or longer. In those instances where the Federal Interest attached is for a period of 15 years or more, the Federal awarding agency or

pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or annual reporting for the first three years and thereafter every five years). The Federal awarding agency or pass-through entity may also require a non-Federal entity to periodically submit reports (using Form SF-428 “Tangible Personal Property Report” or any successor form) concerning tangible personal property in which the Federal Government retains an interest. In addition, the Federal awarding agency or pass-through entity may require a non-Federal entity to submit Form SF-429 and/or Form SF-428 in connection with a non-Federal entity’s request to acquire, encumber, dispose of, or take any other action pertaining to real property or tangible personal property acquired or improved, in whole or in part, under this Award or pertaining to Federally owned property under this Award. *See also* section C.2 “Reporting on Real Property” of these Construction ST&Cs.

4. Insurance and Bonding.

- a. *Insurance.* The Recipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided for property owned by the Recipient. Federally owned property need not be otherwise insured unless required by the Terms and Conditions of the Award. *See* 2 CFR § 200.310 (“Insurance coverage”).
- b. *Bonding.* If the Award exceeds the simplified acquisition threshold as defined at 2 CFR § 200.88, EDA may accept the Recipient’s or subrecipient’s bonding policy and requirements if EDA or the pass-through entity 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 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.
 - 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 ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. *See* 2 CFR § 200.325 (“Bonding requirements”).

5. Leasing Restrictions.

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

- a. That said lease arrangement is consistent with the authorized general and special purpose of the Award;
- b. That said lease arrangement is for adequate consideration; and

- c. That said lease arrangement is consistent with applicable EDA requirements concerning but not limited to nondiscrimination and environmental compliance.

6. Eminent Domain.

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

- a. Not to exercise any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties; and
- b. Not to accept title to land, easements, or other interests in land acquired by the exercise 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 the prior written consent of EDA is an unauthorized use of the Project. If the Recipient puts the Project to an unauthorized use, the Recipient shall compensate EDA for its fair share in accordance with 13 CFR §§ 314.4 ("Unauthorized use of property") and 314.5 ("Federal share"), as the same may be amended from time to time.

7. Disposal of Real Property.

- a. During the estimated useful life of the Project, 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 purposes of this Award, EDA may, in its sole discretion, approve use of the property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 CFR Chapter III. *See* 13 CFR § 314.3(b) ("Authorized use of property").
- b. When property is not disposed of as provided in section L.7.a above, the Government shall determine final disposition and must be compensated by the Recipient for the Federal Share of the value of the property, plus costs and interest, as provided in 13 CFR § 314.4 ("Unauthorized use of property").

M. FEDERAL ENVIRONMENTAL REQUIREMENTS.

Environmental impacts must be considered by Federal decision-makers in their decisions whether or not to approve: (i) a proposal for Federal assistance; (ii) the proposal with mitigation; or (iii) a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts of the projects funded with Federal assistance on the environment. Each Recipient must 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 a proposed project may have on the environment. In some cases, 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 the DOC 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 CFR 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 when the Award activities remain subject to Federal authority and control. Recipients 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 in complying with NEPA. Recipients may also be requested to assist EDA in drafting an environmental assessment if EDA determines an assessment is required. Until the appropriate NEPA documentation is complete, and if any additional information is required during the period of performance to assess Project environmental impacts, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit the appropriate NEPA documentation sufficient to enable EDA to make an assessment on any environmental impacts of a Project.

2. National Historic Preservation Act (54 U.S.C. § 300101 *et seq.*).

Section 106 of the National Historic Preservation Act (“NHPA”) (54 U.S.C. § 300101 *et seq.* (formerly codified at 16 U.S.C. § 470f)) and the Advisory Council on Historic Preservation implementing regulations (36 CFR part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Recipients are required to identify to the awarding agency any effects the Award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients may also be requested to assist EDA in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects on historic properties. Until the appropriate NHPA consultations and documentation are complete and if any additional information is required during the period of performance in order to assess Project impacts on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit any information sufficient to enable EDA to make the requisite assessment under the NHPA.

3. Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371–4375).

Federally supported public works facilities and activities that affect the environment shall be implemented in compliance with policies established under existing law.

4. Clean Air Act (42 U.S.C. § 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 (“Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans”).

The Recipient must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq.*), Clean Water Act (33 U.S.C. § 1251 *et seq.*), and Executive Order 11738 (38 *Fed. Reg.* 25161, 1973), and shall not use a facility on the Environmental Protection Agency’s (“EPA’s”) *List of*

Violating Facilities (this list is incorporated into the Excluded Parties List System located at <https://www.sam.gov/portal/public/SAM/>) in undertaking work that is nonexempt under 2 CFR § 1532, and shall notify the Project Officer in writing if it intends to use a facility that is on the EPA's *List of Violating Facilities* or knows that the facility has been recommended to be placed on the list.

5. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f *et seq.*).

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

6. Executive Order 11988 (“Floodplain Management”) and Executive Order 11990 (“Protection of Wetlands”).

Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

7. The Flood Disaster Protection Act (42 U.S.C. § 4002 *et seq.*), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration (“FEMA”) or by EDA.

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

8. The Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*).

Funded projects must be consistent with a coastal State's approved management plan for the coastal zone.

9. The Coastal Barrier Resources Act (16 U.S.C. § 3501 *et seq.*).

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

10. The Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq.*).

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

11. The Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*).

This Act requires the evaluation of impacts to fish and wildlife from Federally assisted proposed water resource development projects.

12. The Endangered Species Act (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 no adverse effects to a protected species or habitat occur from actions with Federal financial assistance and to conduct the required reviews under the Endangered Species Act, as applicable.

13. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, more commonly known as Superfund) (42 U.S.C. § 9601 *et seq.*), and the Community Environmental Response Facilitation Act (Pub. L. No. 102-426, 42 U.S.C. §§ 9601 *note et seq.* and 9620(h)(4)).

These requirements address responsibilities related to hazardous substance releases, threatened releases, and environmental cleanup. They also impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to State and local emergency responders.

14. The Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*).

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Recipients give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

15. Executive Order 12898 (“Environmental Justice in Minority Populations and Low-Income Populations”).

Federal agencies are required to identify and address any disproportionately high adverse human health or environmental effects of Federal programs, policies, and activities on low-income and minority populations.

16. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4821 *et seq.*).

Use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance is prohibited.

17. The Farmland Protection Policy Act (7 U.S.C. §§ 4201–4209).

Projects are subject to review under this Act if they may irreversibly directly or indirectly convert farmland, including forest land, pastureland, cropland, or other land, to nonagricultural use.

18. The Noise Control Act of 1972 (42 U.S.C. § 4901 *et seq.*).

Federally supported facilities and activities shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.

