Requirements For Approved Construction Projects

Ninth Edition
April 2000

U.S. Department of Commerce
William M. Daley, Secretary

Chester J. Straub, Jr.
Acting Assistant Secretary
for Economic Development

OMB Control No. 0610-0096
Expires: 11/30/02

REQUIREMENTS FOR APPROVED CONSTRUCTION PROJECTS
NINTH EDITION
April 2000

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105-393. The reason for collecting this information is to enable the Economic Development Administration to monitor construction projects for compliance with Federal and other requirements. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average **18** hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOREWORD

The technology and communications advances of the last decade have created a globally competitive environment with opportunities for American goods and services. At the beginning of a new century, the United States economy is a thriving marketplace characterized by continued prosperity and growth.

For every successful community, however, the Nation has at least one or multiple locations overcome by economic need or distress, areas that will experience further decline without the implementation of technology-led approaches that create sustainable, new market and/or liveable communities with the capacity for world success.

The Economic Development Administration (EDA) provides meaningful assistance generally on a cost-shared basis to economically-challenged communities. Through a broad range of flexible economic development tools, EDA promotes local partnerships for job creation and economic growth.

The Public Works Program is considered the mainstay of job creation for EDA. Publically validated reports show that one million dollars of EDA public works investments create at least 327 direct permanent jobs, generate $10.08 million of private sector investment, add $10.13 million to the local tax base, and create jobs at an EDA cost of $3,058 per job.

This publication, "Requirements for Approved Construction Projects", is the policy and procedures guidebook for the proper use of assistance provided by EDA. It was designed to assist the EDA grant recipient to complete its project economically, within quality standards, and in accordance with regulations governing federal grant assisted construction projects.

Your EDA assisted project, when successfully completed, will be an integral part of both EDA's and your community's plans and hopes for national and local economic development through cooperative effort.

REQUIREMENTS FOR APPROVED CONSTRUCTION PROJECTS

TABLE OF CONTENTS

Page No.

SECTION I. GENERAL AND PRE-CONSTRUCTION REQUIREMENTS

1. Basis for Economic Development Administration Requirements
   - a. Applicable OMB Circulars and Code of Federal Regulations I-1
   - b. Purpose of this publication I-1
   - c. Changes to policies and procedures I-1
   - d. Variances to these requirements I-1

2. The EDA Grant Award
   - a. Project description I-2
   - b. Standard terms and conditions I-2
   - c. Special conditions I-2
   - d. Grant expiration date I-2
   - e. Combined type of grants I-2
   - f. Performance measures I-2

3. Initial Actions
   - a. Initial EDA Regional Office actions I-3
   - b. Pre-award construction I-3
   - c. Davis-Bacon requirement for pre-award construction I-3

4. Project Management Conference I-3

5. Selection of the Architect/Engineer
   - a. Pre-award selection of the A/E I-3
   - b. Acceptable forms of contracts I-4

6. The Architect/Engineer Contract for Services
   - a. Suggested forms for contract format I-4
   - b. Acceptable types of cost reimbursement for A/E services I-4
   - c. Prohibited forms of compensation I-4
   - d. Basic and special services I-5
   - e. Construction inspection I-5
   - f. A/E record keeping and access to records I-5
   - g. Required provisions of the A/E contract I-5

7. Multiple Contracts and Phasing
   - a. Project phasing I-5

b. Disbursement of the grant for phased projects I-6

8. Recipient Furnished Equipment and/or Materials I-6

9. Services Performed by the Recipient's Own Forces
a. Use of in-house forces I-6
b. Use of force-account forces I-7
c. Wage Rate for Force Account Employees I-7

10. Construction Management Services
a. Definition of construction management services I-7
b. Cost threshold I-8
c. EDA approval for cost reimbursement I-8
d. Compensation I-8
e. Assigning responsibility I-8

11. Certification of Acquisition of Land, Easements and Rights-of-Way
a. Title, easements, rights-of-way, etc. I-8
b. Title opinions I-8
c. Amount and cost of land, etc. I-8
d. Changes in amount and cost of land I-9
e. Federally owned/controlled airfield restriction I-9

12. Relocation Assistance I-9

13. Certification of Adequacy of Treatment of sewage and other waste
a. Certification of adequacy I-9
b. Exceptions I-9
c. Certification Requirements I-9

14. Project Financing I-10

15. Safeguarding Funds
a. Documentation of project costs I-10
b. Use of minority banks I-10
c. Separate bank accounts I-10
d. Bonding of project fund custodian I-10

16. Department of Commerce Metric Program I-10

17. Seasonality I-10

18. Design for the Handicapped
a. Source of requirement I-11
b. Requirements for buildings I-11
c. Exceptions I-11
d. Waivers I-11

19. Reporting of Project Progress
a. Recipient review of project progress I-11
b. The project performance report I-11
c. Project performance report due dates I-12
d. Reporting non-routine performance items I-12
e. Project performance report format I-12
f. Grant advances I-13
g. Delinquent performance reports I-13

20. Environmental Requirements
a. Policy statement I-13
b. Applicable directives I-13
c. Hazardous substances requirements I-13

21. Project Revisions I-13

SECTION II: CONTRACTING FOR PROJECT CONSTRUCTION

1. Contracting Standards
A. State recipients II-1
B. Recipients other than states II-1
C. The contract administration system II-1
D. Standards of conduct II-1
E. State and local agreements II-2
F. Use of surplus property II-2
G. Value engineering II-2
H. Awards to responsible contractors II-2
I. Maintenance of records II-2
J. Use of time and material contracts II-2
K. Settlement of contractual issues II-3
L. Protest procedures II-3

2. Competition in Procurement
A. Full and open competition II-3
B. Prohibition of use of state or local geographical preferences II-4
C. Requirements for procurement actions II-4
D. Use of prequalification lists II-4

3. Acceptable Methods of Procurement
A. Small purchase procedures II-4
B. Procurement by sealed bids II-5
C. Requirements for sealed bids II-5
D. Procurement by competitive proposals II-5
E. Procurement by noncompetitive proposals II-6

4. Unacceptable Method of Procurement II-6

5. Contracting with Disadvantaged Firms
A. Affirmative steps for use of disadvantaged firms II-7

6. Contract Cost and Price Analysis
A. The price analysis II-7
B. Federal cost principles II-8
C. Prohibited methods of contracting II-8

7. Advertising for Bids
A. Frequency of advertisement for bids II-8
B. Requirements for projects over $1,000,000 . . . . . II-8
C. Additional circulation of invitation for bids II-8

8. Bonding and Insurance Requirements
A. Minimum bond amounts II-8
B. Insurance requirements II-9

9. Bid Schedules for Alternative Materials
A. Use of bid schedules II-9
B. Method of award II-9
C. Exceptions and deviations II-9

10. Non-EDA Work
A. Requirements for adding non-EDA work II-9
B. Restrictions on award of contract II-10

11. EDA Review of Proposed Procurement Documents
A. Procurement system certification II-10
B. EDA approval of contract documents II-10
C. EDA pre-bid review II-11
D. EDA pre-award review II-11
E. Use of standardized documents and checklists II-11

12. Construction and Services Contract Provisions
A. Required contract documents II-11
B. Cost documentation II-12
C. Required contract provisions II-12

13. Wage Rates
A. Applicable act II-16
B. Wage rate coverage II-16
C. Different types of coverage II-17
D. Period of wage rate validity II-17
E. Application and exception for wage rates II-17
F. Exceptions for railroads and public utilities II-17
G. EDA or Department of Labor investigations II-18
H. Record retention II-18
I. Retroactivity of wage rates II-18

14. The Bid Opening
A. EDA representation at the bid opening II-18

15. Overrun at Bid Opening
A. When lowest bid exceeds funds available II-19
B. When lowest bid less deductive alternates exceeds funds available II-19

16. Underrun at Bid Opening
A. EDA notification II-20

17. EDA Approval of the Contract Award
A. EDA approval II-20
B. Requirements for EDA approval II-20
C. Checking debarred, ineligible, or suspended contractors II-21

18. Executed Bid Award
A. Contents of executed contract documents to be furnished to EDA II-21

19. Preconstruction Conference II-22

SECTION III: CONSTRUCTION PROCEDURES

1. Recipient Responsibilities
   - A. Recipient responsibilities for project monitoring III-1
   - B. Recipient responsibilities for project documents III-1

2. Employment of Local Labor
   - A. Anticipated labor requirements III-1

3. Construction Progress Schedule
   - A. Construction progress chart III-1
   - B. Monthly update III-1
   - C. Acceptable formats III-1

4. Construction Sign
   - A. Contractor responsibility III-2
   - B. Location of sign III-2
   - C. Local agency coordination III-2
   - D. Modification of sign specifications III-2
   - E. Bilingual signs III-2

5. Inspection of Construction III-2

6. Occupancy Prior to Completion
   - A. Recipient responsibilities III-2
   - B. Role of EDA III-3

7. Contractor Payrolls
   - A. Payroll retention requirements III-3
   - B. Applicable Executive Order and form III-3

8. Civil Rights Requirements III-3

9. Contract Change Orders
   - A. Notification to and approval from EDA III-4
   - B. Cost and price analysis III-4
   - C. Required copies III-4
   - D. Prohibited change of scope III-4
   - E. Change order requirements III-4
   - F. EDA approval III-4
   - G. Substantial variations III-4

10. Inspection for Final Acceptance
A. Final inspection III-5
B. Interested parties III-5

11. Specific Requirements for Subcontractors III-5

12. Safety III-6

SECTION IV: FINANCIAL ADMINISTRATION

1. Standards for Financial Management Systems
A. Requirements for State recipients IV-1
B. Requirements for other recipients IV-1
C. EDA review IV-2

2. Grant Disbursements
A. The reimbursement method IV-2
B. Effect of program income IV-2
C. Withholding payments IV-2
D. Cash depositories IV-3
E. Interest earned on advances IV-3

3. Allowable Costs
A. Limitation on use of funds IV-3
B. Applicable cost principles IV-3

4. Period of Availability of Funds
A. General IV-4
B. Liquidation of obligations IV-4

5. Matching or Cost Sharing
A. Basic rule IV-4
B. Qualification and exceptions IV-5
C. Valuation of donated services IV-6
D. Valuation of 3rd party donated supplies and loaned equipment or space IV-6
E. Valuation of 3rd party donated equipment, buildings and land IV-7
F. Valuation of Recipient donated real property for construction/acquisition IV-7
G. Appraisal of real property IV-7

6. Program Income
A. General IV-8
B. Definition of program income IV-8
C. Cost of generating program income IV-8

D. Governmental revenues IV-8
E. Royalties IV-8
F. Sale of real property IV-8
G. Use of program income IV-8
H. Income after the award period IV-9

7. Non-Federal Audit IV-9

SECTION V: AMENDMENTS TO GRANT AGREEMENTS

1. General Requirements
A. Unforeseen problems V-1
B. Types of project amendments V-1
C. Change of scope determination V-1

2. Changes to the Project Scope
A. Definition of project scope V-1
B. Approval by EDA V-2
C. Types of project modifications V-2
D. EDA review of proposed modifications V-2

3. Time Extensions
A. Recipient responsibilities V-2
B. Suspension of disbursements V-3
C. Request approval process V-3
D. EDA right to suspend or terminate the grant V-3

4. Budget Line Item Revisions
A. Requirements for approval by EDA V-3
B. Transfers between budget line items V-3
C. Transfer from contingencies line item V-3
D. Use of underrun funds V-3
E. Notification of budget line item changes V-4

5. Additional EDA Funding
A. Request for additional EDA funds V-4
B. Proceeding before EDA approval V-4

6. Termination of the EDA Grant
A. Termination for cause V-4
B. Termination for convenience V-5

SECTION VI: PROJECT CLOSEOUT PROCEDURES

1. Audit Requirements
   - A. Securing Single Audit Act audit VI-1
   - B. Specific audits VI-1
   - C. Department of Commerce audits VI-1
   - D. Audit standards VI-1

2. Closeout Procedures
   - A. Beginning the closeout process VI-1
   - B. Final grant reports VI-2
   - C. Liquidation of obligations VI-2
   - D. The final grant disbursement VI-2
   - E. Eligible and ineligible costs VI-3
   - F. After closeout requirements VI-3

SECTION VII: POST CONSTRUCTION GRANT REQUIREMENTS

1. Real Property
   - A. Grantee ownership VII-1
   - B. EDA's reversionary interest VII-1
   - C. Successor grantees VII-1
   - D. Applicability of requirements VII-1

2. Definitions VII-1

3. Use of Property
   - A. Use only for authorized purposes VII-2
   - B. Property no longer needed for grant purpose VII-2
   - C. Property for lease or sale VII-2
   - D. Property substitutions VII-2

4. Unauthorized use
   - A. Disposal without EDA approval VII-2
   - B. EDA actions for disposal without approval VII-3

5. Federal Share
   - A. Calculation of federal share VII-3
   - B. Leasehold depreciation VII-3
   - C. Transfer to another eligible grantee VII-3
   - D. EDA interest after compensation VII-3

6. Encumbrances
A. Restrictions on encumbrances VII-3
B. Compensation for encumbrances VII-3
C. Waivers VII-3
D. Water and sewer exceptions VII-4

7. Civil Rights Restriction VII-4

8. Performance Reports VII-4

9. Record Retention VII-4

10. Program Income Earned After the Award Period VII-5

SECTION VIII: EXHIBITS

SECTION I

GENERAL AND PRE-CONSTRUCTION REQUIREMENTS

1. Basis for Economic Development Administration (EDA) Requirements

   A. These Requirements for Approved Construction Projects apply to all awards for construction projects and they are based on Office of Management and Budget (OMB) administrative requirements for Federal grants as set forth in OMB Circulars and on regulations set forth in the Code of Federal Regulations (CFR) Section 13 Chapter III, Section 15 Part 24 and Section 15 Part 14 as they may be amended.

   B. These Requirements for Approved Construction Projects are intended to organize and explain the various requirements that apply to Federally-assisted construction programs. They are not intended to derogate, replace, or negate the above cited Federal requirements. Conflicts between these Requirements for Approved Construction Projects and the documents referred to above should be brought to the attention of EDA immediately. Any inconsistences or conflicts shall be resolved in favor of such Federal requirements.

   C. EDA, as a Federal agency, is obligated to promulgate policies and procedures applicable to Recipients of EDA grants to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote the effective use of grant funds in accomplishing the purpose for which they were granted. Pursuant to this obligation, grant terms and conditions require Recipients to comply with changes in regulations and other requirements and policies EDA may issue from time to time. Such changes apply to actions taken by all Recipients of EDA grants, existing and prospective, after the effective date of the changes.

   D. EDA's policy is to administer grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic development problems, requests for variances to the requirements of this Requirements for Approved Construction Projects will be considered if they are consistent with the goals of EDA programs, make sound and financial sense, and do not conflict with applicable Federal and regulatory requirements.

2. The EDA Grant Award

   The EDA grant award contains mandatory requirements and information vital to the accomplishment of the project. It should be read carefully with particular attention paid to:

A. The description of the project. This description and the corresponding scope of work must be adhered to. Proposed changes to EDA approved projects will be permitted by EDA only if they are necessary to the proper functioning of the project. Enhancements to the project that were not envisioned in the grant award will not be approved for EDA participation.

B. The Standard Terms and Conditions for Public Works and Development Facilities and Economic Adjustment Construction Projects. The Standard Terms and Conditions contain, by reference or substance, a summary of the pertinent statutes, regulations published in the Federal Register or Code of Federal Regulations, Executive Orders or OMB Circulars.

C. The Special Conditions of the grant award. The Special Conditions generally contain two types of information. The first type relates specifically to the grant being awarded. The second type relates to all approved grants and are of recent origin and therefore have not yet been incorporated into the Standard Terms and Conditions. Special attention should be paid to the Project Development Time Schedule. The time schedule can only be extended as a result of a written request from the Recipient and a written approval by EDA. Failure to meet the time schedule is considered a violation of the grant award and may result in action by EDA to suspend and/or terminate the grant. No disbursement of EDA grant funds is permitted when a project has exceeded the time schedule in the grant award unless EDA has given written approval to a time schedule extension.

D. For projects approved prior to October 1, 1999, the EDA grant funds remain available for a period beginning at the time the grant is awarded and ending five (5) years after the end of the fiscal year in which the grant was approved. Any funds not disbursed to the Recipient before the end of that period are automatically canceled and will be deobligated and will no longer be available for payment of costs incurred by the Recipient.

E. Combination construction and nonconstruction grants. If the EDA grant award is for both construction and nonconstruction, the Recipient must obtain prior written approval from EDA before making any fund or budget transfer from nonconstruction to construction or vice versa.

F. Performance Measures. The Standard Terms and Conditions of the EDA grant award make reference to "Core Performance Measures" that require post-construction reports to be submitted to EDA. The first report will be due at the completion of construction of the project. The due dates for the submission of the second and third reports are 3 years and six years after the completion of construction. Questions regarding the content or submission of these reports should be directed to EDA.

3. Initial Actions

A. After the Grant Award has been affirmed, the EDA Regional Office will mail a pre-construction package to the Recipient that includes a copy of "Requirements for Approved Construction Projects", and a list of items that need special attention (such as the project development time schedule), and a list of any unresolved problems identified during the preapproval review process. The EDA Project Manager will then contact the Recipient to offer assistance and guidance, to arrange for an updated schedule of the Recipient's proposed activities and to arrange a Project Management Conference.

B. Because it is the policy of EDA to discourage the undertaking of any construction prior to the submission of an application for financial assistance, special consideration and judgment must be executed if it becomes necessary for a project to proceed prior to award of the EDA grant. Commencement of a project prior to approval of the application for assistance is not prohibited, but it may jeopardize the favorable consideration of such application since, among other things, it raises a rebuttable presumption that funds necessary for the accomplishment of the project are otherwise available and that proper contracting procedures and labor standards may not have been followed.

C. If construction of the project was begun before affirmation of the grant award, the Recipient will be required to document to EDA's satisfaction that it has complied with all EDA requirements, including but not limited to the payment of Davis-Bacon wages from the start of construction and environmental requirements, in order to qualify for EDA reimbursement of costs incurred, if agreed to in the grant award.

4. Project Management Conference

Whenever practical, the Project Management Conference will be held at the Recipient's location; however, if necessary and required for appropriate EDA personnel to be present, it may be held at another location including in the Regional Office. The Recipient's Authorized Representative, Architect/Engineer, attorney and possibly the Recipient's financial representative should be in attendance. Reasonable costs for transportation, meals and lodging for these individuals are an authorized cost under the administrative line item in the project budget. Per diem costs eligible for EDA reimbursement may not exceed the current Federal per diem rate.

5. Selection of the Architect/Engineer

A. If an Architect/Engineer has been selected by the Recipient prior to EDA approval of the grant award and the contract between the Recipient and the Architect/Engineer has not been

previously submitted to EDA, it should be submitted as soon after the grant award as possible. If the selection has not been made at the time of grant award the contract should be sent to the EDA Regional Office as soon as possible after its execution by both parties.

B. For EDA to participate in the cost for architect/engineer services the Architect/Engineer must be selected competitively by sealed bids (formal advertising) or by competitive proposals. If the selection is made by competitive proposal the following requirements apply:

(1) Requests for proposals shall be publicized and shall identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
(2) Proposals will be solicited from an adequate number of qualified sources (normally sufficient to secure at least three proposals from qualified proposers);
(3) The Recipient will have a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered;
(4) The Recipient will determine the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. Competitor's qualifications will be evaluated and the most qualified competitor will be selected, subject to negotiation of fair and reasonable compensation.

6. <u>The Architect/Engineer Contract for Services</u>

A. The architect/engineer agreement shall provide for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.

B. The Architect/Engineer's fee for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on a determination, subject to audit, that the compensation is reasonable.

C. The use of the cost-plus-a-percentage-of-cost and percentage of construction cost forms of compensation are specifically prohibited.

D. The Architect/Engineer's fee shall cover all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs. The basic fee shall not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services shall be identified in the agreement. Such additional charges may be approved for grant participation by EDA if they:

(1) Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;
(2) Are a proper charge against the project cost; and
(3) Are reasonable for the extra services to be rendered.

E. Regardless of who furnishes the construction inspector, the Architect/Engineer shall be held responsible for making sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

F. All negotiated architect/engineer contracts (except those of $100,000 or less awarded under small purchase procedures) awarded by Recipients shall include a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the architect/engineer (which are directly pertinent to a specific grant project) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.

G. EDA requirements for the agreement for architect/engineer services are contained in Exhibit A-1 to these "Requirements for Approved Construction Projects".

7. <u>Multiple Contracts and Phasing</u>

A. The Recipient is strongly urged to award all contracts for the project construction at one time. Where compelling reasons justify phasing the project, the Recipient must secure the approval of EDA for phasing prior to advertising any portion for bid. The Recipient's request for approval of phasing must include:

(1) Valid reasons justifying the request, and
(2) A statement from the Recipient that it can, and will, fund any overrun that arises in the later phases.

B. Normally EDA will not disburse funds until all construction contracts have been awarded, (an exception is the development of a water source when required to determine the availability of an adequate source of water supply in terms of both quality and quantity as called for in the Grant Agreement). Disbursement of grant funds by phases must be approved by EDA. Such approvals will be given only if the Recipient can demonstrate that a severe hardship will result if such approval is not given and there are compelling reasons why all phases cannot be contracted for at the same time. The Recipient must be capable of meeting incurred costs prior to the first disbursement of EDA grant funds.

8. Recipient Furnished Equipment and/or Materials

The Recipient may wish to incorporate into the project equipment and/or materials which it will secure through its own efforts. It is the responsibility of the Recipient to assure that such equipment and/or materials are adequate for the proposed use. The use of such equipment and materials must be approved by EDA to be eligible for EDA financial participation. The Recipient must be prepared to show that the cost claimed for such equipment and/or materials is competitive with local market costs. Acquisitions of Recipient furnished equipment and/or materials under this section is subject to the requirements of 15 CFR Part 24 or15 CFR Part 14. The Recipient shall be required to submit with its request for approval either a paid invoice or current quotes from not less than three suppliers who normally distribute such equipment and/or materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value.