19. The Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 *et seq.*).

This Act provides a process for returning certain Native American cultural items to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.

N. NOTICE AND EVIDENCE OF COMPLIANCE WITH ALL APPLICABLE ENVIRONMENTAL REQUIREMENTS.

The Recipient agrees to promptly notify the Grants Officer in writing of any environmental requirement or restriction, regulatory or otherwise, with which it must comply. Before Project Closeout and final disbursement of Award funds, the Recipient further agrees to provide evidence satisfactory to the Grants Officer that any required environmental remediation has been completed: (1) in compliance with all applicable Federal, State and local regulations; and (2) as set forth in the

applicable lease, finding of suitability to lease (“FOSL”), lease in furtherance of conveyance, quitclaim deed, or other conveyance instrument and any amendments, supplements, or succeeding documents. Compliance with said laws or restrictions shall be included in any contract documents for Project construction. The Recipient must certify compliance before final disbursement of grant funds.

O. MISCELLANEOUS REQUIREMENTS.

1. Criminal and Prohibited Activities.

- a. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).
- b. The False Claims Amendment Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively) provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. The Civil False Claims Act (31 U.S.C. §§ 3729–3733) provides that suits can be brought by the Government, or a person on behalf of the Government, for false claims under Federal assistance programs.
- d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874) 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 or her compensation under an employment contract. The Copeland “Anti-Kickback” Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

2. Foreign Travel.

- a. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.
- b. The Fly America Act requires Federal travelers and others performing U.S. Government financed air travel to use U.S. 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 U.S. flag air carrier is unavailable or when use of U.S. flag air carrier service will not accomplish the agency’s mission.
- c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral and multilateral “Open Skies Agreements” (U.S. Government Procured Transportation) that allow Federally funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple Open Skies Agreements currently

in effect. For more information about the current bilateral and multilateral agreements, visit the General Services Administration (“GSA”) website at <http://www.gsa.gov/portal/content/103191>. Information on the Open Skies Agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State’s website at <http://www.state.gov/e/eeb/tra/>.

- d. If a foreign air carrier is anticipated to be used for any portion of travel under this Award, the Recipient must receive prior approval from the Grants Officer. When requesting such approval, the Recipient must provide a justification in accordance with the guidance provided by 41 CFR § 301-10.142, which requires the Recipient to provide 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; and (vi) a statement explaining why the Recipient meets one of the exceptions to the 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 or a citation to the official agreement available on the GSA website. 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 disallowance of any transportation costs for which any 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. **General.** The rights to any work produced or purchased under this Award are determined by 2 CFR § 200.315 (“Intangible property”). The Recipient owns any work produced or purchased under a Federal award subject to the DOC’s royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes. In accordance with 2 CFR § 200.315(d), the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award and authorize others to receive, reproduce, publish or otherwise use such data for Federal purposes.
- b. **Inventions.** Unless otherwise provided by law, the rights to any invention made by a Recipient under this Award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified at 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail at 37 CFR part 401 and, in particular, in the standard patent rights clause at 37 CFR § 401.14, which is hereby incorporated by reference into this Award.
 - i. **Ownership.**
 - (1) *Recipient.* The Recipient has the right to elect to retain title to any invention it makes (conceived or first actually reduced to practice) or that is made by its employees. A Recipient that is a nonprofit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an

invention without the permission of DOC unless that assignment is to a patent management organization (e.g., a university's Research Foundation). The Recipient's ownership rights are subject to the Government's nonexclusive, nontransferrable, irrevocable, paid-up license and other rights.

- (2) *Department*. If the Recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty-free, nonexclusive, revocable license for the Recipient. DOC owns any invention made solely by its employees, but may license to the Recipient in accordance with the procedures in 37 CFR part 404.
 - (3) *Inventor/Employee*. If neither the Recipient nor DOC is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the DOC, may allow the inventor/employee to retain ownership of the invention subject to certain restrictions as described at 37 CFR § 401.9.
 - (4) *Joint Inventions*. Inventions made jointly by a Recipient and a DOC employee will be owned jointly by the Recipient and DOC. However, DOC may transfer or license its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the Recipient is willing to patent and license the invention, usually in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Recipient inventor and one DOC employee inventor). The agreement will be prepared by DOC and may include other provisions, such as a royalty-free license to the Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the Recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.
- ii. *Responsibilities – iEdison*. The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are described below. The Recipient is expected to comply with all requirements of the standard patent rights clause and 37 CFR part 401 and is required to submit its disclosures, elections, and requests for waivers from any requirement for substantial U.S. manufacture 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.
- c. **Patent Notification Procedures**. Pursuant to Executive Order 12889 (58 *Fed. Reg.* 69681, 1993), DOC is required to notify the owner of any valid patent covering technology whenever DOC or a Recipient, 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. This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the Award.
 - d. **Copyright**. A Recipient may copyright any work produced under this Award subject to DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish or

otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DOC and Recipient employees may be copyrighted, but only the part of such works authored by the Recipient is protectable in the United States because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the Recipient to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking the primary dissemination of the work.

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 CFR 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. DOC regulations at 15 CFR part 27 require that the Recipient maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this Project, 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 Federal-wide use under Department of Health and Human Services guidelines (*see* 15 CFR § 27.103);
 - ii. Documentation to support an exemption for the Project under 15 CFR § 27.101(b); or
 - iii. 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 and/or charged for human subjects research until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 CFR § 27.118, if research involving human subjects is proposed after an award is made, the Recipient must contact the Grants Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the Project for protocol or instrument development related to human subjects research.

7. Federal Employee Expenses.

Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any Federal employee. Use of Award funds (Federal or non-Federal) or the Recipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from Recipients or applicants regardless of the source.

8. Minority Serving Institutions Initiative.

Pursuant to Executive Orders 13555 ("White House Initiative on Educational Excellence for Hispanics") (75 *Fed. Reg.* 65417, 2010), 13592 ("Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities") (76 *Fed. Reg.* 76603, 2011), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities") (75 *Fed. Reg.* 9749, 2010), DOC is strongly committed to broadening the participation of minority serving institutions ("MSIs") in its financial assistance programs.

DOC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website at <https://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html>.

9. Research Misconduct.

The DOC adopts, and applies to financial assistance for research, the Federal Policy on Research Misconduct ("Federal Policy") issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 *Fed. Reg.* 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Recipients must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the result of any investigation. DOC may take appropriate administrative or enforcement action at any time under the Award, up to and including Award termination and possible suspension or debarment, and referral to the DOC Office of the Inspector General ("OIG"), the U.S. Department of Justice, or other appropriate investigative body.

10. Publications, Videos, and Acknowledgment of Sponsorship.

- a. Publication of results or findings in appropriate professional journals and production of video or other media are encouraged as important methods of recording and reporting results of Federally funded projects, such as scientific research, and expanding access to Federally funded projects.
- b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to their EDA Project Officer.
- c. When releasing information related to a funded Project, Recipients must include a statement that the Project or effort undertaken was or is sponsored by DOC.
- d. Recipients are responsible for ensuring that every publication of material based on, developed under, or produced under this 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] using Federal funds under award [number] from the Economic Development Administration, 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 Economic Development Administration or the U.S. Department of Commerce.

11. Care and Use of Live Vertebrate Animals.

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. § 2131 *et seq.*) (“Animal acquisition, transport, care, handling, and use in projects”), and the implementing regulations at 9 CFR parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); the Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) (“Taking possession, transport, purchase, sale, export or import of wildlife and plants”); the Non-indigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq.*) (“Ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release”); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC award unless authorized by the Grants Officer.

12. Homeland Security Presidential Directive 12.

If performance under the Award requires Recipient personnel to have routine access to Federally controlled facilities and/or Federally controlled information systems (for purposes of this condition, “routine access” is defined as more than 180 business days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with the U.S. Citizenship and Immigration Services (“USCIS”) Verification Division, a component of the Department of Homeland Security (“DHS”), to ensure that the individual is in a lawful immigration status and that he or she is eligible for employment within the U.S. Any items or services delivered under this Award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, “Policy for a Common Identification Standard for Federal Employees and

Contractors,” Federal Information Processing Standards Publication (“FIPS PUB”) Number 201, and OMB Memorandum M-05-24. The Recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this Award comply with the requirements contained in this term. The Grants Officer may delay final payment under this Award if a subrecipient or contractor fails to comply with the requirements listed below. The Recipient shall insert the following term in all subawards and contracts when the subrecipient or contractor is required to have routine physical access to a Federally controlled facility or routine access to a Federally controlled information system:

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

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

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

- a. This term applies to the extent that this Award involves access to export-controlled items.
- b. In performing under 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 the deemed exports and reexports provisions of the Export Administration Regulations (“EAR”). The Recipient shall establish and maintain throughout performance of this Award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.
- c. Definitions.
 - i. *Export-controlled items.* Items (commodities, software, or technology) that are subject to the EAR (15 CFR §§ 730–774), implemented by the DOC’s Bureau of Industry and Security. These are generally known as “dual-use” items—that is, items with a military and commercial application.
 - ii. *Deemed export/reexport.* The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is “deemed” to be an export to the home country of the foreign national. 15 CFR § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange

of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from DOC may be required for deemed exports or reexports.

- d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, executive orders, or regulations, including the EAR.
- e. As applicable, Recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.
- f. Nothing in the Terms and Conditions of this Award is intended to change, supersede or waive the requirements of applicable Federal laws, executive orders, or regulations.
- g. The Recipient shall include this subsection entitled "Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations," including this subparagraph g, in all lower-tier transactions (subawards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.

14. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as Amended, and the Implementing Regulations at 2 CFR part 175.

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the Recipient engages in certain activities related to trafficking in persons. The Department hereby incorporates the following Award term required by 2 CFR § 175.15(b). See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>

- a. *Provisions applicable to a Recipient that is a private entity.*
 - i. The Recipient, its employees, subrecipients under this Award, and subrecipients' employees may not:
 - (1) Engage in severe forms of trafficking in persons during the period of time that the Award is in effect;
 - (2) Procure a commercial sex act during the period of time that the Award is in effect; or
 - (3) Use forced labor in the performance of the Award or subawards under the Award.
 - ii. EDA, as the Federal awarding agency, may unilaterally terminate this Award, without penalty, if the Recipient or a subrecipient that is a private entity:
 - (1) Is determined to have violated a prohibition in paragraph a.i of this Award term; or
 - (2) Has an employee who is determined by the Grants Officer to have violated a prohibition in paragraph a.i of this Award term through conduct that is either:
 - (A) associated with performance under this Award; or
 - (B) imputed to the Recipient or a subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided at 2 CFR part 180 ("OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)") as

implemented by DOC at 2 CFR part 1326 (“Nonprocurement Debarment and Suspension”).

- b. *Provision applicable to a Recipient other than a private entity.* EDA, as the Federal awarding agency, may unilaterally terminate this Award, without penalty, if a subrecipient that is a private entity:
 - i. Is determined to have violated an applicable prohibition in paragraph a.i of this Award term; or
 - ii. Has an employee who is determined by the Grants Officer to have violated an applicable prohibition in paragraph a.i of this Award term through conduct that is either:
 - (1) Associated with performance under this Award; or
 - (2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided at 2 CFR part 180 (“OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)”), as implemented by DOC at 2 CFR part 1326 (“Nonprocurement Debarment and Suspension”).
- c. *Provisions applicable to any Recipient.*
 - i. The Recipient must inform EDA immediately of any information it receives from any source alleging a violation of a prohibition in paragraph a.i of this Award term.
 - ii. EDA’s right to terminate this Award unilaterally, as described in paragraph a.ii or b of this section:
 - (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (“TVPA”), as amended (22 U.S.C. § 7104(g)), and
 - (2) Is in addition to all other remedies for noncompliance that are available to EDA under this Award.
 - iii. The Recipient must include the requirements of paragraph a.i of this Award term in any subaward made to a private entity.
- d. *Definitions.* For purposes of this Award term:
 - i. “Employee” means either:
 - (1) An individual employed by the Recipient or a subrecipient who is engaged in the performance of the Project under this Award; or
 - (2) Another person engaged in the performance of the Project under this Award and not compensated by the Recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward Matching Share requirements.
 - ii. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subsection to involuntary servitude, peonage, debt bondage, or slavery.
 - iii. “Private entity”:

- (1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined at 2 CFR § 175.25;
- (2) Includes: (A) a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of “Indian tribe” at 2 CFR § 175.25(b); and (B) a for-profit organization.
- iv. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given in section 103 of the TVPA, as amended (22 U.S.C. § 7102).

15. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 U.S.C. § 6101 Note), as Amended by the Government Funding Transparency Act of 2008 (Pub. L. No. 110-252).

a. **Searchable Website Requirements.** The Federal Funding Accountability and Transparency Act of 2006 (“FFATA” or “Transparency Act”) requires that information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. To meet these requirements, Recipients and subrecipients must include the following data elements in their Application:

- i. Name of entity receiving Award;
- ii. Award amount;
- iii. Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive Award title;
- iv. Location of entity and primary location of performance (city, State, Congressional District, and country); and
- v. Unique identifier of entity.