9. Services Performed by the Recipient's Own Forces

A. The Recipient may have a portion or all of the design, construction, inspection, legal services, or other work and/or services in connection with the project performed by personnel who are employed by the Recipient either full-time or part-time (in-house), subject to the following conditions:

(1) EDA must review and approve the Recipient's plan if this method is to be elected by the Recipient.
(2) Such work or services performed by in-house personnel may be considered an eligible cost for EDA reimbursement if in conformance with Office of Management and Budget Circulars A-87, A-21 or A-122, as appropriate.
(3) If a portion of the architect/engineer services is to be performed by in-house forces, the Recipient will submit a statement listing the services to be so performed. This statement should accompany the architect/engineer agreement when it is submitted to EDA for

approval.

B. Due to the difficulty in monitoring in-house construction and the limited EDA staff available to perform the monitoring, in-house construction is strongly discouraged. The in-house method of construction may be approved only if:

(1) The Recipient has a special skill required for the construction, e.g., construction of unique Indian structures, or
(2) Substantial cost savings can be demonstrated, or
(3) The Regional Office is satisfied that the Recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors, such as the remoteness of the site combined with a small contract or an overabundance of construction work in the project area, or
(4) It has been determined by EDA that special circumstances require its use to successfully complete the project.

C. If EDA approves the use of the Recipient's in-house forces to construct all or part of the EDA assisted project and the in-house forces are to be augmented by personnel hired specifically for the EDA assisted project, the hourly wages to be paid to such personnel shall be the same as the hourly wages paid to full time personnel of the Recipient doing the same or similar work If the nature of the work is not similar and/or there is not an established wage scale, the prevailing state or county hourly wage for public employees shall be obtained from the appropriate state or county agency and used for the newly established position. However, non-profit recipients must pay all personnel employed for the construction of the EDA assisted project the prevailing hourly wages for the area as established by the U.S. Department of Labor.

10. <u>Construction Management Services</u>

A. For the purposes of this document, Construction Management is defined as the services of a firm with competent and experienced staff to act as the Recipient's agent to perform all or part of the following:

(1) Aid the project designer to find expedited or less costly methods of construction (Value Engineering).
(2) Monitor the contracting process. This may vary in scope from giving advice to the Recipient to complete control of the contracting process.
(3) Inspection or supervision of inspection of the construction work.
(4) Controlling the expenditure of project funds on a multi-faceted or highly complex project.
(5) Controlling unusual methods of contracting such as "fast track" or "turn-key".

B. EDA will not normally approve the use of a Construction Management firm for projects costing less than $5 million.

C. If the Recipient wishes to use a Construction Manager, EDA will participate in such costs only if EDA approves the proposed or actual contract for such services between the Recipient and the Construction Manager.

D. The compensation for Construction Management services is subject to the same rules as those for architect/engineer services.

E. The Construction Management Agreement must spell out who is responsible for construction inspection, approval of construction and supply contracts, change orders and other areas of possible conflicts (i.e., the division of responsibility and authority between the Recipient, the Architect/Engineer and the Construction Manager).

11. Certification of Acquisition of Land, Easements and Rights-of-Way

A. As required in the Financial Assistance Award the Recipient must furnish evidence satisfactory to the EDA that it has good and merchantable title to the tracts or parcels of land on which buildings, structures, or other project improvements will be located, with any liens or encumbrances noted, and that it has obtained all necessary easements, permits, rights-of-way, franchises, condemnations, and all Federal, State and local approvals necessary to the completion of the project.

B. To aid EDA in making its determination, the Recipient must furnish a description of the sites and rights-of-way on which the project will be located. Exhibit C of this document is a "Certificate as to Project Site, Rights-of-Way, and Easements," which is a format acceptable to EDA as evidence of the Recipient's title to the real property necessary for the project. The Recipient has the option to prepare the title opinion in a format that meets local law or custom. Any title opinion submitted must be approved by EDA. EDA may require additional documentation.

C. If land acquisition is a part of the project, the EDA project file must be documented to show the basis for determining that the amount of land acquired and the cost of the land is reasonable. If an appraisal is required, a professional appraiser(s) should perform the service. An appraiser registered with a national society and/or licensed by the State will normally be required.

D. Any significant change in the amount and cost of land from that upon which the project approval was based must be approved by EDA to be eligible for EDA reimbursement.

E. No financial assistance under the Act will be approved for a project involving public or privately

owned land adjacent to or in the vicinity of a federally owned or operated airfield, unless the Recipient can demonstrate that the proposed project is compatible with the airfield land use plan prepared for that facility.

12. Relocation Assistance

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), as amended, are applicable to all States and political subdivisions of States and non-profits which are recipients of EDA funding assistance. This Act requires financial and other assistance to persons, businesses, or farm operations displaced from real property acquired for a project financed wholly or in part with Federal funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition. Recipients are required to comply fully with the intent of this Act.

13. Clean Water Act Compliance Procedures

A. The National Environmental Policy Act (NEPA) requires all Federally funded actions to be compliant with all Federal environmental regulations and Executive Orders, including the Clean Water Act. The Clean Water Act prohibits anyone from discharging pollutants without a National Pollutant Discharge Elimination System (NPDES) permit, or from knowingly violating an existing NPDES permit as the result of a connection to an existing sewage treatment plant. These permits contain limits on discharge, as well as monitoring and reporting requirements tailored to the regulated facility.

B. The U.S. Environmental Protection Agency (EPA) has delegated NPDES permitting authority to 43 states (as of March 1999). In most states the NPDES permits are issued from the state environmental protection agency. NPDES permits for the remaining 7 states, territories, Federal Indian Reservations, and the District of Columbia are issued from the appropriate EPA regional office. In the states that do not have delegated NPDES authority, a state water quality permit must also be obtained in addition to the EPA NPDES clearance.

C. EDA will not disburse any funds for a facility requiring a NPDES permit or an amendment to an existing permit, prior to the issuance of the permit and prior to the start of construction. However, EDA may pay its share of engineering design costs, and costs associated with any other element of the project unrelated to the regulated pollutant discharge prior to obtaining the NPDES permit.

14. Project Financing

Prior to obtaining EDA approval of the project's final plans and specifications, the Recipient should furnish evidence to the EDA Project Manager that the Recipient has its share of matching funds either on hand or firmly committed. Any change in the amount or availability of the Recipient's share must be made known to EDA at this time. This is equally true of the interim financing amount and availability.

15. Safeguarding Funds

A. Checks drawn to pay project costs will be signed by the Authorized Representative of the Recipient and may be counter-signed by other representatives of the Recipient if he/she so designates. The Recipient shall retain all bank statements, deposit slips, canceled checks, and related invoices pertaining to these project costs to facilitate final audit.

B. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks as the depository for project funds.

C. Although a separate bank account is not required by EDA, the Recipient is urged to use one for the EDA project as it will be helpful to the audit of the project costs claimed by the Recipient at project closeout.

D. For non-governmental Recipients, EDA recommends that the Recipient have the custodian of the project funds bonded in an amount not less than the amount of the EDA grant.

16. Department of Commerce Metric Program

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce.

17. Seasonality

It is EDA policy to promote construction of projects continuously throughout the year. Recipients and their Architect/Engineers are encouraged to design projects so that construction will not be unreasonably curtailed by weather.

18. Design for the Handicapped

A. Any building or facility financed in whole or in part with assistance under the Act must be designed, constructed, or altered, so as to insure ready access to, and use of, such building or facility by the physically handicapped, as required by P.L. 90-480 (42 U.S.C. 4151-4156) and the regulations promulgated thereunder (41 CFR Subpart 101-19.6).

B. Except as otherwise provided in paragraph (C) of this section, every building, except a residential structure, shall be designed, constructed, or altered in accordance with the minimum standards contained in the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A 117.1 (1971) approved by and available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

C. The standards established in paragraph (B) of this section shall not apply to:

(1) The design, construction, or alteration of any portion of a building or facility which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;
(2) The alteration of an existing building if the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installations or improvements to accommodate the physically handicapped;
(3) The alteration of an existing building or facility, or of such portions thereof, to which application of the standards is not structurally possible.

D. The standards established in paragraph (B) of this section may be modified or waived on a case-by-case basis, provided that the Administrator of the General Services Administration determines that such waiver or modification is clearly necessary.

19. Reporting of Project Progress

A. Recipients are required to constantly monitor project progress to assure that time schedules are being met, project work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity as set forth in the approved grant application.

B. The Recipient is required to submit a project performance report for each calendar quarter. The report will cover the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the timetable established in the Grant Award;
(2) Reasons for delays in those cases where the timetable approved by EDA was not met;
(3) Any change to the purpose, nature, location, bona-fide need, neighborhood served, size, funding, or cost of the project;
(4) All change orders issued up to the date of the report and not previously reported to EDA; and
(5) Other pertinent information including, when appropriate, an analysis and explanation of cost overruns or high unit costs.

C. The project performance report will be due not later than January 15, April 15, July 15 and October 15 for the immediate previous quarter year. This requirement shall begin with the Recipient's acceptance of the EDA Grant Award and shall end when EDA approves the final grant disbursement.

D. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the Recipient will be required to inform EDA as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability of the Recipient to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.
(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work than originally projected; or
(3) If any performance review conducted by the Recipient discloses the need for change in the budget estimates, the Recipient is required to submit a request for budget revision.

E. A sample format for the required project performance report is included herein as Exhibit J. The report will be sent to the EDA Regional Office. The Recipient may use a format other than the EDA sample, provided that the information called for in this section is furnished.

F. EDA does not normally permit grant advances. However, where EDA determines that grant advances are necessary and in the best interest of the Government and the Recipient, the Recipient will be required to submit with the project performance report a Report of Federal Cash Transactions. The EDA Regional Office shall furnish the required forms for this report.

G. EDA will not process any requests for grant disbursement from Recipients with delinquent performance reports.

20. Environmental Requirements

A. EDA is required by law to insure that proper environmental review of its actions take place; that there is a proper balance between the goals of economic development and environmental enhancement in its actions; and, that adverse environmental impacts from its actions are mitigated or avoided to the extent possible.

B. Environmental assessments of EDA actions are conducted in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et. seq.), the Environmental Quality Improvement Act (42 U.S.C. 4371 et. seq.), The Clean Air Act, as amended (42 U.S.C. 7401 et. seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.), The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271 et. seq.), the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4002 et. seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq.), and the Council on Environmental Quality (CEQ) Regulations (40 CFR Section 1500-1508), as specified in EDA Directives 17.02-2, 17.02-7, and 17.04, as hereafter amended or superseded. Directives are available from any EDA office.

C. EDA recipients are subject to Federal, state and local requirements concerning hazardous substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Public Law 96-510 (1980), as amended by Public Law 99-499 (1986), 42 U.S.C. 9601-9675; and the Resource Conservation and Recovery Act (RCRA), Public Law 89-272 (1965), as amended by Public Law 94-580 (1976), Public Law 96-482 (1980) and Public Law 98-616 (1984), 42 U.S.C. 6901-6991.

21. Project Revisions

After Recipient acceptance of the EDA grant award, any change to the project as described in the grant award must be reviewed and approved by EDA. To be eligible for EDA financial participation the proposed revision must meet certain conditions. See Section V of this document for guidelines on securing EDA approval of proposed project revisions.

This page left blank intentionally.

SECTION II

CONTRACTING FOR PROJECT CONSTRUCTION

1. Contracting Standards

A. For States: If a State is the recipient of the EDA grant award, the State may follow the same policies and procedures it uses for procurements from its non-Federal funds provided that the State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and Executive Orders and their implementing regulations. For reimbursable cost determinations, OMB Circular A-87 will be applicable.

B. For Other than States: Recipients of EDA grants other than States may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards contained in these "Requirements for Approved Construction Projects". Recipients may request EDA to approve self-certification of their procurement system. Such self-certification shall not limit EDA's right to survey the system. The Recipient must cite specific procedures, regulations, standards, etc. as being in compliance with EDA and other Federal requirements and have its system available for review. In the absence of written procurement regulations issued by the Recipient which meet the following requirements, applicable Federal procurement standards shall govern.

C. Contract Administration System: Recipients will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

D. Standards of Conduct: Recipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the Recipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firms elected for award:

(1) an employee, officer or agent
(2) any member of his/her immediate family
(3) his or her partner
(4) an organization which employs, or is about to employ, any of the above.

The Recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements

except that Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Recipient's officers, employees, or agent, or by contractors or their agents.

E. State and Local Agreements: To foster greater economy and efficiency, Recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

F. Surplus Property: Recipients are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

G. Value Engineering: Recipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. EDA will not normally approve value engineering costs for construction contracts with estimated costs of less than $1,000,000. Value engineering is defined for the purposes of this paragraph as a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. Value engineering, as a function, is done separately from the architect/engineer design by a person or firm not controlled by the architect/engineer.

H. Awards to Responsible Contractors: Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.

I. Maintenance of Records: Recipients will maintain records sufficient to detail the significant history of each procurement affecting the EDA assisted project. These records will include, but are not necessarily limited to, the rationale for method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract price.

J. Time and Material Contracts: Recipients will use time and material type contracts only:

(1) After a determination that no other type of contract is suitable, and
(2) If the contract includes a ceiling price that the contractor exceeds at its own risk.

K. Settlement of Issues: Recipients alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes and claims. These standards do not relieve the Recipient

of any contractual responsibilities under its contracts. EDA will not substitute its judgment for that of the Recipient unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

L. Protest Procedures: Recipients will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to EDA. A protestor must exhaust all administrative remedies with the Recipient before pursuing a protest with EDA. Reviews of protests by EDA will be limited to:

(1) Violations of Federal law or regulations (violations of State or local law will be under the jurisdiction of State or local authorities); and
(2) Violations of the Recipient's protest procedures for failure to review a complaint or protest. Protests received by EDA other than those specified above will be referred to the Recipient for resolution.

2. Competition in Procurement

A. All procurement transactions affecting the EDA project will be conducted in a manner providing full and open competition consistent with the standards contained herein. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business,
(2) Requiring unnecessary experience and excessive bonding,
(3) Noncompetitive pricing practices between firms or between affiliated companies,
(4) Noncompetitive awards to consultants that are on retainer contracts,
(5) Organizational conflicts of interest,
(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
(7) Any arbitrary action in the procurement process.

B. Recipients will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in these Requirements for Approved Construction Projects preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographical location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

C. Recipients will have written selection procedures for procurement actions. These procedures will ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

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

D. Recipients will ensure that all lists of prequalified persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, Recipients will not preclude potential bidders from qualifying during the solicitation period.

3. Acceptable Methods of Procurement

A. Procurement by Small Purchase Procedures: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000) in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources (normally at least three quotes will be required).

B. Procurement by Sealed Bids (formal advertising): Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction. In order for sealed bidding to be feasible, the following conditions should be present:

(1) A complete, adequate and realistic specification or purchase description approved by EDA is available,

(2) Two or more responsible bidders are willing and able to compete effectively for the business, and
(3) The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

C. If sealed bids are used, the following requirements apply:

(1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids.
(2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.
(3) All bids will be publicly opened at the time and place prescribed in the invitation for bids.
(4) A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
(5) Any or all bids may be rejected if there is a sound and properly documented reason.

D. Procurement by Competitive Proposals: The technique of competitive proposals may be used on EDA projects to secure architect/engineer services and is conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals will be publicized and will identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.
(2) Proposals will be solicited from an adequate number of qualified sources (normally EDA requires responses from at least three responsible firms).
(3) Recipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees.
(4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
(5) Recipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the

proposed effort.

E. Procurement by Noncompetitive Proposals: This technique requires EDA prior written concurrence and is conducted by solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(1) The item is available only from a single source; or
(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
(3) After solicitation of a number of sources, competition is determined inadequate.

4. Unacceptable Method of Procurement

The cost-plus-a-percentage-of-cost method of contracting is unacceptable for use on EDA assisted projects. EDA grant funds may not be used to reimburse costs incurred under such a contract.

5. Contracting with Disadvantaged Firms

A. The Recipient shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises;
(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned

firms and women's business enterprises.

6. Contract Cost and Price Analysis

A. Recipients must perform a cost or price analysis in connection with every procurement action including contract modifications (change orders). The method and degree of analysis is dependent upon the facts surrounding the particular procurement situation, but as a starting point, Recipients must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural/engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

B. Recipients will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance and industry profit rates in the surrounding geographical area for similar work.

C. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see OMB Circulars A-21, A-87 or A-122 as applicable). Recipients may reference their own cost principles that comply with the applicable Federal cost principles.

D. The cost-plus-a-percentage-of-cost and percentage of construction cost methods of contracting shall not be used.

7. Advertising for Bids

A. In the absence of State or local law to the contrary, the advertisement for bids should appear in publications of general circulation a minimum of four times within a 30-day period prior to the opening of bids.

B. Additional circulation of the invitation for bids is encouraged if it is needed to obtain the coverage necessary to secure competitive bids.

C. Generally, a minimum of 30 days should be allowed for submission of bids.

8. Bonding and Insurance Requirements

A. For construction or facility improvement contracts or subcontracts exceeding $100,000 the following minimum bonding requirements apply:

(1) The bonding company selected must be listed in U.S. Treasury Department Circular 570.
(2) 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 his bid, execute such contractual documents as may be required within the time specified.
(3) A performance bond on the part of the contractor for 100 percent of the contract price.
(4) A payment bond on the part of the contractor for 100 percent of the contract provisions.

B. The Recipient shall require that each construction contractor and all subcontractors maintain, during the life of its contract, Workmen's Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by the nature of the work and State and local law. When appropriate, the Recipient shall require the prime contractor to provide Builder's Risk Insurance as part of the construction contract. In any case, the responsibility for seeing that coverage is obtained and kept in force remains with the Recipient. Such coverage is an eligible project cost, when obtained by the Recipient directly.

9. Bid Schedules for Alternative Materials

A. Should the Recipient, acting upon the advice of his/her consultant Architect/Engineer desire to obtain competitive prices for differing materials, such bids should be requested on the basis of "Bid Schedule A", "Bid Schedule B", etc. Bid Schedules, as used herein, refer to the method used to obtain bids on more than one material to be used for the same purpose. As an example, if 2,000 linear feet of sewer line were to be installed, Bid Schedule A might call for the pipe material to be cast iron. Bid Schedule B might call for the pipe material to be ductile iron. Bid Schedule C might call for the material to be asbestos cement, etc.

B. If bids are asked for on the basis of two or more Bid Schedules as set forth above, the bid documents must clearly set forth that the contract will be awarded to the bidder having proposed the lowest responsive bid within the amount of funds announced as available by the Recipient to finance the contract and including the Bid Schedule upon which that Contractor bid the lowest price.

C. If the Recipient wishes to use a bid material which will result in increased cost, EDA may permit the use of the material chosen, but the amount of grant participation by EDA shall remain based on the lowest responsive bid. The contract must be awarded to the lowest bidder determined in accordance with the procedure described above unless a deviation is specifically allowed in applicable State and local law.

10. Non-EDA Work

A. If the Recipient plans to add work that is an addition to the approved EDA project, the following will apply:

(1) The advertisement for bids, all bid documents, and contract documents shall clearly define and separate the EDA portion of the work from the non- EDA portion.

(2) The Recipient may offer for bid and award work in addition to the EDA portion, provided:

(a) the Recipient understands that EDA will participate in the EDA portion only;

(b) the additional work does not adversely affect the original intent of the EDA project or its economic impact, as approved.

(3) Contracts shall be so drawn that the EDA-assisted portion of the work is clearly identifiable at all times during construction.

(4) Underruns in the EDA project cannot be applied to assist the Recipient in funding work which is not a part of the EDA project. It is the responsibility of the Recipient to pay for all added work in full.

(5) In the event of an overrun on the EDA portion of the work, it is the Recipient's responsibility to supply the necessary additional funds and to deposit such funds in the project account. A revised project budget estimate will then be prepared which will clearly show the portion of project cost to be shared by EDA and the portion the Recipient must fund in its entirety. In addition, the overall percentage participation of EDA in the project shall be clearly identified.

B. When the EDA project is included with non-EDA assisted work, the Recipient will normally award to the lowest bidder on all the work. However, EDA participation will be based on the lowest bid for the EDA-assisted portion. When this occurs, the Recipient will prepare a memorandum to EDA, which will clearly present the details of the award.

11. EDA Review of Proposed Procurement Documents

A. EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the EDA grant award and does not attest to the accuracy or completeness of design, dimensions, details, proper selection of materials nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

B. A pre-bid review of proposed construction bid documents by EDA is required if:

(1) The procurement is expected to exceed the simplified acquisition threshold (currently $100,000) and the Recipient's procurement procedures and operations have not been certified by EDA and/or do not comply with the procurement standards of this document, or
(2) The scope of the work as approved in the EDA grant award has changed, or
(3) The proposed bid documents specify one or more "brand name" products.

C. A pre-award review by EDA is required if:

(1) The procurement is expected to exceed the simplified acquisition threshold (currently $100,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation, or
(2) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement, or
(3) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold, or
(4) The Recipient's procurement procedures or operation fails to comply with the procurement standards in this Requirement for Approved Construction Projects, or
(5) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product.

D. It will greatly expedite EDA's review of the proposed bid documents if the Recipient completes the Checklist for Construction Contracts (Exhibit A-2), has it signed by the Recipient's authorized representative and submits it to the EDA regional office with the proposed construction bid package for approval. EDA review and approval of the proposed contract documents will also be expedited if the Recipient uses standardized documents such as "Contract Documents for Construction of Federally Assisted Water and Sewer Projects" jointly prepared, endorsed by, and available from, the Environmental Protection Agency, Rural Development, the Department of Housing and Urban Development, the Associated General Contractors of America, the Consulting Engineers Council and the National Society of Professional Engineers. Standardized contract forms available from the American Institute of Architects are also acceptable to EDA.

E. Until EDA has reviewed and approved the Recipient's proposed contracts and related procurement documents, the Recipient will be proceeding at its own risk regarding the eligibility of costs incurred.

12. Construction and Services Contract Provisions

A. The proposed contract documents to be part of the invitation for bids should contain at least the following:

(1) An Index
(2) Advertisement for Bids
(3) Information for Bidders
(4) Bid Form
(5) Contract Form
(6) Bid Bond
(7) Performance Bond
(8) Payment Bond
(9) General Conditions
(10) "Supplemental General Conditions" (to be furnished by EDA)
(11) Technical Specifications
(12) Working Drawings
(13) Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246 and 41 CFR 60-4) (Exhibit E)

B. The package sent to EDA should also contain a documentation of the estimated cost for the proposed contract (see Section II 6. of these "Requirements for Approved Construction Projects").