See also 2 CFR § 200.211 (“Public access to Federal award information”).

b. **Subaward and Executive Compensation Data Reporting Requirements.** A Recipient awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (“Recovery Act”), are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The Recipient is required to file a FFATA subaward report by the end of the month following the month in which the Recipient awards any subgrant greater than or equal to \$25,000.
See Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (*see* 31 U.S.C. § 6101 note). The reporting requirements are located in Appendix A of 2 CFR part 170 and are available at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part170.pdf>.

i. Reporting of first-tier subawards.

- (1) **Applicability.** Unless exempt as provided in paragraph b.iv of this Award term, the Recipient must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the

Recovery Act, Pub. L. No. 111-5) for a subaward to an entity (*see* definitions in paragraph b.v of this Award term).

(2) Where and when to report.

- (a) The Recipient must report each obligating action described in paragraph b.i(1) of this Award term to <http://www.fsrs.gov>.
- (b) For subaward information, the Recipient must report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2015, the obligation must be reported by no later than December 31, 2015.)

(3) What to report. The Recipient must report information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

ii. Reporting total compensation of Recipient executives.

(1) Applicability and what to report. The Recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if:

- (a) The total Federal funding authorized to date under this Award is \$25,000 or more;
- (b) In the preceding fiscal year, the Recipient received:
 - (i) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and
 - (ii) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and
- (c) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(2) Where and when to report. The Recipient must report executive total compensation described in paragraph b.ii of this Award term:

- (a) As part of its registration profile at <http://www.ccr.gov>.
- (b) By the end of the month following the month in which this Award is made, and annually thereafter.

iii. Reporting total compensation of subrecipient executives.

(1) Applicability and what to report. Unless the subrecipient is exempt as provided in paragraph b.iv of this Award term, each first-tier subrecipient under this Award shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

- (a) In the subrecipient's preceding fiscal year, the subrecipient received:
 - (i) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and
 - (ii) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - (b) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
See also 2 CFR § 200.300(b) ("Statutory and national policy requirements").
- (2) Where and when to report. The subrecipient must report its executive total compensation described in paragraph b.iii of this Award term:
- (a) To the Recipient.
 - (b) By the end of the month following the month during which the subaward is made. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), the required compensation information of the subrecipient must be reported by November 30 of that year.
- iv. Exemptions. If, in the previous tax year, the Recipient had gross income, from all sources, under \$300,000, it is exempt from the requirements to report:
- (1) Subawards, and
 - (2) The total compensation of the five most highly compensated executives of any subrecipient.
- v. Definitions. For purposes of this Award term:
- (1) "Entity" means all of the following, as defined at 2 CFR part 25:
 - (a) A Governmental organization, which is a State, local government, or Indian tribe;
 - (b) A foreign public entity;
 - (c) A domestic or foreign nonprofit organization;
 - (d) A domestic or foreign for-profit organization; and
 - (e) A Federal agency, but only as a subrecipient under an award or subaward to a Recipient.
 - (2) "Executive" means officers, managing partners, or any other employees in management positions.
 - (3) "Subaward":

- (a) This term means a legal instrument to provide support for the performance of any portion of the substantive Project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.
 - (b) The term does not include the Recipient's procurement of property and services needed to carry out the Project or program (for further explanation, *see* 2 CFR § 200.330).
 - (c) A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.
- (4) "Subrecipient" means an entity that:
- (a) Receives a subaward from the Recipient under this Award; and
 - (b) Is accountable to the Recipient for the use of the Federal funds provided by the subaward.
- (5) "Total compensation" means the cash and noncash dollar value earned by the executive during the Recipient's or subrecipient's preceding fiscal year and includes the following (for more information, *see* 17 CFR § 229.402(c)(2)):
- (a) Salary and bonus.
 - (b) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Share Based Payments.
 - (c) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
 - (d) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - (e) Above-market earnings on deferred compensation which is not tax-qualified.
 - (f) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- c. **Central Contractor Registration ("CCR") and Universal Identifier Requirements.** In accordance with 2 CFR part 25, the Recipient must obtain a Data Universal Numbering System ("DUNS") number and maintain an active registration in the CCR database. In addition, the Recipient must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the Recipient. The requirements are located in Appendix A of 2 CFR part 25 and are available at <http://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part25.pdf>.
- i. Requirement for CCR. Unless exempted from this requirement under 2 CFR § 25.110, the Recipient must maintain the currency of its information in the

CCR until it submits the final financial report required under this Award or receives the final payment, whichever is later. This requires that the Recipient review and update the information at least annually after the initial registration, and more frequently if required by changes in its information or another Award term.

ii. Requirement for DUNS Numbers. If authorized to make subawards under this Award, the Recipient:

- (1) Must notify potential subrecipients that no entity (*see* definition in paragraph b.v of this Award term) may receive a subaward from the Recipient unless the entity has provided its DUNS number to the Recipient.
- (2) May not make a subaward to an entity unless the entity has provided its DUNS number to the Recipient.

iii. Definitions for purposes of this Award term:

- (1) "Central Contractor Registration ("CCR")" means the Federal repository into which an entity must provide information required for the conduct of business as a Recipient. Additional information about registration procedures may be found at the System for Award Management website (currently at <https://www.sam.gov/portal/public/SAM/>).
- (2) "Data Universal Numbering System ("DUNS")" number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
- (3) "Entity," as it is used in this Award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - (a) A Governmental organization, which is a State, local government, or Indian Tribe;
 - (b) A foreign public entity;
 - (c) A domestic or foreign nonprofit organization;
 - (d) A domestic or foreign for-profit organization; and
 - (e) A Federal agency, but only as a subrecipient under an award or subaward to a Recipient.
- (4) "Subaward":
 - (a) This term means a legal instrument to provide support for the performance of any portion of the substantive Project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.
 - (b) The term does not include the Recipient's procurement of property and services needed to carry out the Project or program (for further explanation, *see* 2 CFR § 200.330).
 - (c) A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.

(5) "Subrecipient" means an entity that:

- (a) Receives a subaward from the Recipient under this Award; and
- (b) Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

See also 2 CFR § 200.300(b) ("Statutory and national policy requirements").

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

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

- a. Unless there is an actual rescission of funds for specific grant obligations, Recipients under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the Award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.
- b. All Award actions will be delayed during a Government shutdown; if it appears that a Recipient's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible Government shutdown, the Project Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise the Recipient that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, Recipients whose ability to withdraw funds is subject to prior agency approval, which in general are Recipients that have been designated high risk, Recipients under construction awards, and other Recipients limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment ("ASAP") account only if agency approval is given and coded into ASAP prior to any Government shutdown or closure. This limitation may not be lifted during a Government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the Government reopens.
- c. The ASAP system should remain operational during a Government shutdown. Recipients that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a Government shutdown and advanced funds held for more than 30 days will have to be returned with interest.