C. The Recipient shall include the following contract provisions or conditions in all procurement contracts and subcontracts for the EDA assisted project.

(1) Contracts in excess of the simplified acquisition threshold (currently $100,000) shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
(2) Contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the Recipient including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of $10,000 by the Recipient and their contractors or subrecipients shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) All contracts and subgrants in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he/she is otherwise entitled. The Recipient shall report all suspected or reported violations to EDA.

(5) All construction contracts in excess of $2,000 awarded by the Recipient and Subrecipients shall include a provision for compliance with the Davis- Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Recipient shall place a copy of the current prevailing wage determination issued for each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The Recipient shall report all suspected or reported violations to EDA.

(6) Where applicable, all contracts awarded by the Recipients and Subrecipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 102 of this Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

(7) Section 107 of the Contract Work Hours and Safety Standards Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR Part 401, “Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Grants, Contracts and

Cooperative Agreements".

(9) All negotiated contracts (except those awarded by small purchases procedures) awarded by the Recipient shall include a provision to the effect that the Recipient, EDA, the Office of Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract.

(10) The Recipient shall require contractors to maintain all required records for three years after the Recipient makes final payments and all other pending matters are closed.

(11) Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 USC 1251 et seq.), Violations shall be reported to EDA and the regional office of the Environmental Protection Agency (EPA).

(12) Recipients and subrecipients must contain mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan, where applicable, issued in compliance with the Energy Policy and Conservation Act (P.L. 94-165).

(13) EDA may require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

(14) The EDA project number should appear on all drawings and on the face sheet of specification documents. In the case of a single sheet layout included in folders, the project number should be shown on the face of the sheet or at a point which will be outside when folded. If the layout consists of two or more sheets, all sheets should be so identified.

(15) In all cases, a reasonable time must be allowed to perform the work and the contract documents should stipulate the number of calendar days allowed for completing the work.

(16) EDA urges that a liquidated damage provision be included in all construction contracts with a specific dollar amount of daily damage to be assessed against the Contractor for each calendar day beyond the stipulated completion date. The daily amount of damages shall be a reasonable and adequate amount based upon the circumstances and estimated dollar cost of the individual contract, or the revenue-producing capacity of the project. The liquidated damages provision provides the Recipient with a feasible means of securing compensation for damages for delays in completing the work. Without such a provision, the proving of such damage is difficult and usually entails court action. In the event that the Recipient objects to the inclusion of a liquidated damages provision in construction contracts, a statement of the reasons for objecting should be submitted with the proposed contract documents.

(17) The Architect/Engineer should be encouraged to use deductive alternates which do not alter the scope of the project, affect the economic impact or project revenue, or change the project justification. Thus, should the bids exceed the cost estimate, deductive alternates may be used to reduce the cost to the extent necessary to come within the

approved funds. Deductive alternates, where used, must be listed in the order to be used on the bid documents and must be taken in that order when awarding the contract. Deductive alternates should not be used for material. EDA recommends that unit price bidding based on quantities estimated by the Architect/Engineer so as to arrive at a total base bid be used to the greatest practical degree.

(18) The limiting of materials and/or equipment to a particular manufacturer or brand name ("sole source") must have EDA approval to be eligible for reimbursement from grant funds unless an "or equal" clause is included in the equipment specifications.

(19) EDA discourages the use of performance type specifications. If the Recipient or his/her Architect/Engineer wishes to use performance type specifications, written approval must be secured from EDA.

(20) See Section II, paragraph 8 of these "Requirements for Approved Construction Projects" for bonding and insurance requirements.

(21) Exhibit B, "Supplemental General Conditions" found in the Exhibits section of these "Requirements for Approved Construction Projects" must be made a part of the construction bid and contract documents unless all EDA and other Federal requirements contained therein are covered elsewhere.

(22) The bidding documents should stipulate that:

(a) the Recipient may consider any bid informal which is not prepared and submitted in accordance with the provision of the bid documents and may waive any informalities or reject any and all bids;

(b) any bid may be withdrawn prior to the time scheduled for the opening of bids but not afterward; and

(c) any bid received after the time and date specified for the bid opening shall not be considered.

(23) Stated allowances may be used for certain items such as door and/or window hardware with the approval of EDA.

(24) All of the above documents shall be included in the sets of bidding documents to be issued to prospective bidders, with any changes or additions recommended by EDA. The responsibility for complying with all State and local laws rests with the Recipient.

(25) Exhibit E to these "Requirements for Approved Construction Projects" is a notice which provides goals and timetables for minority and female participation in construction work. This notice must be included in all invitations for bids for construction projects for which the prime contract and any related subcontracts are in excess of $10,000. EDA shall furnish the Recipient with the appropriate goals and timetables to be inserted in the above notice. In addition, the requirements of the above notice have been provided in the "Supplemental General Conditions" (Exhibit B) as the Standard Federal Equal Employment

Opportunity Construction Contract Specifications.

(26) EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the Grant Agreement and does not imply nor attest to the accuracy or completeness of design, dimensions, details, proper selection of materials, nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

(27) In the absence of State or local law to the contrary, the advertisement for bids will conform to the requirements of Section II 7 of these "Requirements for Approved Construction Projects".

(28) Only complete sets of plans and specifications should be issued to prospective contractors and/or subcontractors.

(29) Generally, a minimum of 30 days should be allowed for submission of bids.

13. Wage Rates

A. Wage rates paid for labor must not be less than the prevailing area wages as determined by the Secretary of Labor and embodied in the construction contract, pursuant to the provisions of the Davis-Bacon act, as amended (40 USC 276a to 276a-7). EDA will secure the wage determination for the Recipient based on the following.

B. Most areas of the United States are covered by existing Department of Labor (DOL) wage decisions published and updated at irregular intervals. If the Recipient's project is in a covered area, the EDA Regional Office will supply copies of the applicable wage decision upon the Recipient's request. If the area is not covered by an existing wage decision the following procedure will apply. Between 45 and 60 days prior to the anticipated date of advertising for bids, the Recipient shall send to the EDA Regional Office a request for a wage determination (also referred to as a wage decision) defining the type of construction category (Building, Heavy or Highway) with each feature of work listed under the appropriate category. In addition, the crafts or skills needed for each category shall be listed and any pertinent wage information available submitted, such as statements from the secretaries of the Association of General Contractors and the Building Trades Council having jurisdiction. In isolated communities, certified copies of current contractors' payrolls for similar type work in the area concerned may accompany the request. When a State wage determination is required by State law, the Recipient must secure a schedule of rates from the State Labor Department and incorporate both State and Federal schedules of rates in the contract documents. The Recipient is responsible for seeing that the wage rates shown in the contract documents reflect not less than the higher of the Federal or State rate by trade. EDA will secure the wage decision from the appropriate Department of Labor Regional Administrator.

C. Each feature of work scheduled must call for Building, Heavy, or Highway wage rates, if applicable. Where a proposed contract involves only one type of construction, the specifications

shall so state. Where more than one type of construction is involved, the specification shall identify, as specifically as possible, into which category of construction each work item falls. This decision, made by the Recipient in consultation with the Architect/Engineer, shall be based on local or area practice to insure fairness to all prospective bidders on construction contracts to be awarded.

D. Wage decisions are only valid for a 120-day period and extensions of wage decisions shall not be granted. If the decision expires without being superseded prior to award of contract, a new wage decision must be secured and included in the proposed contract documents prior to award. The request for a new wage decision shall be addressed to the EDA Regional Office. If the wage rate included in the Invitation for Bids is superseded, the new wage rate must be substituted if the new wage rate decision is dated over ten days prior to the bid openings; otherwise the old wage rate shall apply.

E. Contractors and subcontractors shall be advised that upon acceptance of their bids, they are obligated to pay not less than the established wage rate unless otherwise required by law. Wage rates need not be listed for non-manual workers, including executive, supervisory, administrative and clerical employees.

F. Wage rate schedules are generally not required for contracts between Recipients and railroads and other public utilities for construction services to the extent that the services are performed by personnel employed directly by the utility concerned and paid at rates prevailing for the type of work and utility concerned.

G. EDA or the Department of Labor may cause investigation to be made as may be necessary to assure compliance with the labor standard clauses required by the regulations contained in 29 CFR, Part 5 and the applicable statutes listed therein. Complaints made to, or which come to the attention of the Recipient, shall be called to the attention of the EDA Regional Office.

H. The Recipient shall require each contractor and subcontractor to submit, in compliance with the Davis-Bacon Act, a weekly payroll record. These records shall be retained for a period of three years from the date of completion of the contract and in a manner reasonably accessible. Such payroll records shall be made available at all times for inspection by EDA, the Department of Commerce Inspector General or their authorized representative, and by authorized representatives of the Department of Labor. The Recipient shall file these records by contract number. If the Recipient wishes to use another system for maintaining these records, the EDA Regional Office shall be consulted to avoid any violations of the Privacy Act. The Recipient shall check the submitted payroll records to assure they contain the following:

(1) A properly completed payroll Form WH-347, or

(2) If another form is used, all the information required by Form WH-347, including the name, address, correct job classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid for all employees; and the Statement of Compliance, properly executed as shown on the reverse side of Department of Labor Form WH-347, "Payroll Reporting Form" containing all of the information requirements including the Statement of Compliance. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

I. Where a construction contract has been awarded and work has commenced on the EDA approved project prior to acceptance of the Grant Award, wage rates and requirements listed herein shall be retroactive to the date of start of construction.

14. <u>The Bid Opening</u>

A. Whether or not an EDA representative or his/her designee is present at the bid opening, the Recipient will furnish the following to the EDA Regional Office:

(1) a statement signed by the Authorized Representative of the Recipient, certifying that all bids were received sealed and were opened in his/her presence;
(2) copy of official minutes of the bid opening;
(3) a copy of the bid tabulation.

15. <u>Overrun at the Bid Opening</u>

A. If the lowest responsive bid received at the bid opening exceeds the amount of funds available to finance the contract:

(1) the Recipient may without taking deductive alternates:

(a) reject all bids;

(b) augment the funds available in an amount sufficient to enable award to the lowest responsive bidder.

(2) The Recipient may take deductive alternates in the order shown in the Invitation for Bids until at least one of the responsive bids less deductive alternates result in a price within the funds announced as available. Then award may be made to that bidder. It should be noted that this procedure may change the order of bidders and thus extra care must be exercised to insure that:

(a) all responsive bids are considered;

(b) deductive alternates have been taken in the exact order shown in the Invitation for Bids; and

(c) only sufficient deductive alternates have been taken to reduce at least one of the responsible bids to or below the amount of funds announced as available.

(3) In no event, however, should the Recipient negotiate with the low bidder or other bidders in order to reduce the cost within the funds available.

B. If the low bid less all deductive alternates exceeds the funds available, the Recipient may:

(1) furnish the additional funds required. If the Recipient intends to finance the overrun from his/her own funds, he/she will furnish a written letter or statement to the EDA Regional Office affirming his/her intention to finance the overrun and indicating the source of funds. If such funds are to be borrowed an appropriate supplemental financial plan must be prepared by the Recipient; or

(2) reject all bids and have the Architect/Engineer redesign the project, within the approved scope, to reduce the cost to, or below the approved amount and readvertise; or

(3) request additional EDA financial assistance as a last resort. However, before the Regional Office can accept a request for additional EDA funds, it will be necessary for the Recipient to furnish the following documentation to the EDA Regional Office:

(a) a written statement from the Architect/Engineer giving his/her professional opinion that redesign of the project within the approved scope or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and

(b) a written statement from the Authorized Representative or governing body of the Recipient that the Recipient cannot furnish the additional funds required, giving the reasons plus documentation and/or statistics relative to the financial condition of the Recipient.

16. <u>Underrun Funds at the Bid Opening</u>

A. If the total amount of construction contract awards is less than the approved line item for construction and/or any of the other line items in the EDA approved budget experiences an underrun such that the total expected actual cost will be less than the cost estimated in the EDA

approved budget, EDA must be notified.

17. EDA Approval of the Contract Award

A. EDA must review and approve the award of all necessary contracts in order for the cost to be eligible for EDA reimbursement. However, pending EDA approval the Recipient may issue the Notice to Proceed permitting the work to go forward.

B. To obtain approval of the contract award, the Recipient shall submit to the EDA Regional Office:

(1) those items listed in Section II, Paragraph 12.A and 12.B of these "Requirements for Approved Construction Projects", if not furnished previously;
(2) evidence of bidder's qualification. Architect/Engineer must review and add his/her opinion of bidder's qualifications;
(3) evidence of publication of advertisement for bids;
(4) certified evidence of the Recipient's ability to provide the financial participation required by the Grant Agreement;
(5) evidence of ability to provide construction financing;
(6) evidence of ability to provide the movable equipment and furnishings necessary to make the project a usable facility;
(7) a resume of Resident Engineer's or Resident Inspector's qualifications for approval if not previously furnished;
(8) evidence of establishing a project accounting system for the project; and
(9) evidence of bonding of those persons authorized to draw upon the project funds as required by State and/or local law.

C. Prior to awarding any contract the Recipient should contact the EDA Regional Office so that the contractor can be checked against the list of contractors debarred, ineligible, or suspended from dealing with the Federal government or indebted to the United States. Costs for work done by such contractors are ineligible for EDA financial participation.

18. Executed Bid Award

A. After the bid award has been made, if EDA requests it, the Recipient will submit to EDA one set of bound executed contract documents. Each set shall consist of:

(1) all documents furnished the bidder prior to receipt of bids and upon which base bids were submitted;

(2) a signed or certified copy of the contract or agreement executed between the Recipient and the Contractor, including all addenda as issued, with necessary blanks completed;

(3) a copy of performance and payment bonds, dated the same date or subsequent to the date of the contract, supported by a properly signed and dated power of attorney, issued by the Surety. The Surety must be authorized to transact a fidelity and surety business in the State where the project is located and must be on the Treasury Department's current Circular 570, as "Companies Holding Certificate of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies". The underwriting limitations provided for in the said Treasury Department listing shall be applicable. A bound set of final plans are to be submitted with each set of contract documents.

(4) copies of insurance policies and/or certificates described in Section II, Paragraph 5.A of these "Requirements for Approved Construction Projects".

19. Preconstruction Conference

Before the start of construction, an EDA representative may arrange to meet with the Recipient, the Architect/Engineer, and the Prime Contractor(s) to discuss EDA requirements on such matters as project supervision, on-site inspections, progress schedules, reports, payrolls, payments to contractors, contract change orders, insurance, safety, and other items pertinent to the project. At this conference, all parties shall be prepared to discuss any anticipated problems or issues that could affect the timely completion of the project.

SECTION III

CONSTRUCTION PROCEDURES

1. Recipient Responsibilities

   A. The Recipient is responsible for expeditiously prosecuting the project to completion, for monitoring project progress, for keeping EDA advised of project progress, for adequate construction inspection, for prompt payment of costs incurred for the project and for monitoring the contractor's compliance with local, State and Federal construction requirements.

   B. The Recipient, with the assistance of its Architect/Engineer, is responsible for the accuracy and completeness of the plans, specifications and other contract documents. The Recipient, with the assistance of its Architect/Engineer, is responsible for the accuracy and completeness of the design, dimensions, details, proper selection of materials, and compliance with applicable building codes or ordinances. EDA review of proposed and/or final contract documents does not in any way relieve the Recipient of the foregoing responsibilities.

2. Employment of Local Labor

   A. EDA encourages the maximum feasible employment of local labor in the construction of EDA assisted public works projects. The Recipient should supply a list of the successful bidder's anticipated labor requirements to the applicable Federal/State Employment Office far enough in advance of the start of construction so that the employment office may provide the contractor with the names of suitable local personnel from its rolls.

3. Construction Progress Schedule

   A. If requested by EDA, the Recipient will secure from the contractor or Architect/Engineer, and furnish a copy to EDA, of the predicted construction progress chart and a schedule of amounts for contract payments.

   B. The construction progress chart should be updated monthly by the Recipient, the Architect/Engineer or the contractor. A copy for each month will be attached to the Quarterly Performance Report. The EDA Regional Office will advise as to the content of the report. The report will be due quarterly throughout the construction of the project.

   C. After a review of the project the EDA project manager may discuss with the Recipient, or the Recipient's representative, the appropriate type of progress chart. The bar graph type of chart

will generally be acceptable but some type of network analysis may be more appropriate for projects with cost in excess of $1 million and with greater than average complexity. The cost for such network analysis may be an eligible project cost if EDA approves its use.

4. Construction Sign

A. The Recipient shall be responsible for the construction, erection, and maintenance in good condition throughout the construction period, of a sign or signs, (specifications for the sign are included as an exhibit to this document), at the project site in a conspicuous place indicating that the Federal government is participating in the project. EDA may require more than one sign if site conditions so warrant.

B. Project signs will not be erected on public highway rights-of-way.

C. Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area if any possibility exists for obstruction to traffic line of sight.

D. Whenever EDA site sign recommended specifications conflict with State law or local ordinance, the Recipient may modify such conflicting recommended specifications so as to comply with the State law or local ordinance.

E. When appropriate, EDA may require that a bilingual project sign be used. Recommended specifications for such a sign are contained in this document in Exhibit B.

5. Inspection of Construction

The Recipient must provide competent project inspection during the construction period. The inspector may be an employee of the Recipient, an employee of the Architect/Engineer, or a person(s) under contractual control of the Recipient. The extent of the inspection and the selection of the inspector must be approved by EDA. Pertinent information regarding the proposed inspector's experience, qualifications, salary plan and the scope of his responsibilities and authorities shall be furnished to EDA for this purpose.

6. Occupancy Prior to Completion

A. If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the Recipient must:

(1) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;
(2) secure the written consent of the contractor;
(3) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and.
(4) secure permanent fire and extended coverage insurance, where applicable, including a permit to complete construction.

B. EDA may require from the Recipient an assurance to protect the EDA investment in the project, prior to the approval of occupancy and/or use of all or any part of the project before completion of the construction.

7. Contractor Payrolls

A. Each contractor and subcontractor must be required by the Recipient to maintain weekly payroll records. These records are to be retained for a period of three years from the date of project closeout. Each contractor and subcontractor must also be required to furnish a copy of each payroll to the Recipient. The Recipient is responsible to assure that the payrolls meet the following standards:

(1) Wage rates and fringe benefits paid agree with the Department of Labor wage rate, or State wage rates if they are higher.
(2) Name, address, and Social Security number and work classification is shown for all employees.
(3) The Certificate of Prime Contractor on the reverse side of the Form WH-347 has been properly executed. If EDA has approved a substitute form for the WH-347 the substitute form must contain the certification as well as all of the above standards.

B. EDA may require that copies of the weekly payroll records be furnished to the applicable EDA regional office.

8. Civil Rights Requirements

The regulations issued under Executive Order 11246 (41 CFR 60-1.7) require the submission of compliance reports regarding civil rights. Standard Form 100 is to be used for this purpose. The requirement applies to any person or entity subject to Executive Order 11246 who:

(1) has 50 or more employees; and

(2) is a prime contractor or first-tier subcontractor; and
(3) has a Federally assisted contract, subcontract or purchase order amounting to $50,000 or more.

9. Contract Change Orders

A. After the construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the Recipient and accepted by the contractor. All contract change orders must be concurred in by EDA even if the Recipient is to pay for all additional costs resulting from the change or the contract price is to be reduced. The work on the project may continue pending EDA review and concurrence in the change order but the Recipient should be aware that all such work is at the Recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.

B. The Recipient or its Architect/Engineer shall perform a cost or price analysis in connection with every change order which affects the contract price.

C. Proposed contract change orders will be prepared by the Recipient in sufficient quantity that two copies can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications, and plans will be attached. Before submission to the EDA regional office, the change order must be signed by the Recipient, the Architect/Engineer, and the contractor. The Recipient will be notified in writing of EDA concurrence if the change order is acceptable to EDA.

D. EDA will not approve change orders which change the scope of the project. Change orders that add minimally or incidentally to the cost of the project but do not change the project scope may be approved by EDA provided that either:

(1) the Recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or
(2) there are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.

E. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA approved project budget. EDA approval of change orders must be based on a finding by EDA that the work called for in the change order is within the project scope and will enhance the operation or functioning of the project.

F. Normally change orders should be submitted to EDA for approval as the changes occur.

G. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. When actual quantities differ substantially from those estimated quantities upon which the contractor's bid was based, a "substantial variation" results. A substantial variation is usually considered to be for actual quantities in excess of 115% to 120% or less than 85% to 90% of the estimated quantities. Substantial variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity which will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract.

10. Inspection for Final Acceptance

A. A final inspection will be scheduled by the Recipient when all construction has been completed, the Architect/Engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed.

B. The final inspection will be made by representatives of the Recipient, the Architect/Engineer and the contractor(s). EDA must be given advance notice of the final inspection so that an EDA representative may participate, at the option of EDA.

11. Specific Requirements for Subcontractors

A. The Recipient is responsible to ensure that the contractor(s) causes appropriate provisions to be inserted in all subcontracts to bind subcontractors to EDA contract requirements as contained herein, in 15 CFR Part 24, or in 15 CFR Part 14 as appropriate.

B. Each subcontractor must agree to comply with all applicable Federal, State, and local requirements in addition to those set forth in this section.

C. Prior to the approval of any subcontract EDA will check the proposed subcontractor against the listing of contractors debarred, ineligible, suspended or indebted to the United States from contractual dealings with Federal government departments. The work performed by any such contractor or subcontractor will be ineligible for reimbursement wholly or partially from EDA grant funds.

D. All subcontracts in excess of $10,000 shall include, or incorporate by reference, the equal opportunity clause of Executive Order 11246.

E. All subcontracts must contain a nondiscrimination clause.

F. Each subcontract must contain a requirement for compliance with the Davis-Bacon and related acts.

G. Each subcontractor must submit weekly payroll records and a weekly statement of compliance. These documents should be submitted to the prime contractor. The subcontractor can satisfy this requirement by submitting a properly executed Department of Labor Form WH-347.

H. Each subcontract with every subcontractor must contain a clause committing the subcontractor to employment of local labor to the maximum extent possible.

I. The Standard Terms and Conditions of the grant agreement impose other requirements which the Recipient will be required to have the prime contractor impose on the subcontractor.

J. All subcontractors who meet the conditions set forth in Section III, Paragraph 8 must submit a completed Standard Form 100 by March 30 of each year.

K. Subcontractors performing work in areas covered by published goals for minorities will be required to report monthly on Form CC-257.

12. Safety

A. All contractors on EDA assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). The Recipient or its Architect/Engineer should periodically check the contractor's compliance.

B. The Recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA assisted project.

SECTION IV

FINANCIAL ADMINISTRATION

1. Standards for Financial Management Systems

A. A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its Subrecipients and cost-type contractors, must be sufficient to:

(1) Permit preparation of reports required by this document and applicable regulations and statutes cited herein, and
(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

B. The financial management systems of other Recipients must meet the following standards:

(1) Financial reporting: Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
(2) Accounting records: Recipients must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
(3) Internal controls: Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Recipients must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
(4) Budget controls: Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
(5) Allowable costs: Applicable OMB cost principles, agency program regulations, and the terms of grant agreements will be followed in determining the reasonableness, allowableness, and allocability of costs.
(6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by Recipients must be followed whenever advance payment procedures are used. When advances are made by electronic transfer

of funds methods, the Recipient must make drawdowns as close as possible to the time of making disbursements.

C. EDA may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

2. Grant Disbursements

A. Reimbursement: Reimbursement is the preferred method of grant disbursement. EDA will not use the percentage of completion method to pay construction grants. The Recipient may use that method to pay its construction contractor. However, EDA's payments to the Recipient will be based on the Recipient's actual rate of disbursement.

B. Effect of program income, refunds, and audit recoveries on payment: Recipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional grant disbursements.

C. Withholding payments: EDA will not withhold payments for proper charges incurred by Recipients unless--

(1) The Recipient has failed to comply with grant award conditions, or
(2) The Recipient is indebted to the United States.

Cash withheld for failure to comply with grant award conditions, but without suspension of the grant, shall be released to the Recipient upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with the section on enforcement contained in this document.

EDA will not make payment to Recipients for amounts that are withheld by Recipients from payment to contractors to assure satisfactory completion of work. Payments shall be made by EDA when the Recipients actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

D. Cash depositories: Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230. EDA will not require the Recipient to maintain a separate bank account unless required by Federal-State agreement.

E. Interest earned on advances:

(1) For entities subject to 15 CFR Part 24: Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), Recipients shall promptly, but at least quarterly, remit interest earned on advances to EDA. The Recipient may keep interest amounts up to $100 per year for administrative expenses.

(2) For entities subject to 15 CFR Part 14: Entities not subject to the Cash Management Improvement Act may keep up to $250 for administrative costs, to be remitted annually.

3. Allowable Costs

A. Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the Recipients, and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the Recipient.

B. Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

See TABLE 1 on Section IV, Page 4

TABLE 1 COST PRINCIPLES

For the costs of a --	Use the principles in --
State, local or Indian tribal government	OMB Circular A-87
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular	OMB Circular A-122
Educational institutions	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to EDA.

4. Period of Availability of Funds

A. For EDA projects approved prior to October 1, 1999, the maximum period for any EDA financial assistance that is provided is not more than 5 years from the end of the fiscal year of the award. Normally, costs incurred after the end of the funding period will not be eligible for reimbursement from the EDA grant.

B. Liquidation of obligations. A Recipient must liquidate all obligations incurred under the award not later than 90 days after the acceptance of the project from the construction contractor or before the end of the funding period, whichever occurs earlier.

5. Matching or Cost Sharing

A. Acceptable Costs and Contributions: With the qualifications and exceptions listed on the next page of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the Recipient, or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by cash donations from non-Federal third parties.
(2) The value of third party in-kind contributions applicable to the period to which the cost

sharing or matching requirements applies.

B. Qualifications and exceptions:

(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a Recipient or Subrecipient from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in the following section on program income, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement.

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of Recipients or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions.

(a) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(b) Some third party in-kind contributions are goods and services that, if the Recipient, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the Recipient, or contractor has established, along with its regular

indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(c) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(i) An increase in the services or property provided under the contract (without additional cost to the Recipient or Subrecipient), or

(ii) A cost savings to the Recipient or Subrecipient.

(d) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

C. Valuation of Donated Services:

(1) Volunteer services. Unpaid services provided to a Recipient by individuals will be valued at rates consistent with those ordinarily paid for similar work in the Recipient's organization. If the Recipient does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a Recipient, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, Paragraph 5.A applies.

D. Valuation of Third Party Donated Supplies and Loaned Equipment or Space:

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

E. Valuation of Third Party Donated Equipment, Buildings, and Land: If a third party donates equipment, buildings, or land, and title passes to a Recipient or Subrecipient, the treatment of the donated property will depend upon the purpose of the grant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant is to assist the Recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following paragraphs of this section apply:

(a) If approval is obtained from EDA, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(b) If approval is not obtained under Paragraph 5.E.(2)(a) (above), no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the Recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in OMB Circulars A-87, A-21 and A-122, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

F. Valuation of Recipient Donated Real Property for Construction/Acquisition: If a Recipient donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost-sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

G. Appraisal of Real Property: In some cases it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, EDA may require the market value or fair rental value be set by one or independent appraisal.

6. <u>Program Income</u>

A. General. Recipients are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds.

Program income does not normally include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

B. Definition of program income. Program income means gross income received by the Recipient directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

C. Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incidental to the generation of program income may be deducted from gross income to determine program income.

D. Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a Recipient are not program income unless the revenues are specifically identified in the grant agreement as program income.

E. Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a Recipient is program income only if the revenues are specifically identified in the grant agreement as program income.

F. Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Section VII of these "Requirements for Approved Construction Projects".

G. Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the grant agreement specifies another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between sources, kinds, or amounts of income. Alternative uses include:

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless EDA authorizes otherwise. Program income which the Recipient did not anticipate at the time of the award shall be used to reduce the EDA and Recipient contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by EDA and the Recipient. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

H. Income after the award period. Income earned beginning at the end of the award period (see Paragraph 4A of this Section IV) and ending at the end of the useful life of the project shall be used only for the following purposes:

(1) To satisfy any debt service (mortgage payments) existing during this time period. Note that any new encumbrances on the EDA assisted facility during this period must have EDA approval.
(2) For necessary operation, maintenance and repair services.
(3) Any excess above the costs of (1) and (2) above may be used for other economic development purposes in the same economic development area with the concurrence of EDA.

7. Non-Federal Audit

A. Basic rule: Recipients and Subrecipients are subject to audit requirements contained in the Single Audit Act amendments of 1996 (31U.S.C. 7501-7) and revised OMB Circular A-133, "Audits of State, Local Governments, and Non-Profit Organizations".

This page left blank intentionally.

SECTION V

AMENDMENTS TO GRANT AGREEMENTS

1. General Requirements

   A. Between approval and closeout of an EDA construction project, one or more changes in the project may be necessary to resolve unforeseen problems or remove obstacles to the project's successful completion. In most instances, the proposed change can be effected only through a formal amendment to the project.

   B. Project amendments generally fall into the following categories.

      (1) Time extensions;
      (2) Budget revisions;
      (3) Additional funding (overrun);
      (4) Permitted waiver of EDA regulations;
      (5) Changes which do not involve overall funding (e.g., change of Recipient; method and schedule of financing; addition, deletion, or change affecting a line item in the approved project cost estimate);
      (6) Change to the Special Conditions of the Grant Award;
      (7) Termination (for cause or by mutual consent).

   C. A change-of-scope determination may be necessary before a decision can be made if the requested change involves a change to the purpose, bona fide need, nature or community served of the project.

2. Changes to the Project Scope

   A. Project scope is defined as the purpose, bona fide need, nature and community served of the approved grant. A project amendment which amounts to a change of scope is, in fact, the substitution of one grant for another. A change of scope modification to a project which was funded in a prior fiscal year cannot be approved by EDA. Modifications to projects funded from the current fiscal year's appropriation, or from a no-year appropriation, do not constitute a prohibited change of scope but must have the written approval of EDA. Any proposed change to an EDA assisted project which is a change of scope will be disapproved by EDA.

   B. Certain types of project modifications can be approved by EDA if specified findings can be made. These include time extensions for commencement or completion of work, waivers of certain EDA requirements and some types of budget line item changes.

C. Certain types of project modifications are normally assumed to constitute a change of scope, although the facts of a particular situation could permit such modifications to be approved. Examples are:

(1) A change of Recipient;
(2) A change of project location;
(3) Addition of a new line item to the EDA approved budget;
(4) An expansion of the activity associated with a budget line item.

D. Every proposed modification to a grant shall be considered not only in the light of the foregoing policy on change of scope, but shall also be processed in accordance with all EDA legal and technical requirements so that grants as amended will not deviate from the standards employed in initial grant approval.

3. Time Extensions

A. The Recipient is responsible for expeditiously prosecuting the implementation of the project in accordance with the project development time schedule contained in the EDA grant award. As soon as the Recipient becomes aware that it will not be possible to meet the time schedule, it must notify the EDA Regional Office. The Recipient's notice to EDA should contain the following information.

(1) 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; or unplanned environmental mitigation required).
(2) A statement that no other changes to the project are contemplated;
(3) Documentation that demonstrates there is still a bona fide need for the project; and
(4) A statement that no further delay is anticipated and that the project can be completed within the revised time schedule.

B. EDA will advise the Recipient if a formal written request from the Recipient for a time extension will be required. The Recipient should be aware that grant disbursements may be suspended while the Recipient is not in compliance with the time schedule.

C. A mandatory review of a project's progress will be performed by EDA for any project which is not under construction within two years of the grant award. The Recipient will be required to justify in writing to EDA why the grant should not be terminated. Depending on the circumstances, a request for time extension has to be approved by either the Regional Director

or the Assistant Secretary for Economic Development.

D. EDA reserves the right to suspend and/or terminate any grant if the Recipient fails to proceed with reasonable diligence to accomplish the project as intended.

4. Budget Line Item Revisions

A. The tabulation of estimated project costs contained in the EDA Grant Award is the controlling budget for the project. Budget line item revisions which do not involve a change of scope may be approved by EDA if:

(1) no new EDA funds are involved; and
(2) another budget line item (preferably the contingency line item, although this is not mandatory) has funds which can be used without significantly adversely affecting the object of that line item; and
(3) unless the line item which is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed; and

B. Funds may be transferred to other approved budget line items from the contingencies line item provided the activity associated with the line item cannot be completed unless the line item to be supplemented is supplemented.

C. The transfer of funds from line items other than the contingencies line item may be permitted with EDA written permission provided there will be no significant adverse effect to the object of the line item from which the transfer is to be made.

D. The construction line item shall be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts shall be transferred to the contingencies line item. Recipients are reminded that contingency funds are to be used to cover situations resulting from unknown conditions and changes required for the fulfillment of the previously authorized project activities intended under the grant award. Underrun funds cannot be used to change the scope of the project.

E. The Recipient shall notify EDA of any proposed transfer of funds from one budget line item to another.

5. Additional EDA Funding

A. In accepting the award of an EDA grant the Recipient agreed to fund any overrun(s). Additional

EDA funding for an approved project is unlikely to be approved. To be considered for approval it must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, before EDA will accept a formal request for additional EDA funds it will be necessary for the Recipient to furnish the following documentation to EDA:

(1) A written statement from the Recipient's Architect/Engineer giving reasons for his professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds.

(2) A written statement from the administrative head of the Recipient's organization justifying why the Recipient cannot furnish the additional funds required. Relevant data may be in the form of an audit performed within the past two years, schedule of bonded debt, assessed property values as a percentage of market value, tax rates, and percent of collection. The statement should state why non-EDA sources of funds cannot be used.

B. Acceptance by EDA of a request for additional EDA assistance does not indicate approval. Any further action by the Recipient pending EDA's review of the Recipient's request is at the Recipient's risk.

6. <u>Termination of the EDA Grant</u>

A. Termination for Cause

(1) If a Recipient materially fails to comply with any term of a grant award, whether stated in a Federal statute, regulation, assurance, grant application, or notice of award, EDA may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold disbursement of grant funds pending correction of the deficiency by the Recipient, or more severe enforcement action by EDA;

(b) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

(c) Wholly or partly suspend or terminate the current award;

(d) Withhold further awards for the project or program;

(e) Take other remedies that may be legally available.

(2) In taking an enforcement action, EDA will provide the Recipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Recipient is entitled under

any statute or regulation applicable to the action involved.

(3) Costs resulting from obligations incurred by the Recipient after notice by EDA of suspension or termination of the grant, are not allowable unless EDA expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other Recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(a) The costs result from obligations which were properly incurred by the Recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are noncancellable; and,

(b) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(4) The enforcement remedies identified in this section, including suspension and termination, do not preclude Recipient from being subject to "Debarment and Suspension" under E.O.s 12549 and 12689 and implementing regulations at 15 CFR Part 26.

B. Termination for Convenience

(1) Terminations for convenience have the following requirements:

(a) EDA may propose the termination for convenience, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

(b) The Recipient may propose the termination to EDA in writing, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, EDA determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, EDA may terminate the grant in its entirety under the termination for cause procedures or termination for convenience procedures with the consent of the Recipient. An appropriate official of the Recipient may request EDA to cancel or terminate a project. This request must be accompanied by a certified resolution or ordinance authorizing the requesting party to make such request. EDA will determine the legal sufficiency of such request.

This page left blank intentionally.

SECTION VI

PROJECT CLOSEOUT PROCEDURES

1. Audit Requirements

   A. Recipients are subject to audit requirements contained the Single Audit Act of 1984,and the amendments of 1996, (31 U.S.C. 7501-7) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations". If the Recipient has no current audit performed in accordance with the Single Audit Act, EDA will advise the Recipient of the procedure for securing the required audit.

   B. Normally, if the Recipient has had an audit in accordance with the Single Audit Act within the prescribed period, EDA will not require a project specific audit. However, if the documentation supplied by the Recipient is inadequate for a determination by EDA of the eligibility of claimed costs for reimbursement from the EDA grant, EDA may require such a project specific audit. EDA reserves the right to: (1) require the Recipient to secure an independent audit of the project cost, or (2) conduct an audit of project costs using Department of Commerce auditors, and (3) recover any costs previously allowed for EDA reimbursement but found by the audit to be not allowable.

   C. From time to time the Department of Commerce Office of the Inspector General selects an EDA assisted project for audit. If its project is one of those selected, the Recipient will be notified in advance.

   D. In arranging for audit services, Section II, Contracting for Project Construction will be followed. An independent audit arranged by the Recipient must meet the standards of the Comptroller General publication, "Standards for Audit of Government Organizations, Programs, Activities, and Functions".

2. Closeout Procedures

   A. When project construction is complete, the final inspection has been completed, and the Recipient has accepted the project from the contractor, the Recipient can begin the closeout process. This should include notifying EDA of the following actions:

      (1) Compliance with all Special Conditions of the EDA grant award.
      (2) Securing permanent insurance for above ground facilities.
      (3) Results of a review of the project to determine that all changes to the project have been brought to the attention of EDA.

(4) Provisions have been made for the retention for three years of all records pertaining to the project.
(5) Certificate of Final Completion has been prepared, executed and a copy furnished to EDA.
(6) As-built drawings have been received from the contractor and/or the architect/engineer.
(7) A copy of a current Single Audit Act audit of the Recipient has been furnished to EDA. If no Single Audit Act audit is available but is required, the Recipient's plan to secure the audit has been furnished to EDA and approved. If no Single Audit Act audit is required, EDA has been advised and has determined whether an independent audit will be required.
(8) To the knowledge of the Recipient there are no outstanding Davis-Bacon or local labor employment violations.
(9) EDA has been notified of any change, lien, mortgage or other encumbrance relating to the ownership of the project.
(10) EDA has been notified of any unresolved contract/contractor disputes.
(11) If required, a lien or Covenant of Purpose, Use, and Ownership in favor of EDA has been executed and recorded.
(12) A record will be maintained by the Recipient of the useful life of the facility as determined by EDA during which period the Recipient may not alienate its ownership or change the use and purpose of the EDA assisted facility without EDA's written permission.

B. Recipients shall submit, within 90 calendar days after the completion of the project, all financial, performance and other reports as required by the terms and conditions of the grant award.

C. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations incurred under the grant award no later than 90 calendar days after the funding period or the date of completion, whichever is earlier, as specified in the terms and conditions of the award.

D. When EDA is satisfied that the audit requirement has been met and the actions discussed in paragraphs A, B, and C above have been accomplished, the Recipient may request the final grant disbursement. The request will be prepared on EDA Form ED-113, Outlay Report and Request for Reimbursement for Construction Programs. EDA may assist with filling out the form but it is the responsibility of the Recipient to assure that the numbers on the form are correct. The following documentation should accompany the executed form ED-113 when it is sent to the EDA Regional Office unless the documentation has been previously furnished:

(1) Copies of all executed contracts, subcontracts (if claimed separate from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the Form ED-113;
(2) A copy of the currently valid Single Audit Act audit if one was performed;
(3) Payroll forms, if any of the cost claimed is for work performed by in-house work forces;
(4) Payroll Compliance Certificate;

(5) Civil Rights documents;
(6) Title opinions, legal descriptions, bills of sale, title records, etc., for any land cost being claimed; and
(7) Specifics of any administrative costs being claimed.

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

F. The closeout of an award does not affect any of the following:

(1) The right of EDA to disallow costs and recover funds on the basis of a later audit or other review.
(2) The obligation of the Recipient to return any funds due as a result of later refunds, corrections, or other transactions.
(3) Requirements for property management, records retention and performance measurement reports.
(4) Audit requirements.

This page left blank intentionally.

SECTION VII

POST CONSTRUCTION GRANT REQUIREMENTS

1. Real Property

   A. All property that is acquired or improved with EDA grant assistance shall be held in trust by the grantee for the benefit of the project purposes under which the property was acquired or improved.

   B. During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance.

   C. EDA may approve the substitution of an eligible entity for a grantee. The original grantee remains responsible for the period it was the grantee, and the successor grantee holds the project property with the responsibilities of an original grantee under the award.

   D. The requirements contained in this part apply solely to grant and cooperative agreement award projects.

2. Definitions

   A. As used in this Section VII:

      (1) **Dispose** includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.
      (2) **Estimated useful life** means that period of years from the time of award, determined by EDA as the expected life span of the project.
      (3) **Grantee** includes any recipient, subrecipient, awardee, or subawardee of grant assistance under the Public Works and Economic Development Act of 1965, as amended.
      (4) **Owner** includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold or leased.
      (5) **Personal Property** means all property other than real property.
      (6) **Project** means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs "project" includes such programs.
      (7) **Property** includes all forms of property, real, personal (tangible and intangible), and mixed.
      (8) **Real property** means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of

such land as a specific part of the project purpose.

3. Use of property

A. The grantee or owner shall use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project as long as it is needed during the estimated useful life of the project and such property shall not be leased, sold, disposed of or encumbered without the written authorization of EDA.

B. In the event that EDA and the grantee determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, if EDA approves such use.

C. When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided it is for adequate consideration and the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination and environmental compliance.

D. When acquiring replacement personal property of equal or greater value, the grantee may, with EDA's approval, trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property.

4. Unauthorized use

A. Except as provided in 3B, 3C, or 3D above, whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of without the approval of EDA, or no longer used for the authorized purpose of the project, the Federal Government shall be compensated by the grantee for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR Part 24 and 15 CFR Part 14 or any supplements or successors thereto, as applicable, shall apply.

B. If property is disposed of without approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs A and B of this section, except that the total amount to be recovered shall not exceed the Federal share, plus costs and interest.

5. Federal Share

A. For purposes of this Section, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale).

B. Where the grantee's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor shall be considered in determining the percentage of the Federal share.

C. If property is transferred from the grantee to another eligible entity, as provided in paragraph 1C above, the Federal Government shall be compensated the Federal share of any money paid by or on behalf of the successor grantee to or for the benefit of the original grantee, provided that EDA may first permit the recovery by the original grantee of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

D. When the Federal Government is compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use or disposition of the property.

6. Encumbrances

A. Except as provided in paragraph 6 C below, grantee-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project.

B. Encumbering such property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in paragraphs 4 and 5 above.

C. EDA may waive the provisions of paragraph 6A above for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the grantee, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The lender/grantor would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/grantee will not default on its obligation.

D. The EDA Assistant Secretary or his/her designee may waive the provisions of paragraphs A and B above as to an encumbrance on property which is financed by an EDA construction grant when he/she determines that the encumbrance arises solely from the provisions of a pre-existing water, sewer or other utility encumbrance which by its terms extends to additional property connected to such facilities. EDA's determination shall make reference to the specific requirements (for example, "water system and all accessions, additions or improvements thereto") which extend the terms of the pre-existing encumbrance to the property which is financed and/or improved by the EDA construction grant.

7. Civil Rights Restriction

Among other applicable requirements, the Recipient or in the case of a transfer, the transferee, of real property, structures or improvements thereon or interests therein acquired, leased, or improved with EDA assistance may not sell, lease, or otherwise make any part of such premises available for occupancy by any person, firm, or entity unless the Recipient includes in the instrument effecting the sale, lease or transfer a covenant running with the land that assures that the purchaser, lessee or occupant will comply with the nondiscrimination provisions of the Civil Rights Act of 1964, as amended as provided in 15 CFR 8.5(b)(5)(6) and (11).

8. Performance Reports

The Government Performance and Results Act of 1993 (GPRA) requires EDA to report on program performance including the long term outcomes of EDA grant awards. Recipients are required to report on core program performance measures at the intervals and in such form as EDA may require in compliance with GPRA. The current core performance measures and reporting requirements are set forth in Exhibit O of in Section VIII of these requirements. EDA regional offices will provide written notice within a reasonable period prior to project close out and prior to the submission of subsequent reports, in the event that modifications are made to the core performance measures or reporting requirements.

9. Record Retention

Architect/engineering records and payroll records relating to the project must be retained as described in Section I, Paragraph 6.F; Section II, Paragraph 13.H; and Section III, Paragraph 7.A. Recipients

are required to retain documentation to support data submitted to EDA in GPRA performance reports for a minimum of six years.