APPENDIX

The following reference materials and forms are available online:

1. 2 CFR part 200, "*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*"
2. 2 CFR part 1326, "*Nonprocurement Debarment and Suspension*"
3. 13 CFR Chapter III (EDA's regulations)
4. 15 CFR part 4, "*Disclosure of Government Information*"
5. 15 CFR part 27, "*Protection of Human Subjects*"
6. 15 CFR part 28, "*New Restrictions on Lobbying*"
7. 15 CFR part 29, "*Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)*"
8. 48 CFR part 31, "*Contract Cost Principles and Procedures*"
9. Code of Federal Regulations (CFR): Government Printing Office's Federal Digital System (FDSYS) at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>
10. EDA's regulations: <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>; search for Title 13, Chapter III after selecting the relevant year
11. OMB Circulars: www.whitehouse.gov/omb/circulars/index.html
12. Davis-Bacon wage rate determinations: <http://www.wdol.gov/dba.aspx>

Governmentwide and DOC-Specific Forms:

1. Form CD-281, "Report of Government Property in Possession of Contractor"
2. Form CD-450, "Financial Assistance Award"
3. Form CD-451, "Amendment to Financial Assistance Award"
4. Form SF-425, "Federal Financial Report"
5. Form SF-428, "Tangible Personal Property"
6. Form SF-429, "Real Property Status Report"
7. Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"
8. Form SF-272, "Federal Cash Transaction Report"
9. Form SF-LLL, "Disclosure of Lobbying Activities"

Commerce Department ("CD") forms:

http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic_Forms/index.htm

Governmentwide Standard Forms ("SF"): https://www.whitehouse.gov/omb/grants_forms



Compliance with EDA Disaster Assistance Program Requirements

Fraud Awareness Training



You **must** successfully complete this training and **attach the signed completion certificate** along with your signed CD-450.

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award



OVERVIEW



- Overview of EDA Disaster Recovery Programs
- The Department of Commerce (DOC)
Office of Inspector General (OIG)
- Fraud in EDA Programs
- Additional Items
- Certificate

INTRODUCTION: EDA DISASTER RECOVERY



Role of EDA: Facilitate the timely and effective delivery of Federal economic development assistance to support long-term community economic recovery planning and project implementation, redevelopment, and resiliency

INTRODUCTION: EDA DISASTER RECOVERY



- Under the Bipartisan Budget Act of 2018 (PL 115-123), Congress appropriated to EDA \$600 million in additional Economic Adjustment Assistance (EAA) Program funds for disaster relief and recovery as a result of Hurricanes Harvey, Irma, and Maria, wildfires, and other calendar year 2017 natural disasters under the Stafford Act.
- Projects, among other things, must have a **nexus to applicable disaster recovery and resilience efforts** and be consistent with at least one of the EDA Investment Priorities.

INTRODUCTION: EDA DISASTER RECOVERY



EDA INVESTMENT PRIORITIES

- **Recovery & Resilience:** Projects that assist with economic resilience (including business continuity and preparedness) and long-term recovery from natural disasters and economic shocks to ensure U.S. communities are globally competitive.
- **Critical Infrastructure:** Projects that establish the fundamental building blocks of a prosperous and innovation-centric economy and a secure platform for American business, including physical (e.g., broadband, energy, roads, water, sewer) and other economic infrastructure.
- **Workforce Development & Manufacturing:** Projects that support the planning and implementation of infrastructure for skills-training centers and related facilities that address the hiring needs of the business community -- particularly in the manufacturing sector -- with a specific emphasis on the expansion of apprenticeships and work-and-learn training models. Also includes projects that encourage job creation and business expansion in manufacturing, including infrastructure-related efforts that focus on advanced manufacturing of innovative, high-value products and enhancing manufacturing supply chains.
- **Exports & Foreign Direct Investment (FDI):** Primarily infrastructure projects that enhance community assets (e.g. port facilities) to support growth in U.S. exports and increased foreign direct investment—and ultimately the return of jobs to the United States.

<https://www.eda.gov/about/investment-priorities/>

INTRODUCTION: EDA DISASTER RECOVERY



- EDA disaster assistance grants are being awarded through its Regional Offices under the agency's Economic Adjustment Assistance (EAA) Program. The EAA Program enables EDA to make awards that support a wide range of construction and non-construction activities.
- Catalog of Federal Domestic Assistance (CFDA) 11.307
 - Located at <https://beta.sam.gov/>
 - Contains overview of the EAA Program
 - Contains eligibility, application, and compliance requirements, etc.

ELIGIBILITY



Eligible applicants under the EAA Program include:

- District Organization
- Indian Tribe or a consortium of Indian Tribes
- State,* county, city, or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions
- Institution of higher education or a consortium of institutions of higher education
- Public or private non-profit organization or association acting in cooperation with officials of a political subdivision of a State

EDA is not authorized to provide EAA grants to individuals or for-profit entities. Requests from such entities will not be considered for funding.

**Includes Puerto Rico and other U.S.Territories*

ELIGIBILITY



Projects eligible for EDA support include both the development of disaster recovery strategies and the implementation of recovery projects identified within those strategies, including construction activities, capitalizing revolving loan funds, and a variety of others.

ELIGIBILITY



Applicants must propose a project located in or serving one or more communities or regions impacted by Hurricanes Harvey, Irma, or Maria, or wildfires or other Federally-declared natural disasters occurring in calendar year 2017.



The U.S. Department of Commerce (DOC) Office of Inspector General (OIG)

DOC – OFFICE OF INSPECTOR GENERAL



- Created by IG Act of 1978 to:
 - Combat fraud, waste, and abuse within the DOC
 - Conduct audits and investigations of DOC operations
 - Keep the DOC and Congress informed
- Mission
 - To improve the programs and operations of the Department of Commerce through independent and objective oversight

This includes oversight of EDA Assistance Programs

DOC – OFFICE OF INSPECTOR GENERAL



- Office of Audit and Evaluation
- Office of Investigations
 - Criminal
 - Civil
 - Administrative
 - Employee misconduct
 - Public corruption

WHISTLEBLOWER PROTECTIONS



Federal employees, applicants, and employees of federal contractors **and grantees** who make certain disclosures—to OIG or elsewhere—are protected under the law from suffering retaliation because of those disclosures.

Basic elements of whistleblower protection law: (1) you make a protected disclosure; (2) you are subject to certain retaliatory acts; and (3) there is a causal connection between your protected disclosure and the retaliatory act.