10. Program Income Earned After the Award Period

The uses for program income earned after the award period are described in Section IV, Paragraph 6.H.

This page left blank intentionally.

SECTION VIII

EXHIBITS

This section contains a copy of the Exhibits cited elsewhere in this Volume and other items which may be helpful to the Recipient as it proceeds through project design, construction, and closeout. The EDA forms shown as exhibits herein are updated and revised as new procedures and requirements become known. Thus, the exhibit may not be the latest version of the form currently in use. The Recipient should check with the EDA regional office to be sure the correct form is being used before the initial use of any of the exhibits. The documents marked with an asterisk (*) are available from the EDA regional office, if needed.

A. Checklists for:
   (1) Architect/Engineer Contracts
   (2) Construction Contracts
   (3) Initial Grant Disbursement
   (4) Project Closeout

B. Supplemental General Conditions

C. Certificate as to Project Site, Rights-of-Way, and Easements (Form ED-152)

D. * Sample Agreement and Mortgage

E. Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246)

F. * Sample Contract Documents
   (1) Advertisement for Bid
   (2) Information for Bidders
   (3) Bid Form
   (4) Bid Bond
   (5) Agreement (Construction Contract)
   (6) Performance Bond
   (7) Payment Bond
   (8) General Conditions
   (9) Contractor’s Application for Payment (AIA Document #G 702)
   (10) Weekly Payroll Form (use Dept. of Labor's Form WH-347)
   (11) Notice of Award
   (12) Notice to Proceed
   (13) Change Order

G. Recipient’s Outlay Report and Request for Reimbursement for Construction Programs (Form ED-113)

H. ACH Vendor/Miscellaneous Payment Enrollment Form (Form SF-3881)

I. Sample Final Acceptance Inspection Report

J. Sample Quarterly Performance Report

K. Sample Architect/Engineer's Certificate

L. Sample Certificate of Grantee/Borrower's Attorney

M. Information Required for EPA Certification as to Adequacy of Treatment

N. Financial Status Report (Form SF269)

This page left blank intentionally.

CHECKLIST FOR ARCHITECT/ENGINEER CONTRACTS

Although the use of this checklist is not mandatory, its use will expedite EDA's review of the Architect/Engineer contract. When completed by the Recipient it should be submitted to the EDA regional office soon after the grant award is approved by EDA and accepted by the Recipient if the Architect/Engineer contract has been previously executed. If the Architect/Engineer contract has not been executed prior to the Recipient's acceptance of the grant award, this checklist may be completed and sent to the appropriate regional office as soon as the Architect/Engineer contract is signed and prior to any request for disbursement of EDA grant funds. The appropriate responses should be circled in ink and signed by the authorized representative of the Recipient.

Y N The Recipient has written procurement procedures with which the Architect/Engineer contract has been found to be in compliance.

Y N The Architect/Engineer was selected competitively by sealed bids (formal advertising) or by competitive proposals. If not, attach an explanation of the selection method and the reason(s) for using that method.

Y N Requests for proposals were publicized and all evaluation factors and their relative importance were identified therein. Any response to publicized requests for proposals were honored to the maximum extent practical.

Y N Proposals were solicited from an adequate number of qualified sources (normally it is sufficient to secure at least three proposals from qualified proposers). If less than 3 qualified proposals were secured, attach an explanation to this document.

Y N The Recipient has a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered.

Y N The Recipient determined the responsible firm whose proposal was most advantageous to the program, with price and other factors considered. Competitor's qualifications were evaluated and the most qualified competitor was selected, subject to negotiation of fair and reasonable compensation.

Y N The Architect/Engineer agreement provides for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.

Y N The Architect/Engineer's fee for basic services is either a fixed price or a cost reimbursement with an agreed maximum. (The amount of EDA participation will be based on a determination, subject to audit, that the fee compensation is reasonable).

Y N The Architect/Engineer contract compensation is not based on the use of the cost-plus-a-percentage-of-cost or percentage of construction cost form of compensation. (These forms of compensation are not eligible for EDA participation).

Y N The Architect/Engineer's fee covers all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs.

Y N The basic fee does not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services are identified in the agreement. Such additional charges may be approved for grant participation by the EDA if they:

a. Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;

b. Are a proper charge against the project cost; and

c. Are reasonable for the extra services to be rendered.

Y N Regardless of who furnishes the construction inspector, the agreement requires the Architect/Engineer to make sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

Y N If the Architect/Engineer contract(s) price exceeds $100,000 (awarded under small purchase procedures), it includes a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the Architect/Engineer (which are directly pertinent to a specific grant program) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.

Y N The agreement for Architect/Engineer services provides an adequate basis for the Recipient to require the Architect/Engineer to:

Y N Design the project in accordance with the intent of the Grant Award;

Y N Redesign the project in the event the preliminary cost estimate, the final cost estimate, or the lowest responsive bid less deductive alternates, exceeds the funds available by an amount or percentage to be mutually agreeable to the Recipient and the Architect/Engineer;

Y N Design any sewage treatment or other sewage facility so that a certificate of adequacy

of treatment can be obtained;

Y N Include in all contracts and subcontracts with costs in excess of $100,000 a provision which requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et. seq.) and the Federal Water Pollution Control Act (33 USC 1251 et. seq., as amended). (Violations shall be reported to EDA and to the regional office of the U. S. Environmental Protection Agency).

Y N Include in all contracts and subcontracts in excess of the small purchase threshold of $100,000, provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

Y N Include in all contracts in excess of $10,000 suitable provisions for termination by the Recipient including the manner in which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

Y N Include in all contracts in excess of $10,000 a provision requiring compliance with Executive Order 11246, entitled"Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);

Y N Include in all contracts in excess of $2,000 for construction or repair a provision for compliance with the Copeland "Anti-Kickback"Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. (The Recipient shall report all suspected or reported violations to EDA).

Y N Include in all construction contracts in excess of $2,000 a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. A copy of the current prevailing wage determination issued by the Department of Labor must be included in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. (All suspected or reported violations shall be reported to EDA. Davis-Bacon wage determinations are not applicable to Recipient employed "Force Account" workers).

Y N Include in all contracts in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers, a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and safety. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Work performed by employees of the Recipient (in-house forces) on the EDA-assisted project will be subject to the following:

1. Work performed in excess of eight hours per day will be reimbursed by EDA at the normal rate of pay unless the Recipient can show that a higher rate is required by State or local law or union contract;

2. Work performed in excess of 40 hours per week may be reimbursed by EDA at a higher rate than normal if the Recipient can show that it normally pays for such work at a higher rate. In any case the rate for work in excess of 40 hours per week may not exceed one and one half times the normal hourly rate.

Y N Include a notice in all contracts involving research, developmental, experimental or demonstration work requiring that all patentable processes, discoveries or inventions which arise or are developed in the course of, or under, such contract shall be reported to EDA. The notice will state that the Government has an interest in any such patentable processes, discoveries or inventions corresponding to the percentage of total project cost funded by EDA.

Y N Include in all negotiated contracts (except those awarded by small purchase procedures) a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Y N Include in all contracts a requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor and all other pending matters are closed.

Y N State a specific timetable in the Architect/Engineer agreement for:

1. Completing preliminary plans and associated cost estimates;

2. Completing final plans, specifications, and cost estimates;

3. Securing required State and local approvals; and

4. Completing proposed contract documents in a form sufficient for soliciting bids for construction of the project.

(If the Recipient has executed an Architect/Engineer agreement without such a requirement for a timetable, EDA shall require that an addendum to the agreement be executed to incorporate this requirement).

Y N Provide surveillance of project construction to assure compliance with plans, specifications, and all other contract documents. If the Recipient chooses to use the Architect/Engineer as the project inspector, the requirements for construction inspection services shall be clearly defined and the amount the Recipient is required to pay for such services shall be stated.

Y N Be responsible for any damages arising from any defects in design or negligence in the performance of the construction inspector, if the inspector is furnished by the Architect/Engineer. (EDA recommends that the Architect/Engineer be required to take insurance, when available, to cover liability for such damages).

Y N Supervise any required subsurface explorations such as borings, soil tests, and the like, to determine amounts of rock excavation or foundation conditions, no matter whether they are performed by the Architect/Engineer or by others paid by the Recipient.

Y N Attend bid openings, prepare and submit tabulation of bids, and make a recommendation as to contract award.

Y N Review proof of bidder's qualifications and recommend approval or disapproval.

Y N Prepare and submit proposed contract change orders when applicable. There shall be no charge to the Recipient when the change order is required to correct errors or omissions by the Architect/Engineer. (To be eligible for EDA participation the specific change order must have written approval from EDA and must have some form of cost or price analysis performed by the Recipient or the Architect/Engineer).

Y N Submit a report not less frequently than quarterly to the Recipient covering the general progress of the job and describing any problems or factors contributing to delay.

Y N Review and approve the contractor's schedule of amounts for contract payment.

Y N Certify partial payments to contractors.

Y N Assure that a ten percent (10%) retainage is withheld from all payments on construction contracts until final acceptance by the Recipient and approval by the EDA Regional Office, unless State or local law provides otherwise.

Y N Prepare "as-built" or record drawings after completion of the project. Reproducible originals will be furnished to the Recipient within 60 days after all construction has been completed and the final inspection has been performed. (One set of copies shall be furnished to the EDA Regional Office only if requested by the Regional Office).

Y N Review and approve the contractor's submission of samples and shop drawings, where applicable.

Y N Comply with all Federal statutes relating to non-discrimination. These include but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (P.L.88-352) which prohibits discrimination on the basis of race, color, or national origin;

2. Section 112 of PL 92-45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex;

3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C.794) which prohibits discrimination on the basis of handicaps;

4. The Age Discrimination Act of 1975, as amended (42 U.S.C.6101-6107) which prohibits discrimination because of age;

5. The Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse;

6. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L.91-616), as amended, relating to non-discrimination on the basis of alcohol abuse or alcoholism;

7. Sections 523 and 527 of the Public Health Service Act of 1912 (42U.S.C. 290 dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et. seq.), as amended,

relating to non-discrimination in the sale, rental or financing of housing;

9. Any other non-discrimination provisions in the specific statute(s) under which the application for Federal assistance is being made; and

10. The requirements of any other non-discrimination statute(s) which may apply.

Y N Incorporate into the proposed construction contract documents a designation of all of the different types of construction which will be used for the project; such as Building, Heavy or Highway in accordance with all local and State laws and practices. For this purpose either the plans, the specifications or both shall clearly delineate where each type stops and another starts.

Y N Consider in the establishment of the compensation any cost savings that may be realized through multiple use of the same design.

Y N Provide in all proposed construction contracts deductive alternates which can be taken, if necessary, to reduce the bid price so that the lowest responsive bid for construction of the project will not exceed the funds available.

Y N Design the facility to comply with the Americans with Disabilities Act (ADA)(P.L.101-336) and the Accessibility Guidelines for Buildings and Facilities, as amended, (36 CFR Part 191 and Executive Order 12699.

Y N Design for seismic safety in accordance with Executive Order 12699 which imposes requirements that Federally assisted facilities be designed and constructed in accordance with the 1991 ICBO Uniform Building Code or 1992 Supplement to the BOCA National Building Code and/or 1991 Amendments to the SBCC Standard Building Code.

Y N Provide sufficient plans, specifications, bid sheets, cost estimates, design analysis, and other contract documents required for the project. The number of copies to be furnished by the Architect/Engineer as part of his/her compensation for basic services shall be specified in the agreement.

Y N Use forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond which meet EDA requirements. All proposed contract documents are subject to EDA approval. (Documents contained in "Contract Documents for Construction of Federally Assisted Water and Sewer Projects" are acceptable for this purpose).

The name and address of the Architect/Engineer is:

_____

Y N The Architect/Engineer will perform project inspection services. If not, provide the name and address of the firm or person that will provide project construction inspection services: _____

The contract price for Basic Services is $_____

The contract price for Extra Services is $_____

The contract price for inspection services is $ _____

The number of proposals received were _____

The number of bidders disqualified were _____

_____ _____

Recipients Authorized Representative Date

CHECKLIST FOR CONSTRUCTION CONTRACTS

Although the use of this checklist is not mandatory, its use by the Recipient will expedite EDA's review of the construction contract. When used by the Recipient, it should be submitted to EDA at or before the invitation for construction contract bids is published. EDA reserves the right to perform a pre-award review of the proposed procurement documents or a review of the executed contract documents at any time within the record retention time frame. The appropriate responses should be circled in ink and the authorized representative of the Recipient should sign the form where indicated.

The following documents are included in the invitation for bids:

Y N An index
Y N The advertisement for bids
Y N The information for bidders
Y N The bid form
Y N The contract form
Y N EDA's Supplemental General Conditions (to be furnished by EDA)
Y N The Recipient's general conditions
Y N The technical specifications
Y N The working drawings
Y N The applicable wage rates (to be furnished by EDA)
Y N Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (to be furnished by EDA)

The bid documents contain the following provisions:

Y N Details of how the successful bidder will be selected
Y N Actions to be taken by the Recipient if the lowest bid exceeds the funds available
Y N Requirement for 5% bid bond, 100% payment bond and 100% performance bond
Y N The order in which alternates, if any, are to be taken
Y N Provisions for termination of the contract including default of the contractor and conditions beyond the control of the contractor
Y N Provisions for administrative, contractural or legal remedies for contractor breach or violation of contract terms and provision for such sanctions and penalties as may be appropriate
Y N A requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor
Y N A requirement that the bidders submit proof of qualification to do the work called for in the contract
Y N Notice that progress payments will have a 10% retainage (unless otherwise required by State or local law)
Y N A requirement for the contractor to submit all shop drawings, samples and change orders to the Architect/Engineer and Recipient for approval
Y N A requirement for a construction progress estimate and periodic progress reports from the construction contractor
Y N A procedure for the settlement of disputes between the contractor, the contractor's subcontractors, the Architect/Engineer and the Recipient

Y N A liquidated damages provision for failure of the contractor to meet the specified construction timetable. The amount specified in the proposed contract is $ _____ per day

Y N The proposed design contains no materials or products specified by brand name without an "or equal" provision

Y N A requirement is included for compliance with Federal regulations as listed in EDA's Supplemental General Conditions, EDA's Standard Terms and Conditions to the grant award and the Special Conditions to the grant award

Y N The bidders will be limited to those on a prequalified list maintained by the Recipient. If so, explain on an attached sheet the procedure that is used to place prospective bidders on the list.

Y N Recipient furnished materials and/or equipment will be incorporated into the project outside the construction contract. If so, attach a list of such materials and/or equipment.

Y N No part of the project construction will be accomplished by the Recipient's own forces or by labor hired directly by the Recipient for this specific project. If so, contact the EDA Regional Office for further guidance

Y N The contract is solely for the EDA project. If non-EDA work is included, contact the EDA Regional Office for further guidance.

Y N The land, rights-of-way and easements required for the construction and operation of the project are owned by the Recipient or otherwise have been appropriately permitted by the responsible authorities.

Y N The Recipient's share of the project cost is on hand or immediately available.

Y N Provisions for construction inspection are in place.

Y N All applicable terms and conditions of the grant award have been satisfied. If not, please explain on an attached sheet.

Y N The scope of work for the project as described in the grant award has not changed.

The construction period specified in the proposed contract is for _____ months.

The Architect/Engineer's cost estimate for construction is $_____.

The advertising period will be from_____ to _____.

_____ _____

Recipient's Authorized Representative Date

CHECKLIST FOR CONSTRUCTION CONTRACTS

Although the use of this checklist is not mandatory, its use by the Recipient will expedite EDA's review of the construction contract. When used by the Recipient, it should be submitted to EDA at or before the invitation for construction contract bids is published. EDA reserves the right to perform a pre-award review of the proposed procurement documents or a review of the executed contract documents at any time within the record retention time frame. The appropriate responses should be circled in ink and the authorized representative of the Recipient should sign the form where indicated.

The following documents are included in the invitation for bids:

Y N An index
Y N The advertisement for bids
Y N The information for bidders
Y N The bid form
Y N The contract form
Y N EDA's Supplemental General Conditions (to be furnished by EDA)
Y N The Recipient's general conditions
Y N The technical specifications
Y N The working drawings
Y N The applicable wage rates (to be furnished by EDA)
Y N Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (to be furnished by EDA)

The bid documents contain the following provisions:

Y N Details of how the successful bidder will be selected
Y N Actions to be taken by the Recipient if the lowest bid exceeds the funds available
Y N Requirement for 5% bid bond, 100% payment bond and 100% performance bond
Y N The order in which alternates, if any, are to be taken
Y N Provisions for termination of the contract including default of the contractor and conditions beyond the control of the contractor
Y N Provisions for administrative, contractural or legal remedies for contractor breach or violation of contract terms and provision for such sanctions and penalties as may be appropriate
Y N A requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor
Y N A requirement that the bidders submit proof of qualification to do the work called for in the contract
Y N Notice that progress payments will have a 10% retainage (unless otherwise required by State or local law)
Y N A requirement for the contractor to submit all shop drawings, samples and change orders to the Architect/Engineer and Recipient for approval
Y N A requirement for a construction progress estimate and periodic progress reports from the construction contractor
Y N A procedure for the settlement of disputes between the contractor, the contractor's subcontractors, the Architect/Engineer and the Recipient

Y N A liquidated damages provision for failure of the contractor to meet the specified construction timetable. The amount specified in the proposed contract is $ _____ per day

Y N The proposed design contains no materials or products specified by brand name without an "or equal" provision

Y N A requirement is included for compliance with Federal regulations as listed in EDA's Supplemental General Conditions, EDA's Standard Terms and Conditions to the grant award and the Special Conditions to the grant award

Y N The bidders will be limited to those on a prequalified list maintained by the Recipient. If so, explain on an attached sheet the procedure that is used to place prospective bidders on the list.

Y N Recipient furnished materials and/or equipment will be incorporated into the project outside the construction contract. If so, attach a list of such materials and/or equipment.

Y N No part of the project construction will be accomplished by the Recipient's own forces or by labor hired directly by the Recipient for this specific project. If so, contact the EDA Regional Office for further guidance

Y N The contract is solely for the EDA project. If non-EDA work is included, contact the EDA Regional Office for further guidance.

Y N The land, rights-of-way and easements required for the construction and operation of the project are owned by the Recipient or otherwise have been appropriately permitted by the responsible authorities.

Y N The Recipient's share of the project cost is on hand or immediately available.

Y N Provisions for construction inspection are in place.

Y N All applicable terms and conditions of the grant award have been satisfied. If not, please explain on an attached sheet.

Y N The scope of work for the project as described in the grant award has not changed.

The construction period specified in the proposed contract is for _____ months.

The Architect/Engineer's cost estimate for construction is $_____.

The advertising period will be from_____ to _____.

_____ _____

Recipient's Authorized Representative Date

CHECKLIST FOR INITIAL GRANT DISBURSEMENT

Grant Recipient: _____ EDA Project # _____

Grant Recipient's Authorized Representative:
Name: _____
Title: _____

This checklist is for guidance on the information the EDA Regional Office will need before an initial grant disbursement can be approved. The regional office may use their own version of this checklist which may or may not be required to be sent in with the initial grant disbursement request. Use of the checklist will expedite EDA processing of the initial grant disbursement.

Y N NA The EDA grant award/offer was accepted within the 30 day after receipt time limit.
Y N NA Those Special Conditions to the grant award requiring action prior to the initial grant disbursement have been satisfied.
Y N NA An architect/engineer contract has been approved by EDA.
Y N NA An unconditional "EPA Section 106" certificate has been secured and a copy furnished to, or received from, EDA.
Y N NA All required land, easements and rights-of-way have been secured and title opinion has been approved by EDA.
Y N NA The proposed bid documents were approved by EDA.
Y N NA The final plans, specifications and contract documents have been approved by EDA.
Y N NA All contracts required for completion of the project have been executed and approved by EDA.
Y N NA If the answer to the previous question is "N", a request for phasing has been made to, and approved by, EDA.
Y N NA Bid award of the construction contract was to the lowest bidder.
Y N NA The full firm name and owner's name of all contractors have been furnished to EDA for checking against the Federal debarred and ineligible list.
Y N NA The company listed as surety for the low bidder is listed on Treasury Department Circular 570 and possesses sufficient capability to insure the project.
Y N NA Davis-Bacon wage rates have been incorporated into all construction contracts.
Y N NA EDA's Supplemental General Conditions have been incorporated into all construction contracts.
Y N NA Matching funds for the Recipient's share are on hand or immediately available.
Y N NA A first lien or Property Management Agreement has been executed, recorded and submitted to EDA.
Y N NA A relocation assistance plan as required by the Uniform Relocation Assistance Act has been approved by EDA.
Y N NA Use of force account (workmen hired by the Recipient specifically for the EDA approved project) has been approved by EDA.
Y N NA Use of in-house forces (workmen who are part of the Recipient's current workforce) has been approved by EDA.

Y N NA	EDA approval of the start of construction before the award of the EDA grant has been received.
Y N NA	All work accomplished by change order which is part of the claim for the initial grant disbursement has been approved by EDA.
Y N NA	All proposed or actual changes to the EDA approved budget have been approved by EDA.
Y N NA	All project activities to the date of the initial grant disbursement request have been accomplished within the approved time schedule or EDA approved extension.
Y N NA	Currently due project performance reports have been submitted to EDA.
Y N NA	Tabulation of bids, bid form of the low bidder (and bid form of any bidder to whom the Recipient has made, or proposes to make to other than the lowest bidder) and certified minutes of the bid opening have been submitted to EDA.

CHECKLIST FOR PROJECT CLOSEOUT

Grant Recipient: _____ EDA Project # _____

Grant Recipient's Authorized Representative:
Name: _____
Title: _____

This checklist is for the Recipient's guidance on the information the EDA Regional Office will need to closeout the EDA assisted project. Although its use is not mandatory, using it will expedite EDA's processing of the final grant disbursement.

Y N NA All of the Special Conditions to the EDA grant award have been satisfied and approved by the EDA Regional Office.

Y N NA A final inspection was performed by the Architect/Engineer and the completion of the project with all deficiencies corrected has been accepted by the Architect/ Engineer in writing.

Y N NA The Recipient has accepted the project without deficiencies from the contractor.

Y N NA All currently due project progress reports have been submitted to the EDA Regional Office.

Y N NA The project was completed on time or an EDA approved time extension is on file.

Y N NA As-built drawings have been received from the Architect/Engineer and are on file.

Y N NA If requested by EDA, photographs of above ground facilities have been submitted to EDA.

Y N NA The Recipient understands that a warranty inspection is to be performed before the warranty expiration date and the results submitted to EDA.

Y N NA All audit issues have been resolved.

Y N NA If occupancy of the facilities by the Recipient was obtained prior to the Recipient's or Architect/Engineer's acceptance of the facility from the contractor evidence of consent of the contractor, the insurance carrier, and the surety is on file.

Y N NA Permanent insurance on the facility has been obtained.

Y N NA The Recipient is aware that project records must be retained for a minimum of three years.

Y N NA The Recipient is aware that for the EDA determined useful life of the EDA assisted facilities, all real property must be used for originally authorized purposes and the Recipient shall not dispose of or encumber its title or other interests. When the facility is no longer needed for the originally authorized purpose and the useful life has not expired, the Recipient will request instructions from EDA. The instructions will conform to applicable DoC and EDA regulations.

Y N NA All payments due to contractors for construction, services and supplies for the project are current except for contract retainage if project has not been accepted.

Y N NA The first Post Construction Report evaluating the achievement of the Core Performance Measures outlined in the EDA grant award package has been submitted to EDA.

This page left blank intentionally.

EXHIBIT B

SUPPLEMENTAL GENERAL CONDITIONS

These Supplemental General Conditions are intended for use by Economic Development Administration Grantees. They contain specific EDA and other Federal requirements not normally found in non-Federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with EDA funds.

This page left blank intentionally.

SUPPLEMENTAL GENERAL CONDITIONS

S1 Definitions
S2 Federally Required Contract Provisions
S3 Required Provisions Deemed Inserted
S4 Inspection by EDA Representatives
S5 Construction Schedule and Periodic Estimates
S6 Contractor's Title to Material
S7 Inspection and Testing of Materials
S8 "Or Equal" Clause
S9 Patents
S10 Claims for Extra Cost
S11 Contractor's and Subcontractor's Insurance
S12 Contract Security Bonds
S13 Safety and Health Regulations for Construction
S14 Minimum Wages
S15 Withholding of Payments
S16 Payrolls and Basic Records
S17 Apprentices and Trainees
S18 Subcontracts
S19 Termination and Debarment
S20 Overtime Requirements
S21 Equal Employment Opportunity
S22 Other Prohibited Interests
S23 Employment of Local Labor
S24 Historical and Archeological Data Preservation Act of 1974
S25 Clean Air and Federal Water Pollution Control Act
S26 Use of Lead-Based Paints on Residential Structures
S27 EDA Signs

This page left blank intentionally.

SUPPLEMENTAL GENERAL CONDITIONS

S-1 DEFINITIONS

The following terms as used in these Supplemental General Conditions are respectively defined as follows:

a. "Contractor": A person, firm, or corporation with whom this Contract is made by the Owner.

b. "Subcontractor": A person, firm, or corporation supplying labor and materials or only labor, for work at the site of the project, for and under separate contract or agreement with the Contractor.

c. “Work on (at) the project": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

d. "Apprentice": (1) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau; or (2) a person in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship council (where appropriate) to be eligible for probationary employment as an apprentice.

e. "Trainee": A person receiving on-the-job training in a construction occupation under a program which is approved (but not necessarily sponsored) by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and which is reviewed from time to time by the Manpower Administration to insure that the training meets adequate standards.

S-2 FEDERALLY REQUIRED CONTRACT PROVISIONS

a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold - currently fixed at $100,000, see 41 USC 403(11)) .

b. Termination for cause and for convenience by the grantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

c. Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967

and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

d. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

e. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees).

f. Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

g. EDA requirements and regulations pertaining to reporting.

h. EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

i. EDA requirements and regulations pertaining to copyrights and rights in data.

j. Access by the grantee, EDA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

k. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

l. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

m. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub L. 94-163, 89 Stat. 871)

S-3 REQUIRED PROVISIONS DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall

be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

S-4 INSPECTION BY ECONOMIC DEVELOPMENT REPRESENTATIVES

The authorized representatives and agents of the Economic Development Administration shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records.

S-5 CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner: (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

S-6 CONTRACTOR'S TITLE TO MATERIAL

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims or encumbrances.

S-7 INSPECTION AND TESTING OF MATERIALS

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended users.

S-8 "OR EQUAL" CLAUSE

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article or equipment of other manufacturers and vendors which will perform adequately the duties, imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

S-9 PATENTS

The Contractor shall hold and save the owner and its officers, agents, servants and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the contract documents.

License or Royalty Fee: License and/or royalty fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his/her authorized licensee, directly by the Owner and not by or through the Contractor. If the Contractor uses any design, device or materials covered by letters, patent or copyright, he/she shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his/her Sureties shall indemnify and hold harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

S-10 CLAIMS FOR EXTRA COSTS

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.

S-11 CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

The Contractor shall not commence work under this contract until he/she has obtained all the insurance required by the Owner, nor shall the Contractor allow any subcontractor to

commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

a. Types of insurance normally required are:

(1) Workmen's Compensation
(2) Contractor's Public Liability and Property Damage
(3) Contractor's Vehicle Liability
(4) Subcontractors Public Liability, Property Damage and Vehicle Liability
(5) Builder's Risk (Fire and Extended Coverage)

b. Scope of Insurance and Special Hazards. The insurance described above shall provide adequate protection for the Contractor and his/her claims which may arise from operations under this contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazards which may be encountered in the performance of this contract.

c. Proof of Carriage of Insurance. The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies.

S-12 CONTRACT SECURITY BONDS

If this contract is for an amount in excess of $100,000 the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract and also a payment bond in an amount equal to one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, Territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance each bond must be approved by the Economic Development Administration. If this contract is for an amount less than $100,000 the Owner will specify the amount of the payment and performance bonds.

S-13 SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

In order to protect the lives and health of his/her employees under the contract, the Contractor shall comply with all pertinent provisions of the Contract Work Hours and Safety Standards Act, as amended, commonly known as the Construction Safety Act as pertains to health and safety standards; and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the contract. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or

dangerous to his/her health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor.

The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his/her plan, equipment, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

S-14 MINIMUM WAGES

All mechanics and laborers employed or working on the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5 (a) (1)(iv).

Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

The Owner shall require that any class of laborers and mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformable to the wage determination and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the questions accompanied by the recommendation of the contracting officer shall be referred to the Secretary of Labor for final determination.

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, the Owner shall require an hourly cash equivalent to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Owner, shall be referred to the Secretary of Labor for determination.

If the Contractor does not make payments to a trustee or other third person, he/she may

consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract; provided, however, the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

S-15 WITHHOLDING OF PAYMENTS

The Economic Development Administration may withhold or cause to be withheld from the Contractor as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the Contractor or any subcontractor on the work, the full amount of wages required by the contract in accordance with the Davis-Bacon Act. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee employed or working on the project site or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project, all or part of the wages required by the contract, the Economic Development Administration may, after written notice to the Contractor, sponsor, applicant, or Owner, take action as may be necessary to cause the suspension of any further payment, advance, or guaranty of funds until such violations have ceased.

S-16 PAYROLLS AND BASIC RECORDS

Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the EDA project site, or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project. Such records shall contain the name and address of each employee, his/her correct classification, rate of pay (including contributions or costs anticipated of the types described in Section 9 (b) (2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a) (1) (iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b) (2) (B) of the Davis-Bacon Act the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, plus records which show the costs anticipated or the actual cost incurred in providing such benefits.

The Contractor shall submit weekly a copy of all payrolls to the Owner on DOL Form WH-347 or equivalent. The copy shall be signed on the reverse side by the employer or his/her agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set

forth for each laborer or mechanic conform with the work he/she performed. This submission is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 20 CFR 5.5 (a) (1) (iv) shall satisfy this requirement. The Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The Contractor shall make the records required under the labor standards clause of the contract available for inspection by authorized representatives of the Economic Development Administration and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

S-17 APPRENTICES AND TRAINEES

Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U. S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U. S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his/her entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in Section S-l e herein and is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he/she actually performed. The Contractor or subcontractor shall be required to furnish to the Owner written evidence of the registration of his/her program and apprentices as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and when the subparagraph below is applicable, in accordance with the provisions of Part 5, Subpart A, Title 29, Code of Federal Regulations.

On contracts in excess of $10,000, the employment of all laborers and mechanics, including apprentices and trainees, as defined in Section 29 CFR 5.5 shall also be subject to the provisions of Part 5, Subpart A, Title 29, Code of Federal Regulations. Apprentices and trainees shall be hired in accordance with the requirements of Part 5, Subpart A. The provisions of Sections S-14, S-15, and S-17 shall be applicable to every invitation for bids, and to every negotiation, request for proposals, or request for quotations, for an assisted construction contract, and to every such contract entered into on the basis of such invitation or negotiation. Part 5, Subpart A, Title 29, Code of Federal Regulations shall constitute the conditions of each assisted contract in excess of $10,000, and each Owner concerned shall include these conditions or provide for their inclusion, in each such contract. These "Supplemental General Conditions" shall also be included in each such contract.

S-18 SUBCONTRACTS

The Contractor shall insert in any subcontracts these same "Supplemental General Conditions."

S-19 TERMINATION AND DEBARMENT

A breach of any one of the Sections S-15 through S-18 may be considered by the Owner and by the Economic Development Administration as grounds for termination of the contract and for debarment as provided in 29 CFR 5.6.

S-20 OVERTIME REQUIREMENTS

No Contractor nor any subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all hours in excess of forty hours in such workweek.

In the event of any violation of the clause set forth in the subsection above, the Contractor and any subcontractor responsible therefor, shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or territory, to such District of Columbia or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth above in the sum of $10.00 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth above.

The Economic Development Administration may withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth above.

The Contractor shall insert in all subcontracts the clause set forth above in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts that may, in turn, be made.

S-21 EQUAL EMPLOYMENT OPPORTUNITY

No person in the United States shall, on the grounds of race, color, national origin, age, physical handicap, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance; Reference Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and Section 112 of Public

Law 92-65, Age Discrimination Act of 1975 (42 USC 6102) and Section 504 of the Rehabilitation Act of 1973 (26 USC 794).

Form ED-503 The Owner and all Contractors, subcontractors, suppliers, lessees and other parties directly participating in the Recipient's project agree that during and in connection with the associated agreement relating to the Federally assisted program, (i) they will comply, to the extent applicable, as Contractors, subcontractors, lessees, suppliers, or in any other capacity, with the applicable provisions of 13 CFR 311 and the Regulations of the United States Department of Commerce (Part 8 of Subtitle A of Title 15 of the Code of Federal Regulations) issued pursuant to Title VI of the Civil Rights Act of 1964 (P. L. 88-352), and will not thereby discriminate against any person on the grounds of race, sex, color, age, or national origin in their employment practices, in any of their own contractual agreements, in all services or accommodations which they offer to the public, and in any of their other business operations, (ii) they will provide information required by or pursuant to said Regulations to ascertain compliance with the Regulations and these assurances, and (iii) their non-compliance with the nondiscrimination requirements of said Regulations and these assurances shall constitute a breach of their contractual arrangements with the Owner whereby said agreements may be canceled, terminated or suspended in whole or in part or may be subject to enforcement otherwise by appropriate legal proceedings.

Executive Order 11246, 3 CFR 339 (1965) (Equal Opportunity Clause). During the performance of this contract, the Contractor agrees as follows:

a. The Contractor shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, handicap, or national origin. The Contractor shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, handicap 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.

b. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Grantee setting forth the provisions of this nondiscrimination clause.

c. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

d. A notice to be provided by the Grantee shall be sent to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract of understanding, advertising the labor union or workers' representative of the Contractor's commitment under Section 202 of Executive Order No. 11246 of September 24, 1965, and copies of the notice shall be posted in conspicuous places available to employees and applicants for employment.

e. The Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the Economic Development Administration and the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations, and orders. Each Contractor and subcontractor of federally assisted construction work is required to file an Equal Employment Opportunity Employer Information Report (EEO-1) on Standard Form 100, annually on March 31. Forms and instructions are available at the EDA Regional Offices.

g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed (and remedies involved) 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.

h. The Contractor shall include the provisions of paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 203 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Economic Development Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Grantee/Borrower, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

i. Exemptions to Above Equal Opportunity Clause (41 CFR Chap. 60):

(1) Contracts and subcontracts not exceeding $10,000 (other than Government bills of lading) are exempt. The amount of the contract, rather than the amount of the Federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding $10,000 for standard commercial supplies or raw materials are exempt.

STANDARD FEDERAL EQUAL EMPLOYMENT
OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS
(EXECUTIVE ORDER 11246 et seq)

1. As used in these specifications:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. “Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.

   d. "Minority" includes:

      1. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      2. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

2. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

   a. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

3. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $l0,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

4. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's

or subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

5. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 8.a through 8.p of these specifications. The goals set for the Contractor in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

6. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

7. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

8. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

    b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

    c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority and female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with

whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Regional Director when the union or unions, with which the Contractor has a collective bargaining agreement, have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 8.b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, Supervisors, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to, and discussing the Contractor's EEO policy with, other Contractors and subcontractors with whom the Contractor anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment

to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 14 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

9. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Paragraphs 8.a through 8.p). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraphs 8.a through 8.p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

10. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

11. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

12. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

13. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

14. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraphs 8.a through 8.p of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Regional Director shall proceed in accordance with 41 CFR 60-4.8.

15. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof, as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

16. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

17. The goals for minority and female participation in each trade will be furnished by the Economic Development Administration of the U. S. Department of Commerce.

S-22 OTHER PROHIBITED INTERESTS

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or

approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

S-23 EMPLOYMENT OF LOCAL LABOR

a. The maximum feasible employment of local labor shall be made in the construction of public works and development facility projects receiving direct Federal grants. Accordingly, every Contractor and subcontractor undertaking to do work on any such project which is or reasonably may be done as on-site work, shall employ, in carrying out such contract work, qualified persons who regularly reside in the eligible area where such project is to be located, or in the case of Economic Development Centers, qualified persons who regularly reside in the center or in the adjacent or nearby redevelopment areas within the Economic Development District, except:

   (1) To the extent that qualified persons regularly residing in the eligible area or Economic Development District are not available.

   (2) For the reasonable needs of any such Contractor or subcontractor, to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the Contract.

   (3) For the obligation of any such Contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that in no event shall the number of non-resident persons employed under this subparagraph exceed twenty percent of the total number of employees employed by such Contractor and his/her subcontractors on such project.

b. Every such Contractor and subcontractor shall furnish the United States Employment Service Office in the area in which a public works or development facility project is located with a list of all positions for which it may from time to time require laborers, mechanics, and other employees, the estimated numbers of employees required in each classification, and the estimated dates on which such employees will be required.

c. The Contractor shall give full consideration to all qualified job applicants referred by the local employment service, but it is not required to employ any job applicants referred whom the Contractor does not consider qualified to perform the classification of work required.

d. The payrolls maintained by the Contractor shall contain the following information: full

name, address, and social security number and a notation indicating whether the employee does, or does not, normally reside in the eligible area in which the project is located, as well as an indication of the ethnic background of each worker.

e. The Contractor shall include the provisions of this condition in every subcontract for work which is, or reasonably may be, done as on-site work.

S-24 HISTORICAL AND ARCHAEOLOGICAL DATA PRESERVATION ACT REQUIREMENTS

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction, to consult with the State Historic Preservation Officer for recovery of the items. Reference: National Historic Preservation Act of 1966 (80 Stat 915, 16 USC 470) and Executive Order No. 11593 of May 31, 1971.

S-25 CLEAN AIR ACT OF 1970, ET SEQ. AND FEDERAL WATER POLLUTION CONTROL ACT AS AMENDED BY THE CLEAN WATER ACT OF 1977

The Contractor agrees to comply with Federal clean air and water standards during the performance of this contract and specifically agrees to the following:

a. The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations; owned, leased, or supervised; by the Contractor and the subcontractors; for the construction, supply and service contracts entered into by the Contractor;

b. Any facility to be utilized in the accomplishment of this contract is not listed on the Environmental Protection Agency's List of Violating Facilities pursuant to 40 CFR, Part 15.20;

c. In the event a facility utilized in the accomplishment of this contract becomes listed on the EPA list, this contract may be canceled, terminated, or suspended in whole or in part;

d. It will comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308, respectively, and all regulations and guidelines issued thereunder;

e. It will promptly notify the Government of the receipt of any notice from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility utilized or to be utilized in the accomplishment of this contract is under consideration for listing on the EPA List of Violating Facilities;

f. It will include the provisions of Paragraphs a. through g. in every subcontract or purchase order entered into for the purpose of accomplishing this contract, unless otherwise exempted pursuant to the EPA regulations implementing the Air or Water Acts above (40 CFR, Part 15.5), so that such provisions will be binding on each subcontractor or vendor;

g. In the event that the Contractor or the subcontractor for the construction, supply and service contracts entered into for the purpose of accomplishing this contract were exempted from complying with the above requirements under the provisions of 40 CFR, Part 15.5 (a), the exemption shall be nullified should the facility give rise to a criminal conviction (see 40 CFR 15.20) during the accomplishment of this contract. Furthermore, with the nullification of the exemption, the above requirements shall be effective. The Contractor shall notify the Government, as soon as the Contractors' or the subcontractors' facility is listed for having given rise to a criminal conviction noted in 40 CFR, Part 15.20.

S-26 USE OF LEAD-BASED PAINTS ON RESIDENTIAL STRUCTURES

If the work under this contract involves construction or rehabilitation of residential structures, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (see 42 U.S.C. 4831). The Contractor shall assure that paint used on the project on applicable surfaces does not contain lead in excess of the percentages set forth in Paragraphs (a) and (b) of this section. In determining compliance with these standards, the lead content of the paint shall be measured on the basis of the total nonvolatile content of the paint or on the basis of an equivalent measure of lead in the dried film of paint already applied.

a. For paint manufactured after June 22, 1977, paint may not contain lead in excess of 6 one-hundredths of l percent (.00006) lead by weight.

b. For paint manufactured on or before June 22, 1977, paint may not contain lead in excess of five-tenths of 1 percent lead by weight.

As a condition to receiving assistance under the Act, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of Federal funds.

Definitions

1. "Applicable surfaces" are those exterior surfaces which are readily accessible to children under 7 years of age.

2. "Residential structures" means houses, apartments, or other structures intended for human habitation, including institutional structures where persons reside, which are accessible to children under 7 years of age, such as day care centers, intermediate and extended care facilities, and certain community facilities.

S-27 EDA SIGNS

The Contractor shall supply, erect, and maintain a project sign according to the recommended specifications set forth below:

EDA SITE SIGN SPECIFICATIONS

Size:
Sign A: 4' x 8' x l 7/8"
Sign B: 4' x 8' x 3/4"

Materials (Face):
Sign A: l/4" tempered Masonite
Sign B: 3/4" or greater shop sanded (exterior) Plywood (one side only)

Framing:
Sign A: 2" x 4" nominal on four sides and center cross bracing
Sign B: 2" x 4" center cross bracing only

Supports: 4" x 4" x 12' nominal post

Assembly:
Sign A: 2" x 4" frame to fit 4' x 8' board with 2" x 4" cross braces
Sign B: To be mounted directly to the 4" x 4" post, with cross bracing

Mounting:
Signs A and B are to be mounted to the 4" x 4" post with a 3/8" minimum bolt and nut, four on each side of the sign. Each bolt is to have two washers, one between the sign and the head of the bolt and the other between the post and the nut.

Erection: 4" x 4" posts are to be set three to four feet deep into concrete 12" in diameter.

Paint:
Face: Three coats outdoor enamel (sprayed)
Rear: One coat outdoor enamel (sprayed)

Colors: Crimson Red, Stark White and Royal Blue. Specifically, white background; "JOBS" in red; "for your community" in blue; "EDA" logo and "PROVIDED BY EQUAL OPPORTUNITY EMPLOYERS, in partnership with the U. S. DEPARTMENT OF COMMERCE - Economic Development Administration" in black. "By working together we can provide economic opportunities for Americans" in black.

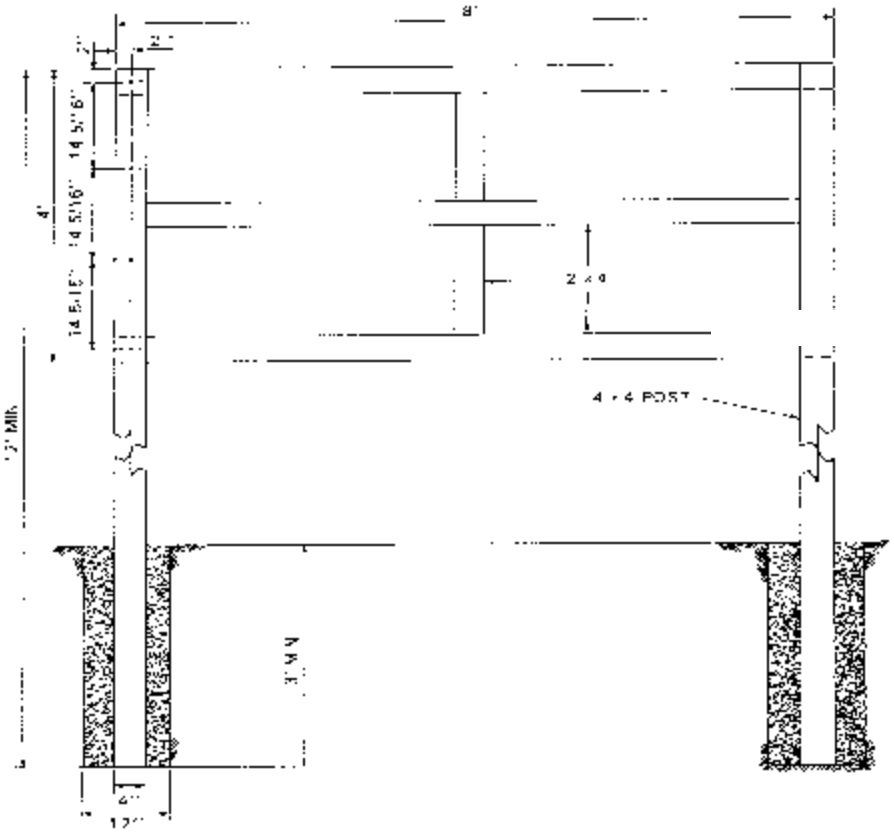
Lettering: Silk screen enamels. Lettering sizes and positioning will be as illustrated.