OIG receives, reviews, and where appropriate, investigates allegations of whistleblower reprisal.

Whistleblower complaints may be submitted to the OIG via the hotline:
<https://www.oig.doc.gov/Pages/Online-Hotline-Complaint-Form.aspx>

Whistleblower complaints may also be submitted to the Office of Special Counsel via their website: <https://osc.gov/pages/file-complaint.aspx>

DOC-OIG Whistleblower Protection Coordinator contact information:

Email: wpo@oig.doc.gov

Phone: 202-482-1099

FRAUD IN EDA ASSISTANCE PROGRAMS



- **Fraud Defined**
- **Compliance Requirements**
 - **Eligibility**
 - **Duplicate Funding**
 - **Matching Funds**
 - **Mandatory Reporting of Fraud**
- **Consequences of Fraud**
- **Recommendations/Best Practices**

FRAUD IN EDA ASSISTANCE PROGRAMS



Although it can take many forms, fraud, at its core, is **deception** through the **misrepresentation** or **omission of material facts** for the purpose of **illegitimate gain**.

FRAUD IN EDA ASSISTANCE PROGRAMS



Examples of fraud within EDA Assistance Programs include, but are not limited to:

- Accepting federal funding in multiple assistance awards for the same work
- Misrepresentations regarding the eligibility of the project or recipient
- Misrepresentations or omissions about the recipient's facilities, ownership/control, or the work to be performed by the recipient
- Providing falsified letters of support
- Misrepresentations concerning the use of funds expended, work performed, results achieved, or compliance with program requirements under the award
- Inflated labor costs

FRAUD IN EDA ASSISTANCE PROGRAMS (CONTINUED)



- Misuse or conversion of assistance award funds (e.g. using funds for personal expenses)
- Theft of government owned property (18 U.S.C. § 666)
- Embezzlement (18 U.S.C. § 666)
- Fabrication or falsification of data, in applying for, carrying out, or reporting results from an assistance award
- Failure to comply with applicable federal cost principles governing grants / cooperative agreements
- Undisclosed self-dealing, such as a sub-award to an entity in which an awardee, executive, or key employee (or family members of the aforementioned individuals) has a financial interest
- “Buying Expenses”, or reporting expenses incurred by another entity for work unrelated to the assistance award

COMPLIANCE REQUIREMENTS



RECIPIENTS MUST COMPLY WITH:

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Department of Commerce Financial Assistance Standard Terms and Conditions
- EDA Standard Award Conditions for Construction Projects **or** EDA Revolving Loan Fund Standard Award Conditions (as applicable)
- Special Award Conditions (unique to each award)

COMPLIANCE REQUIREMENTS



2 CFR § 200.338 – REMEDIES FOR NONCOMPLIANCE

If a non-Federal entity fails to comply with **Federal statutes, regulations or the terms and conditions of a Federal award**, the Federal awarding agency or pass-through entity may impose additional conditions; or, in certain circumstances, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- Temporary withholding of cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity
- Disallowance of (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance
- Whole or partial suspension or termination of the Federal award
- Initiation of suspension or debarment proceedings (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency)
- Withholding of further Federal awards for the project or program
- Other remedies that may be legally available

COMPLIANCE REQUIREMENTS



Eligibility

Within their EDA Assistance Award Proposal, applicants make numerous certifications as to their eligibility to receive a federal award, among other certifications.

Falsely certifying to any material fact or representation contained in a certification is fraud.

CASE EXAMPLE



Eligibility

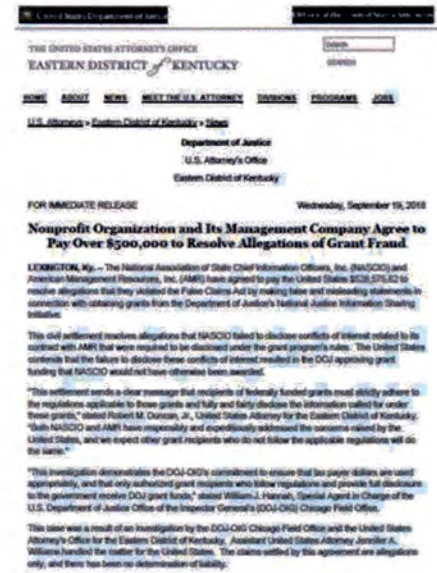
Allegations Included:

- Nonprofit organization made false and misleading statements to obtain federal grant funding
- Failure to disclose conflicts of interest that were required to be disclosed

Outcome:

- Nonprofit agreed to pay \$528,575.82 to resolve allegations they violated the False Claims Act

Double-click
below for more
information



COMPLIANCE REQUIREMENTS



Duplication of Benefits is Prohibited

IMPORTANT— The Stafford Act (42 U.S.C. § 5155) prohibits duplication of benefits:

“The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.”

COMPLIANCE REQUIREMENTS



Duplication of Benefits is Prohibited

2 CFR § 200.53 – Improper Payment

Improper payment includes any payment to an ineligible party, any payment for an ineligible good or service, **any duplicate payment**, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

Other Federal Awards with Similar Programmatic Activities

“The Recipient shall immediately notify the Project Officer and the Grants Officer in writing if, after 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.” *EDA Standard Terms and Conditions for Construction Projects, February 12, 2016*

CASE EXAMPLE



Duplication of Benefits

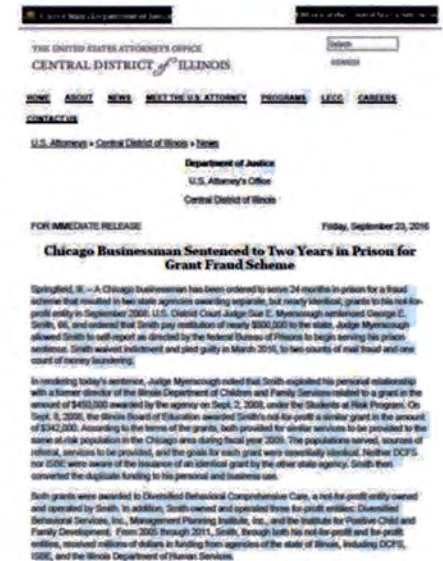
Double-click
below for more
information

Allegations Included:

- Not-for-profit owner applied for funding for similar services
- Owner converted the duplicate funding for his personal and business use

Outcome:

- Owner pled guilty to mail fraud and money laundering
- Sentenced to 24 months in prison
- Ordered to pay \$480,901 in restitution