Project signs will not be erected on public highway rights-of-way.

Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area, if any possibility exists for obstruction to traffic line of sight.

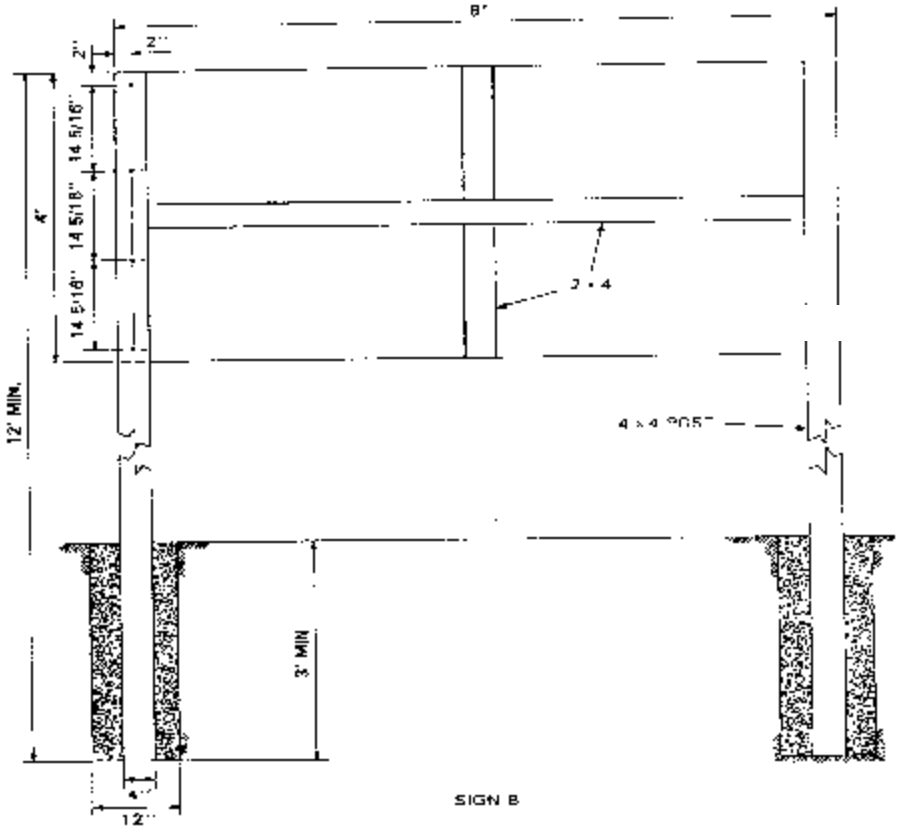
If, at the end of the project, the sign is reusable, it shall be disposed of as directed by the EDA Regional Office.

Whenever EDA Site Sign specifications conflict with State law or local ordinances, the Recipient may modify such conflicting specifications so as to comply with that State law or local ordinance.



ASSEMBLY OF MASONITE SIGN

Exhibit B SGC 24



SIGN B

ASSEMBLY OF PLYWOOD SIGN

Exhibit B SGC-25

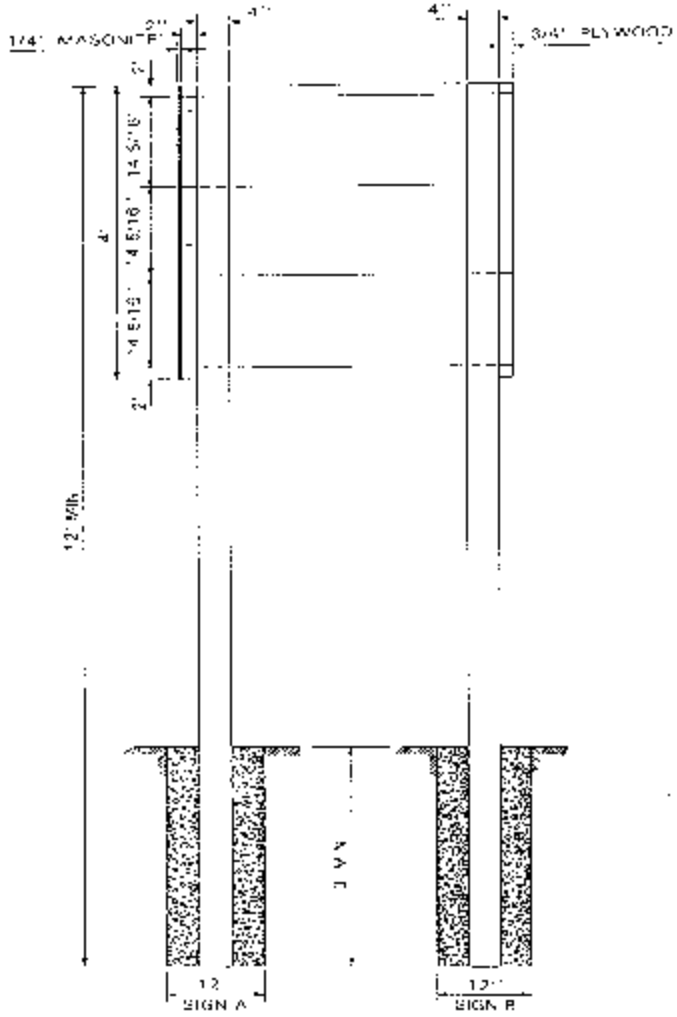


Exhibit B SGO-26

JOBS for your community

PROVIDED BY EQUAL OPPORTUNITY EMPLOYERS

In partnership with the

U.S. DEPARTMENT OF COMMERCE

Economic Development Administration

By working together we can provide economic opportunities for Americans

SCALE 1" = 1'

Exhibit B SGC-27

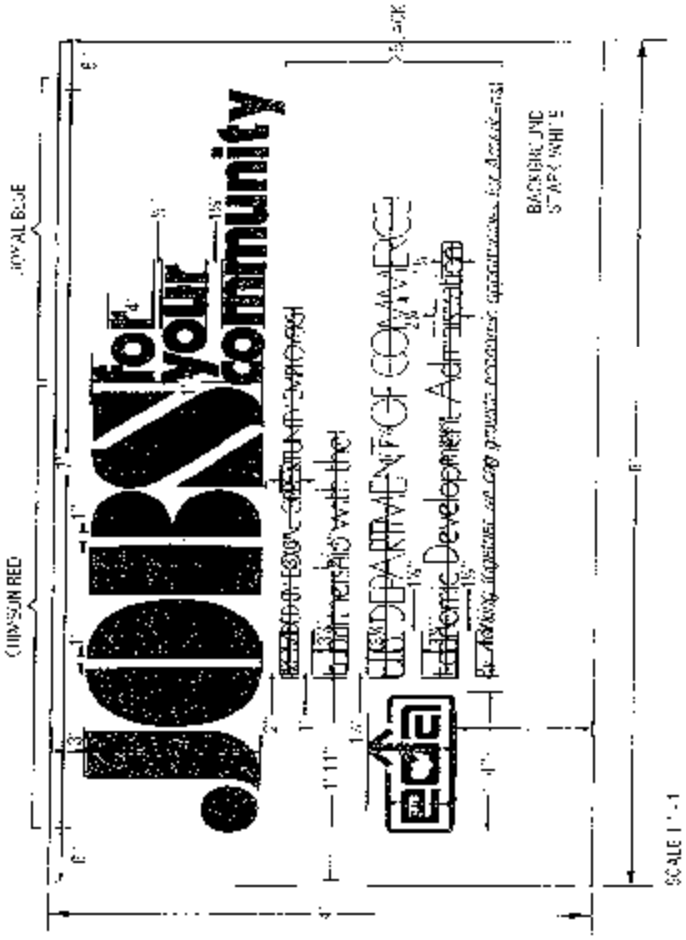


Exhibit B SGC 28

JOBS | EMPLEOS

for your community | **para su comunidad**

[illegible]

Improve the world
U.S. DEPARTMENT
OF COMMERCE
Economic Development Administration

Traducción por
EL DEPARTAMENTO DE COMERCIO
DE LOS E.U.
Administración para Desarrollo Económico

We working together we can create economic opportunities for America

eda

trabajando unos con otros podemos crear oportunidades económicas para América

SCALE [illegible]

Exhibit 18 SSCC 29

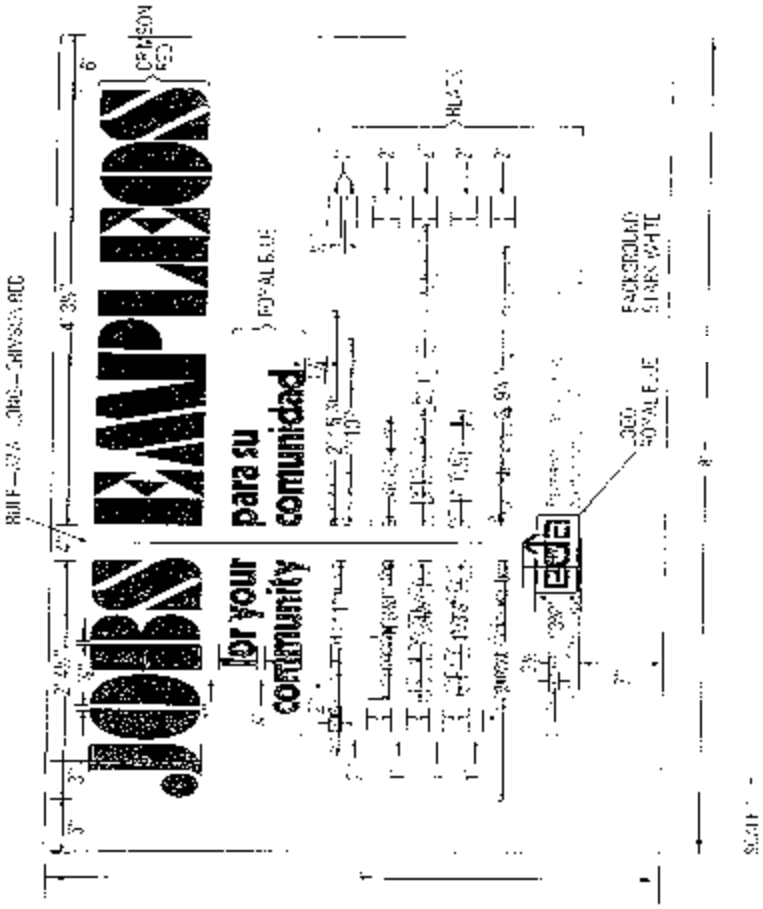


Exhibit B SCC-30

SAMPLE

U. S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY, AND EASEMENTS

Part One
Certificate of Engineer

I, the undersigned Engineer, certify that I am familiar with the design of the

_____
(Name/Type of Facility)

being constructed by the _____
(Name of Owner)

as part of EDA Project Number _____ and that all of such facilities will be constructed wholly within the land, leasehold interest and rights-of-way hereinafter described and existing public streets and roads. I further certify that the land, leasehold interest and rights-of-way being purchased as hereinafter described are sufficient but not in excess of actual needs for the Project as planned and approved by the Owner.

1. Fee Title or a long term leasehold interest is required for the following property (Project elements constructed above ground should be on land owned in Fee. Describe each tract, whether presently owned or to be acquired, and indicate what Project element is to be constructed thereon, i.e., tank site, pumping station, treatment plant, etc.; if more space is needed use additional sheets marked 'Exhibit A'):

2. The following easements and rights-of-way will be required for this Project (describe each easement and right-of-way, <u>whether presently owned or to be acquired</u>. Describe by courses and distances and by name of Owner, including area in acres; if more space is needed use additional sheets marked 'Exhibit B'):

3. The following state, railroad, highway or other permits will be required (describe location and name of permitter; if more space is needed use additional sheets marked 'Exhibit C'):

WITNESS MY HAND, this the _____ day of _____, 19___

_____
Registered Professional Engineer

Telephone No. _____

_____
Address

_____
City State

(TO BE COMPLETED BY ARCHITECT/ENGINEER AND FORWARDED TO OWNER'S ATTORNEY)

Part Two

Title Opinion

I, _____Attorney-at-Law,

representing _____
(hereinafter the 'Owner') do hereby certify that:

1. I have examined the public record of _____ County, _____ State _____

   from the period of _____ , 19___ to _____ , 19___ (which period of time should be at least 40 years). Based upon said examination, I find and am of the opinion that _____ is vested with marketable, fee simple title to the land referenced in Part One hereof as being required in fee, subject only to the following liens, encumbrances and objections (if none write 'None'):

   Any encumbrances or objections to the fee simple title listed above will not, in my opinion, restrict or interfere with the contemplated construction, use or purpose of the aforesaid EDA Project.

2. This is to further certify that all easements or rights-of-way described in Part One as being needed for the noted Project have been acquired by the Owner, that all long term leases described in Part One as being needed for the noted Project have been entered into by the Owner, that I have examined the instruments creating the easements, rights-of-way, or long term leases described in Part One, and it is my opinion that said instruments are valid as to form and substance for the purposes intended and provide the Owner with sufficient interest to construct and maintain the Project facilities.

   I certify that I have examined the public records for the purpose of ascertaining that said easements and/or rights-of-way have been obtained from the record owner(s).

3. The extent of said title examination, is sufficient for the purpose of establishing the validity of the title to said property and for the purpose of determining outstanding restrictions, liens, encumbrances, and ownership interests pertaining thereto.

4. All permits described in Part One as being needed for this Project have been obtained and I have examined all of said permits and am of the further opinion that said permits are valid as to form and substance for the purposes intended.

5. Remarks and Explanations:

_____ _____

Date **Attorney-at-Law**

Telephone No. _____

_____ _____ _____

Address **City** **State**

, It is the sole responsibility of the Recipient/Grantee of the EDA grant award to provide a legal opinion verifying that the Recipient/Grantee has good title to all property required for completion of the Project as defined by the grant award.

, A long term leasehold interest is acceptable only if held by the Recipient/Grantee of the EDA grant award for a period not less than the estimated useful life of the Project and only if lease provisions adequately safeguard EDA's interest in the Project.

, Only legal descriptions of the property described herein should be attached to this form.

, If this title opinion is based on a title insurance policy, any exceptions listed on the policy should be explained and resolved in #5 above.

, EDA relies on this title opinion and does not make independent findings regarding title to the property described herein.

NOTICE

This attached Exhibit D, "Agreement and Mortgage" is furnished as a sample. The actual form which the Recipient may be required to sign may differ from the sample dependent upon the type of property, the form of ownership, and the intent of the EDA assisted project (Check with the Regional Attorney in the EDA regional office). Attention is called to the "useful life", stated in terms of years, during which period the "Agreement and Mortgage" will remain in effect.

This page left blank intentionally.

AGREEMENT AND MORTGAGE

WHEREAS, _____ (hereinafter called "Mortgagor"), whose address is _____ has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (EDA), whose address is _____ _____a grant in the amount of _____ and No/100 Dollars ($)(Grant Amount) pursuant to a Grant Agreement entered into by the parties on _____ , and bearing EDA Project Number __ - __ - _____ (the Project); and

WHEREAS, pursuant to the application filed by Mortgagor requesting said grant and pursuant to the Grant Agreement, the Grant Amount is to be used for the purpose of making improvements consisting of _____ on the real Property described in Exhibit "A," attached hereto and made a part hereof (the Property); and

WHEREAS, any transfer or conveyance of a Project by an EDA Grantee must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. Section 3121, is not authorized to permit transfer or conveyance of a Project to parties which are not eligible to receive EDA grants unless EDA is repaid its share of the fair market value of the Project or unless the authorized purpose of the EDA grant was to develop land in order to lease it for a specific use, in which case EDA may authorize a lease of the Project if certain conditions are met; and

WHEREAS, the aforesaid grant from EDA provides that the authorized purpose for which the Grant Amount may be used is to develop and improve the Property in order to lease it for a specific use while further providing, inter alia, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, other than by a lease permitted by the Grant Agreement, or use the Property for purposes other than and different from those purposes set forth in the Grant Agreement and the application made by Mortgagor therefor, such alienation or use being prohibited by 13 CFR Part 314, or by 15 CFR Part 24 or by 15 CFR Part 14, Attachment N (the OMB Circular); and

WHEREAS, the value of EDA's right to repayment under the terms of 15 CFR Part 24 and 15 CFR Part 14 is difficult to establish; and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Grant Agreement, 15 CFR Part 24, 15 CFR Part 14 or 13 CFR Part 314;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer or alienation of the Property in violation of the Grant Agreement or in violation of the regulations set forth in 13 CFR Part 314, 15 CFR Part 24, or 15 CFR Part 14, as such Grant Agreement, regulations or Circular may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect ____ years from the date hereof, which period of years has been established as the useful life of the improvements to the Property. The amount of the lien, encumbrance and debt created by this Agreement shall be the Grant Amount or the amount actually disbursed or an amount determined pursuant to 13 CFR Part 314. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited

by the Grant Agreement, 15 CFR Part 24, 15 CFR Part 14, or 13 CFR Part 314, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Lease of Property:

   If the Grant Application and Grant Agreement authorize Mortgagor to lease the Property, all lease arrangements must be consistent with the authorized general and special purpose of the grant; said lease arrangements must be consistent with EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and that the proposed Lessee is providing adequate consideration to Mortgagor for said lease. Any lease agreements entered into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

2. Charges; Liens:

   Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

   Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its fair share. EDA's fair share shall be a percentage of said insurance proceeds equal to its grant percentage in the total cost of the grant program for which the damaged or destroyed real property was acquired or improved.

4. Preservation and Maintenance of the Property:

   Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

5. Inspection:

   EDA may make or cause to be made reasonable entries upon and inspection of the Property.

6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be a percentage in the total cost of the grant program for which the condemned property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage - Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property. Mortgagee shall be furnished a confirmed copy of this Mortgage at the time of execution, and after recordation thereof.

9. Remedies Cumulative:

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

10. Notice:

Any notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA's address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Breach of Agreement

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this AGREEMENT AND MORTGAGE, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT AND MORTGAGE may be enforced by the Secretary of Commerce of the United States of America, the Assistant Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

12. Governing Law; Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

IN WITNESS WHEREOF,
Mortgagor has hereunto set its hand and seal on this the ___ day of _____ , 19___ .

WITNESS: _____

Mortgagor

_____ By:_____

_____ Its:_____

STATE OF)
)SS.
COUNTY OF)

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this _____ day of _____, 19___ , by the _____ on behalf of said

_____
Notary Public

My commission expires

NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246 AND 41 CFR PART 60-4)

The following notice shall be included in, and shall be a part of all solicitations for offers and bids on all Federal and Federally assisted construction contracts or subcontracts in excess of $10,000.

The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Timetables	Goals for minority participation for each trade.	Goals for female participation for each trade
	* Insert goals for each year	* Insert goals for each year

* Goals to be furnished by EDA

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed.

The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the appropriate Regional Office of the Office of Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

As used in this notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical area where the contract is to be performed giving the state, county and city, if any).

This page left blank intentionally.

ADVERTISEMENT FOR BIDS

_____
Owner

_____
Address

_____

Separate sealed BIDS for the construction of (briefly describe nature, scope, and major elements of the work)

_____

_____

will be received by _____

at the office of _____

until _____, (Standard Time -- Daylight Savings Time) _____,

19_____, and then at said office publicly opened and read aloud.

The CONTRACT DOCUMENTS may be examined at the following locations:

_____

_____

_____

_____

Copies of the CONTRACT DOCUMENTS may be obtained at the office of _____

_____ located at_____

upon payment of $ _____ for each set.

Any BIDDER, upon returning the CONTRACT DOCUMENTS promptly and in good condition, will be refunded his payment, and any non-bidder upon so returning the CONTRACT DOCUMENTS will be refunded $ _____.

_____ _____
Date

This page left blank intentionally.

INFORMATION FOR BIDDERS

BIDS will be received by_____

(herein called the "OWNER"), at_____

until _____, 19_____, and then at said office publicly opened and read aloud.

Each BID must be submitted in a sealed envelope, addressed to_____ _____ at _____. Each sealed envelope containing a BID must be plainly marked on the outside as BID for _____ _____ and the envelope should bear on the outside the name of the BIDDER, his address, his license number if applicable and the name of the project for which the BID is submitted. If forwarded by mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to the OWNER at _____

_____ .

All BIDS must be made on the required BID form. All blank spaces for BID prices must by filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted. Only one copy of the BID form is required.

The OWNER may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within 60 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended my mutual agreement between the OWNER and the BIDDER.

BIDDERS must satisfy themselves of the accuracy of the estimated quantities in the BID Schedule by examination of the site and a review of the drawings and specifications including ADDENDA. After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

The OWNER shall provide to BIDDERS prior to BIDDING, all information which is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve him from fulfilling any of the conditions of the contract.

Each BID must be accompanied by a BID bond payable to the OWNER for five percent of the total amount of the BID. As soon as the BID prices have been compared, the OWNER will return the BONDS of all except the three lowest responsible BIDDERS. When the Agreement is executed the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the payment BOND and performance BOND have been executed and approved, after which it will be returned. A certified check may be used in lieu of a BID BOND.

A performance BOND and a payment BOND, each in the amount of 100 percent of the CONTRACT PRICE, with a corporate surety approved by the OWNER, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign BID BONDS or payment BONDS and performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

The party to whom the contract is awarded will be required to execute the Agreement and obtain the performance BOND and payment BOND within ten (10) calendar days from the date when the NOTICE OF AWARD is delivered to the BIDDER. The NOTICE OF AWARD shall be accompanied by the necessary Agreement and BOND forms. In case of failure of the BIDDER to execute the Agreement, the OWNER may

at his option consider the BIDDER in default, in which case the BID BOND accompanying the proposal shall become the property of the OWNER.

The OWNER within ten (10) days of receipt of acceptable performance BOND, payment BOND, and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the OWNER not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER.

The NOTICE TO PROCEED shall be issued within ten (10) days of the execution of the Agreement by the OWNER. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period, the time may be extended by mutual agree-ment between the OWNER and the CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.

The OWNER may make such investigations as he deems necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.

A conditional or qualified BID will not be accepted.