COMPLIANCE REQUIREMENTS



Matching Funds

- Generally, EDA's maximum allowable grant rate is 50% of the approved project cost; however, EDA will work with the recipient to determine the appropriate grant rate for the award based on statutory and regulatory distress factors.
- The remaining portion of the EDA approved scope of work must be borne by the recipient or provided to the recipient by a third party as a contribution for the purposes of and subject to the terms of the award.
- The applicant must document that the matching share **will**:
 - Be committed to the project for the period of performance
 - Be available as needed
 - Not be conditioned or encumbered in any way that may preclude its use consistent with the requirements of EDA investment assistance
- Applicants must submit, for each source of matching share, a commitment letter or equivalent document signed by an authorized representative of the organization providing the matching funds. *Additional documentation may be requested by EDA in order to substantiate the availability of the matching funds.*

CASE EXAMPLE



Matching Funds

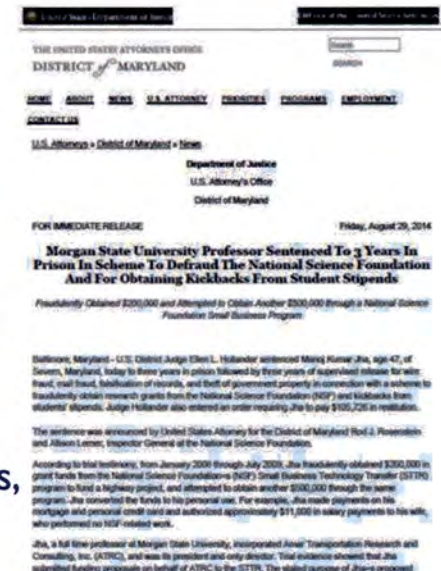
Double-click
below for more
information

Allegations Included:

- Small business owner made several false statements and misrepresentations to obtain federal grant funding
- Owner misrepresented that he obtained a \$100,000 investment from a third party in order to qualify for federal matching funds
- Owner converted grant funds to personal use

Outcome:

- Owner convicted at trial for wire fraud, mail fraud, falsification of records, and theft of government property
- Sentenced to 36 months in prison
- Ordered to pay \$105,726 in restitution
- Owner debarred for 5 years



COMPLIANCE REQUIREMENTS



Mandatory Disclosure of Fraud

2 CFR § 200.113 - Mandatory disclosures

The non-Federal entity or applicant for a Federal award **must disclose**, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Failure to disclose could result in the remedies detailed in 2 CFR § 200.338 (slide 19 of this presentation).



Criminal Prosecution

Lying to obtain a grant, or lying about the work performed may violate several criminal laws:

- 18 U.S.C. § 1001, False Statements (up to 5 years in prison, forfeiture and \$250K fine)
- 18 U.S.C. § 641, Theft of Federal Property (up to 10 years in prison, forfeiture and \$250K fine)
- 18 U.S.C. § 1343, Wire Fraud (up to 20 years in prison, forfeiture and \$250K fine)
- 18 U.S.C. § 666, Theft or bribery concerning programs receiving Federal funds (up to 10 years in prison, forfeiture and \$250K fine)

Fines for organizations may be as high as \$500K

Criminal forfeiture = full amount of the grant; personal assets can be seized to satisfy forfeiture or fine

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)



Civil Prosecution

In addition to or in lieu of criminal prosecution

Civil False Claims Act, 31 U.S.C. §§ 3729-3733

- Liability includes up to treble damages (3x actual damages) and a civil penalty of up to \$22,363 for each false claim
- False claims liability may include payments received when the government relied upon false information in the award proposal, in a certification of current cost or pricing data, in a request for payment, or in progress reports
- Although the statute requires knowledge that the claim was false, knowledge includes “deliberate ignorance” or “reckless disregard of the truth”
- Whistleblowers can receive up to 30% of the recovery amount for reporting fraud via *qui tam* provisions of the False Claims Act

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)



Administrative Remedies

- Government can terminate contracts/grants tainted by fraud
- Government can suspend/debar the entity, owner, and/or employees
 - Results in prohibition from receiving any federal grants or contracts, or working as a sub-grantee on federal grants or a sub-contractor on federal contracts
 - Debarment is typically for three years, but can be for a longer period
- Administrative remedies are in addition to or in lieu of criminal and civil liability

RECOMMENDATIONS



The government retains the right to examine the status of an EDA Assistance award at any time.

Status checks include:

- Site visits
- Requests for records including financial documents and timesheets

Good recordkeeping will help ensure successful status checks and eliminate potential issues.

RECOMMENDATIONS



Good Records: Key to Protecting Yourself

Documentation

- Timesheets for hours worked by ALL involved employees
- All financial receipts, invoices and statements for expenses related to the project

Updates on the project status, including successes/failures

- Keep regular records at the business-level so you have all facts on hand if needed/requested by the government
- Documentation to support performance metrics

IMPORTANT TO REMEMBER!



If you are unsure about any of the requirements relating to the award of an EDA Assistance grant/cooperative agreement:

- Contact the appropriate EDA POC and provide all relevant facts
- Request written guidance from the EDA POC, and
- **Follow it!**

ADDITIONAL RESOURCES



EDA Disaster Recovery website

<https://www.eda.gov/programs/disaster-recovery/>

13 CFR Chapter III – Economic Development Administration (Parts 300-315)

<https://gov.ecfr.io/cgi-bin/text-idx?SID=8fbf6f5b896d79be9a11dd18cee58dea&mc=true&tpl=/ecfrbrowse/Title13/13chapterIII.tpl>

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

<https://gov.ecfr.io/cgi-bin/text-idx?SID=be9b8216bc70dcf927fd18af1b339149&mc=true&node=pt2.1.200&rgn=div5>

Grant Fraud & Scams – Grants.gov

<https://www.grants.gov/learn-grants/grant-fraud.html>

REPORT FRAUD, WASTE, AND ABUSE



**U.S. Department of Commerce
Office of Inspector General
Office of Investigations**

**OIG HOTLINE
Phone: (800) 424-5197**

Online Complaint Form:
<https://www.oig.doc.gov/Pages/Online-Hotline-Complaint-Form.aspx>



**For more information
please visit our website
www.oig.doc.gov**

REPORT FRAUD, WASTE, AND ABUSE



National Center for Disaster Fraud Hotline

Phone: 866-720-5721

Fax: 225-334-4707

Email: disaster@leo.gov



Anonymous & Confidential

For more information please visit
<https://www.fema.gov/disaster-fraud>

CERTIFICATE OF TRAINING COMPLETION



You must successfully complete this training and attach the completion certificate (next slide) to your signed CD-450.

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

CERTIFICATE OF TRAINING COMPLETION



The undersigned has fully and completely reviewed this training on behalf of the proposer/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

Karen Williams Seel
Signature

8/20/19
Date

Karen Williams Seel
Name

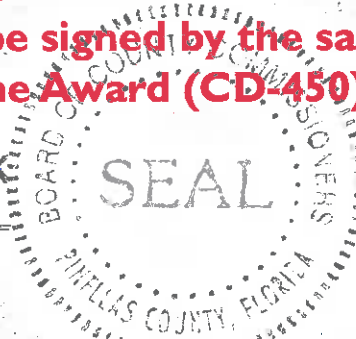
Pinellas County Board of
County Commissioners
Entity Name

Chair
Position Title

EDA Award Number 04-79-07380

Return signed with executed Award Documents, a separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Award (CD-450).

ATTEST: KEN BURKE, CLERK
By: [Signature]
Deputy Clerk



Certificate One

SECTION C – LIMITATION ON LIABILITY, INDEMNIFICATION, AND INSURANCE REQUIREMENTS

1. INSURANCE:

- a) If Consultant does not currently meet insurance requirements, Consultant shall also include verification from their broker or agent that any required insurance not provided at that time of submittal will be in place within 10 days after award recommendation.
- b) Consultant shall email certificate that is compliant with the insurance requirements to sstele@pinellascounty.org. If certificate received with bid was a compliant certificate no further action may be necessary. The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). **A copy of the endorsement(s) referenced in paragraph d) for Additional Insured shall be attached to the certificate(s) referenced in this paragraph.**
- c) No work shall commence at any project site unless and until the required Certificate(s) of Insurance are received and approved by the County. Approval by the County of any Certificate(s) of Insurance does not constitute verification by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. County reserves the right to require a certified copy of the entire insurance policy, including endorsement(s), at any time during the RFP and/or contract period.
- d) All policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by the Consultant and any subcontractors to meet the requirements of the Agreement shall be endorsed to include **Pinellas County a Political subdivision of the State of Florida** as an Additional Insured.
- e) If any insurance provided pursuant to the Agreement expires, or cancels prior to the completion of the work you will be notified by CTrax, the authorized vendor of Pinellas County. Upon notification, renewal certificate(s) of Insurance and endorsement(s) should be furnished to Pinellas County Risk Management at InsuranceCerts@pinellascounty.org and to CTrax c/o JDi Data at PinellasSupport@jdidata.com by the Consultant or their agent prior to the expiration date
 - (1) Consultant shall also notify County within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by said Consultant from its insurer. Notice shall be given by email to Pinellas County Risk Management at InsuranceCerts@pinellascounty.org Nothing contained herein shall absolve Consultant of this requirement to provide notice.
 - (2) Should the Consultant, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement, or at its sole discretion may purchase such coverages necessary for the protection of the County and charge the Consultant for such purchase or offset the cost against amounts due to Consultant for services completed. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance shall in no way be construed to be a waiver of any of its rights under the Agreement.
- f) The County reserves the right, but not the duty, to review and request a copy of the Contractor's most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds \$50,000.

SECTION C – LIMITATION ON LIABILITY, INDEMNIFICATION, AND INSURANCE REQUIREMENTS

- g) If subcontracting is allowed under this RFP, the Prime Consultant shall obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth; and require any subcontractors to obtain and maintain, at all times during its performance of the Agreement, insurance limits as it may apply to the portion of the Work performed by the subcontractor; *but in no event will the insurance limits be less than \$500,000 for Workers' Compensation/Employers' Liability, and \$1,000,000 for General Liability and Auto Liability if required below.*
- (1) All subcontracts between Consultant and its subcontractors shall be in writing and may be subject to the County's prior written approval. Further, all subcontracts shall (1) require each subcontractor to be bound to Consultant to the same extent Consultant is bound to the County by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor; (2) provide for the assignment of the subcontracts from Consultant to the County at the election of Owner upon termination of the Contract; (3) provide that County will be an additional indemnified party of the subcontract; (4) provide that the County will be an additional insured on all insurance policies required to be provided by the subcontractor except workers compensation and professional liability; (5) provide waiver of subrogation in favor of the County and other insurance terms and/or conditions as outlined below; (6) assign all warranties directly to the County; and (7) identify the County as an intended third-party beneficiary of the subcontract. Consultant shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Section C and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents.
- h) Each insurance policy and/or certificate shall include the following terms and/or conditions:
- (1) The Named Insured on the Certificate of Insurance and insurance policy must match the entity's name that responded to the solicitation and/or is signing the agreement with the County. If Consultant is a Joint Venture per Section A. titled Joint Venture of this RFP, Certificate of Insurance and Named Insured must show Joint Venture Legal Entity name and the Joint Venture must comply with the requirements of Section C with regard to limits, terms and conditions, including completed operations coverage.
- (2) Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.
- (3) The term "County" or "Pinellas County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.
- (4) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County or any such future coverage, or to County's Self-Insured Retentions of whatever nature.
- (5) All policies shall be written on a primary, non-contributory basis.
- (6) Any Certificate(s) of Insurance evidencing coverage provided by a leasing company for either workers compensation or commercial general liability shall have a list of covered employees certified by the leasing company attached to the Certificate(s) of Insurance. The County shall have the right, but not the obligation to determine that the Consultant is only using employees named on such list to perform work for the County. Should employees not named be utilized by Consultant, the County, at its option may stop work without penalty to the County until proof of coverage or removal of the employee by the contractor occurs, or alternatively find the Consultant to be in default and take such other protective measures as necessary.

SECTION C – LIMITATION ON LIABILITY, INDEMNIFICATION, AND INSURANCE REQUIREMENTS

(7) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of Pinellas County from both the Consultant and subcontractor(s).

i) The minimum insurance requirements and limits for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

(1) Workers' Compensation Insurance

Limit	Florida Statutory
Employers' Liability Limits	
Per Employee	\$ 500,000
Per Employee Disease	\$ 500,000
Policy Limit Disease	\$ 500,000

(2) Commercial General Liability Insurance including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury.

Limits	
Combined Single Limit Per Occurrence	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal Injury and Advertising Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000

(3) Professional Liability (Errors and Omissions) Insurance with at least minimum limits as follows. If "claims made" coverage is provided, "tail coverage" extending three (3) years beyond completion and acceptance of the project with proof of "tail coverage" to be submitted with the invoice for final payment. In lieu of "tail coverage", Consultant may submit annually to the County, for a three (3) year period, a current certificate of insurance providing "claims made" insurance with prior acts coverage in force with a retroactive date no later than commencement date of this contract.

Limits	
Each Occurrence or Claim	\$ 2,000,000
General Aggregate	\$ 2,000,000

For acceptance of Professional Liability coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Professional Liability and other coverage combined.

(4) Property Insurance Consultant will be responsible for all damage to its own property, equipment and/or materials.