Award will be made to the lowest responsible BIDDER.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout.

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to his BID.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the SUPPLEMENTAL GENERAL CONDITIONS.

The low BIDDER shall supply the names and addresses of major material SUPPLIERS and SUBCONTRACTORS when requested to do so by the OWNER.

Inspection trips, for prospective BIDDERS will leave from the office of the

_____

The ENGINEER is _____. His address

is_____.

BID

Proposal of _____ (hereinafter called "BIDDER"), organized and existing under the laws of the State of doing business as _____ _____*.

To the_____ _____ (hereinafter called "OWNER").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of _____ in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within _____ consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of $_____ for each consecutive calendar day thereafter as provided in section 15 of the General Conditions.

BIDDER acknowledges receipt of the following ADDENDUM:

_____

_____

*Insert "a corporation", "a partnership", or "an individual" as applicable.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or lump sum:

BID SCHEDULE

NOTE: BIDS shall include sales tax and all other applicable taxes and fees.

NO.	ITEM	UNIT	UNIT PRICE	AMOUNT	TOTAL PRICE

TOTAL OF BID .....$ _____
LUMP SUM PRICE (if applicable) .....$_____

Respectfully submitted:

_____	_____
Signature	Address
_____	_____
Title	Date
_____	_____
License Number (if applicable)	

(SEAL -- if bid is a corporation)

Attest _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____

_____ as Principal, and _____

_____ as Surety, are hereby held and firmly bound unto

_____ as OWNER in the penal sum of _____

_____

for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 19_____.

The Condition of the above obligation is such that whereas the Principal has submitted to

_____ a certain BID, attached hereto

and hereby made a part hereof to enter into a contract in writing, for the

_____

_____

_____

NOW, THEREFORE,

(a) If said BID shall be rejected, or

(b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

_____ (L.S.)
Principal

_____
Surety

By:_____

IMPORTANT -- Surety companies executing BONDS must appear on the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the state where the project is located.

AGREEMENT

THIS AGREEMENT, made this _____day of _____, 19_____, by

and between _____ (hereinafter called "OWNER"),
(Name of Owner), (an Individual)

and _____ doing business as (an individual,) or (a partnership.) or (a corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of _____

_____

2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within _____ calendar days after the date of the NOTICE TO PROCEED and will complete the same within _____ calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of $_____, or as shown in the BID schedule.

5. The term "CONTRACT DOCUMENTS" means and includes the following:

(A) Advertisement for BIDS

(B) Information for BIDDERS

(C) BID

(D) BID BOND

(E) Agreement

(F) General Conditions

(G) SUPPLEMENTAL GENERAL CONDITIONS

(H) Payment BOND

(I) Performance BOND

(J) NOTICE OF AWARD

(K) NOTICE TO PROCEED

(L) CHANGE ORDER

(M) DRAWINGS prepared by_____ numbered__

_____through _____, and dated_____, 19_____

(1) SPECIFICATIONS prepared or issued by_____

_____ dated _____

, 19_____

(O) ADDENDA:

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (_____) each of which shall be
(Number of Copies)

deemed an original on the date first above written.

OWNER:

_____

BY _____

Name _____(Please Type)_____

Title _____

(SEAL)

ATTEST:

_____

Name _____(Please Type)_____

Title _____

CONTRACTOR:

_____

BY _____

Name _____(Please Type)_____

Address _____

_____

(SEAL)

ATTEST:

_____

Name _____(Please Type)_____

_____

This page left blank intentionally.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that

_____
(Name of Contractor)

_____
(Address of Contractor)

a _____, hereinafter called Principal, and
(Corporation, Partnership, or Individual)

_____
(Name of Surety)

_____
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

_____
(Name of Owner)

_____
(Address of Owner)

hereinafter called OWNER, in the penal sum of_____

_____Dollars, ($_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19___, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

_____

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each (Number)

one of which shall be deemed an original, this the _____ day of _____,

19_____.

ATTEST: _____
Principal

_____ By _____(s)
Principal Secretary

(SEAL)

_____ _____
(Witness as to Principal) (Address)

_____ _____
(Address)

_____

ATTEST: _____
Surety

_____ By _____(s)
Surety Secretary

(SEAL)

_____ By _____
(Witness as to Surety) Attorney-in-Fact

_____ _____
(Address) (Address)

_____ _____

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must be authorized to transact business in the state where the PROJECT is located.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____
(Name of Contractor)

_____
(Address of Contractor)

a _____, hereinafter called Principal, and
(Corporation, Partnership, or Individual)

_____
(Name of Surety)

_____
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

_____
(Name of Owner)

_____
(Address of Owner)

hereinafter called OWNER, in the penal sum of _____

_____ Dollars, ($_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19___, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

_____

NOW THEREFORE, if the Principal shall promptly make payments to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does

hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each
(Number)

one of which shall be deemed an original, this the _____ day of _____ ,

19_____.

ATTEST: _____
Principal

_____ By _____(s)
Principal Secretary

(SEAL)

_____ _____
(Witness as to Principal) (Address)

_____ _____
(Address)

_____

ATTEST: _____
Surety

_____ By _____(s)
Surety Secretary

(SEAL)

_____ By _____
(Witness as to Surety) Attorney-in-Fact

_____ _____
(Address) (Address)

_____ _____

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must be authorized to transact business in the state where the PROJECT is located.

GENERAL CONDITIONS

1. Definitions
2. Additional Instructions and Detail Drawings
3. Schedules, Reports and Records
4. Drawings and Specifications
5. Shop Drawings
6. Materials, Services and Facilities
7. Inspection and Testing
8. Substitutions
9. Patents
10. Surveys, Permits, Regulations
11. Protection of Work, Property, Persons
12. Supervision by Contractor
13. Changes in the Work
14. Changes in the Contract Price
15. Time for Completion and Liquidated Damages
16. Correction of Work
17. Subsurface Conditions
18. Suspension of Work, Termination and Delay
19. Payments to Contractor
20. Acceptance of Final Payment as Release
21. Insurance
22. Contract Security
23. Assignments
24. Indemnification
25. Separate Contracts
26. Subcontracting
27. Engineer's Authority
28. Land and Rights-of-Way
29. Guaranty
30. Arbitration
31. Taxes

1. DEFINITIONS

1.1 Wherever used in the CONTRACT DOCU- MENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1.2 ADDENDA -- Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

1.3 BID -- The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.4 BIDDER -- Any person, firm or corporation submitting a BID for the WORK.

1.5 BONDS -- Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.

1.6 CHANGE ORDER -- A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.7 CONTRACT DOCUMENTS -- The contract, including Advertisement For Bids, Information for Bidders, BID, Bid Bond, Agreement, Payment Bond, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.

1.8 CONTRACT PRICE -- The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

1.9 CONTRACT TIME -- The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.10 CONTRACTOR -- The person, firm or corporation with whom the OWNER has executed the Agreement.

1.11 DRAWINGS -- The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.

1.12 ENGINEER -- The person, firm or corporation named as such in the CONTRACT DOCUMENTS.

1.13 FIELD ORDER -- A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

1.14 NOTICE OF AWARD -- The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

1.15 NOTICE TO PROCEED -- Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.

1.16 OWNER -- A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the WORK is to be performed.

1.17 PROJECT -- The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

1.18 RESIDENT PROJECT REPRESENTATIVE -- The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

1.19 SHOP DRAWINGS -- All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.20 SPECIFICATIONS -- A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

1.21 SUBCONTRACTOR -- An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the work at the site.

1.22 SUBSTANTIAL COMPLETION -- That date as certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

1.23 SUPPLEMENTAL GENERAL CONDITIONS -- Modifications to General Conditions required by a Federal agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such requirements that may be imposed by applicable state laws.

1.24 SUPPLIER -- Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.25 WORK -- All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.26 WRITTEN NOTICE--Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

2.2 The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. SCHEDULES, REPORTS AND RECORDS

3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK, estimated date of completion of each part and, as applicable:

3.2.1 The dates at which special detail drawings will be required; and

3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The CONTRACTOR shall also submit a schedule of payments that he anticipates he will earn during the course of the WORK.

4. DRAWINGS AND SPECIFICATIONS

4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.

4.3 Any discrepancies found between the DRAW-INGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. SHOP DRAWINGS

5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

5.2 When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

6. MATERIALS, SERVICES AND FACILITIES

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, trans-portation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.

6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. INSPECTION AND TESTING

7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCU-MENTS.

7.3 The CONTRACTOR shall provide at his expense the testing and inspection services required by the CON-TRACT DOCUMENTS.

7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRAC-TOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

7.5 Inspections, tests or approvals by the engineer or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6 The ENGINEER and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CON-TRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.

7.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and re-placed at the CONTRACTOR'S expense.

7.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools. and equipment. If it is found that such WORK is defective, the CONTRAC-TOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. SUBSTITUTIONS

8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECI-FICATIONS by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CON-TRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRAC-TOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCU-MENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CON-TRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. PATENTS

9.1 The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design. or the product of a particular manufacturer or manufacturers is specified, however if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the ENGINEER.

10. SURVEYS, PERMITS, REGULATIONS

10.1 The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the infor-mation provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CON-TRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

11.1 The CONTRACTOR will be responsible for initi-ating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of

construction.

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecu-tion of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCU-MENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. He will give the ENGINEER prompt WRITTEN NOTICE of any sig-nificant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

12. SUPERVISION BY CONTRACTOR

12.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. CHANGES IN THE WORK

13.1 The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

13.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME, or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. CHANGES IN CONTRACT PRICE

14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

(a) Unit prices previously approved.

(b) An agreed lump sum.

(c) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the WORK to cover the cost of general overhead and profit.

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1 To any preference, priority or allocation order duly issued by the OWNER.

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CON-TRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather: and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

16. CORRECTION OF WORK

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and reexecute the WORK in accordance with the CONTRACT DOCU-MENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CON-TRACTOR

does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. SUBSURFACE CONDITIONS

17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS: or

17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

17.2 The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE; provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

18. SUSPENSION OF WORK, TERMINATION AND DELAY

18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2 If the CONTRACTOR is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery, thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

18.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the Contract. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.

18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. PAYMENTS TO CONTRACTOR

19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER's title to the material and equipment and protect his interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial

payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all work covered by the CONTRACT DOCUMENTS. The OWNER at any time, however, after fifty (50) percent of the WORK has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five (5%) percent on the current and remaining estimates. When the WORK is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five (5) percent to only that amount necessary to assure completion. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages, less authorized deductions.

19.2 The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably, stored either at or near the site.

19.3 Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

19.4 The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

19.5 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.

19.6 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance, with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

19.7 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND and Payment BONDS.

21. INSURANCE

21.1 The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1 Claims under workmen's compensation disability benefit and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.

21.3 The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, liability insurance as hereinafter specified;

21.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT

DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than, $500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than $500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than $200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than $200,000 aggregate for any such damage sustained by two or more persons in any one accident.

21.3.2 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRAC-TOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CON-TRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.4 The CONTRACTOR shall procure and maintain at his own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

21.5 The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

22. CONTRACT SECURITY

22.1 The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance Bond and a Payment Bond in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CON-TRACTOR of all undertakings, covenants, terms, condi-tions and agreements of the CONTRACT DOCUMENTS. and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

23. ASSIGNMENTS

23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

24. INDEMNIFICATION

24.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death. or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRAC-TOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRAC-TOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

25. SEPARATE CONTRACTS

25.1 The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that renders it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the OWNER, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall

properly connect and coordinate his WORK with theirs.

25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefor as provided in Sections 14 and 15.

26. SUBCONTRACTING

26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2 The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.

26.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

27. ENGINEER'S AUTHORITY

27.1 The ENGINEER shall act as the OWNER'S representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

27.4 The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

28. LAND AND RIGHTS-OF-WAY

28.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS. unless otherwise mutually agreed.

28.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

28.3 The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

29. GUARANTY

29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL COMPLETION. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

30. ARBITRATION

30.1 All claims, disputes and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 20, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

30.2 Notice of the demand for arbitration shall be filed in writing with the other party to the CONTRACT DOCUMENTS and with the American Arbitration Association, and a copy shall be filed with the ENG-INEER. Demand for arbitration shall in no event be made and any claim, dispute or other matter in question which would be barred by the applicable statute of limitations.

30.3 The CONTRACTOR will carry on the WORK and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

31. TAXES

31.1 The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

APPLICATION FOR PAYMENT

AIA DOCUMENT G702

OWNER
ARCHITECT
CONTRACTOR
FIELD
OTHER

PROJECT:
(name, address)

ARCHITECT:

TO: (Owner)

DATE OF APPLICATION:
APPLICATION NO:

PERIOD FROM: TO:

State of:

County of:

The undersigned certifies that the Work herein has been completed in accordance with the Contract Documents, that all amounts have been paid for items which previ- ous Certificates for Payment were issued and payments received, and that the current payment is now due.

Contractor

Address

By Date

Subscribed and sworn before me this
day of , 19

Notary Public:

My Commission Expires:

Application is made for Payment, as shown below, in connection with this Contract.

TOTAL COMPLETED TO DATE (F below) _____

STORED MATERIALS (see attached list) _____

TOTAL COMPLETED & STORED _____

RETAINAGE % _____

TOTAL EARNED LESS RETAINAGE _____

LESS PREVIOUS PAYMENTS _____

CURRENT PAYMENT DUE _____

ITEM NO. A	DESCRIPTION OF WORK B	SCHEDULED VALUE C	PREVIOUS APPLICATIONS D	THIS APPLICATION E	%	COMPLETED TO DATE F	BALANCE TO FINISH G
	SUB TOTAL OR TOTAL						

AIA DOCUMENT G702 • APPLICATION FOR PAYMENT • APRIL 1970 EDITION • AIA® © 1970
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., NW, WASHINGTON, D.C. 20006

This page left blank intentionally.

SAMPLE

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

Form Approved
Budget Bureau No. 44-R1093

PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

Name of Contractor 9 or Subcontractor 9		Address	
Payroll No.	For Week Ending	Project and Location	Project or Contract No.

(1) Name, Address & SSN of Employee	(2) # of Exempt	(3) Work Classification	OT or Std	(4) Day and Date / HOURS WORKED EACH DAY							(5) Total Hours	(6) Rate of pay	(7) Gross Earned	(8) Deductions						(9) Net wages
														FICA	Tax			Other	Total Ded.	
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	
			OI																	
			S																	
			O																	
			S																	

FORM WH-347 (1/68) - FORMERLY SOL 184

Date _____

I, _____, _____ do hereby state:
(Name of Signatory party) (Title)

1. That I pay or supervise the payment of the persons employed by _____ on the _____; that during the payroll period commencing on the _____ day of _____, 19____ and ending the _____ day of _____, 19____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948; 63 Stat. 108; 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

_____
_____
_____
_____

2. That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he/she performed.

3. That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a state, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

4. That:
   a. WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

   9 - In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

   b. WHERE FRINGE BENEFITS ARE PAID IN CASH

   9 - Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

   c. EXCEPTIONS

Exception (Craft)	Explanation

Remarks:

Name & Title	Signature

The willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

NOTICE OF AWARD

To: _____

_____

_____

_____

_____

PROJECT Description: _____

_____

_____

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated _____, 19_____, and information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of
$ _____.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS, within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____, 19_____.

_____
Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged
by _____,
this the _____ day of _____, 19_____.
By _____
Title _____

This page left blank intentionally.

NOTICE TO PROCEED

To: _____ Date: _____

_____ Project: _____

_____ _____

_____ _____

_____ _____

You are hereby notified to commence WORK in accordance with the Agreement dated _____ , 19 _____ , on or before _____ , 19 _____ , and you are to complete the WORK within _____ consecutive calendar days thereafter. The date of completion of all WORK is therefore _____ , 19_____.

_____
Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

by _____

this the _____ day of _____, 19_____

By _____

Title _____

This page left blank intentionally.

CHANGE ORDER

Order No. _____

Date: _____

Agreement Date: _____

NAME OF PROJECT: _____

_____

OWNER: _____

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

Change to CONTRACT PRICE: $ _____.

Original CONTRACT PRICE: $ _____.

Current CONTRACT PRICE adjusted by previous CHANGE ORDER: $ _____.

The CONTRACT PRICE due to this CHANGE ORDER will be (increased) (decreased) by: $ _____.

The new CONTRACT PRICE including this CHANGE ORDER will be: $ _____.

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by _____ calendar days.

The date for completion of all work will be _____ (Date).

Approvals Required:

To be effective this Order must be approved by the Federal agency if it changes the scope or objective of the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

Requested by: _____

Recommended by: _____

Ordered by: _____

Accepted by: _____

Federal Agency Approval (where applicable) _____

FORM ED-T13
(REV. 12-80)

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS

1. Federal Agency and Organizational Element

2. Federal Grant Number or Other Identifying Number

3. Type of Request: ☐ Final ☐ Partial

4. Basis of Request: ☐ Cash ☐ Accrued Expenditure

5. Partial Payment Request Number

6. Employer Identification Number

7. Grantee/Borrower Account Number or Identifying Number

8. Period Covered (Month, Day, Year) FROM | TO

9. Name of Grantee/Borrower

street number and name

city state zip code

10. Name of Payee (If different than item 9)

street number and name

city state zip code

11. STATUS OF FUNDS

CLASSIFICATION	PROGRAMS — FUNCTIONS — ACTIVITIES (1) Budget Approved per Grant Offer or As Amended	(2) Latest Revised Budget	(3) Expenditures This Period	TOTAL Expenditures To Date
a. Administrative expense	$	$	$	$
b. Preliminary expense				
c. Land, structures, rights-of-way				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Land development				
h. Relocation expense				
i. Relocation payments to individuals and businesses				
j. Demolition and removal				
k. Construction and project improvement cost				
l. Equipment				
m. Miscellaneous cost				
n. Total cumulative to date (Sum of lines a thru m)				
o. Deductions for program income				
p. Net cumulative to date (Line n minus Line o)				
q. Federal share to date				
r. Rehabilitation grants (100% reimbursement)				
s. Total Federal share (Sum of Lines q and r)				
t. Federal payments previously requested				
u. Amount requested for reimbursement	$	$	$	$
v. Percentage of physical completion of project	%	%	%	%

12. CERTIFICATION

I certify that to the best of my knowledge and belief the listed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.

a. Recipient	Signature of Authorized Certifying Official	Date Report Submitted
	Typed or Printed Name and Title	Telephone (area code, number and extension)
b. Representative pertaining to Item 11, Line V	Signature of Authorized Certifying Official	Date Signed
	Typed or Printed Name and Title	Telephone (area code, number and extension)

USCOMM-DC 53-5917

INSTRUCTIONS FOR PREPARING THE OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS

(TEAR OFF BEFORE SUBMITTING)

Item 1. Enter name of the Federal grantor agency and organization element to which the report is submitted.

Item 2. Enter the grant number or other identifying number assigned by the Federal grantor agency.

Item 3. Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project.

Item 4. Show whether amounts are computed on an accrual expenditure or cash disbursement basis.

Item 5. Enter the partial payment request number.

Item 6. Enter the employer identification number assigned by the U.S. Internal Revenue Service.

Item 7. This space is reserved for an account number or other identifying number which may be assigned by the grantee/borrower.

Item 8. Enter the month, day, and year for the beginning and ending period for which this report is prepared.

Item 9. Enter the name and complete mailing address including Zip Code for the grantee/borrower.

Item 10. Enter the name and complete mailing address including the Zip Code where the check should be sent, if the payee is different than the grantee/borrower shown in Item 9.

PLEASE READ BEFORE COMPLETING ITEM 11. The purpose of vertical columns (1) through (5) is to provide space for separate cost breakdowns when a large project has been planned and budgeted by program, function and activity. If additional columns are needed, use as many additional forms as needed and mark "continuation" on each form; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.

Item 11. STATUS OF FUNDS — All amounts are reported on a cumulative basis.

Line a. Enter amounts expended for such items as rents, legal fees, rental of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.

Line b. Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.

Line c. Enter all amounts directly associated with the acquisition of land, existing structures and related rights-of-way.

Line d. Enter basic fees for services of architectural engineers.

Line e. Enter other architectural services. Do not include any amounts shown on Line d.

Line f. Enter inspection and audit fees of construction and related programs.

Line g. Enter all amounts associated with the development of land where the primary purpose of the grant is land improvement. The amount pertaining to land development normally associated with major construction should be excluded from this category and entered on Line k.

Line h. Enter the dollar amounts used to provide relocation advisory assistance and set amounts of replacement for replacement housing (last resort). Do not include amounts needed for relocation administrative expense; these amounts should be included in amounts shown on line a.

Line i. Enter the amount of relocation payments made by the grantee/borrower to displace persons, farms, business concerns, and nonprofit organizations.

Line j. Enter gross salaries and wages of employees of the grantee/borrower and payments to third party contractor directly engaged in performing demolition or removal of structures from developed land. All proceeds from the sale of salvage or the removal of structures should be credited to this account, thereby reflecting net amounts if required by the grantor agency.

Line k. Enter those amounts associated with the actual construction of, addition to, or restoration of a facility. Also include in the category the amounts for project improvements such as sewers, streets, landscaping, and lighting.

Line l. Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.

Line m. Enter the amounts for all items not specifically mentioned above.

Line n. Enter the total cumulative amount to date which should be the sum of Lines a through m.

Line o. Enter the total amount of program income applied to the grant except income included on Line j. Identify on a separate sheet of paper the sources and types of the income.

Line p. Enter the net cumulative amount to date which should be the amount shown on Line n minus the amount on Line o.

Line q. Enter the Federal share of the amount shown on Line p.

Line r. Enter the amount of rehabilitation grant payments made to individuals when program legislation provides 100 percent payment by the Federal grantor agency.

Line s. Enter the total of Lines q and r.

Line t. Enter the total amount of Federal payments previously paid, if this form is used for requesting reimbursement.

Line u. Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on Lines s and t. If different, explain on a separate sheet.

Line v. Show the percentage of the physical completion of the project.

Item 12. CERTIFICATION

a. To be completed by the recipient official who is responsible for the operation of the program. The date should be the actual date the form is submitted to the Federal agency.

b. To be completed by the official representative who is certifying to the percent of project completion as provided for in the terms of the grant or agreement.

c. The certifications on the reverse side of this form are for EDA use only.

OMB No. 1510-0056
Expiration Date: 01/31/2000

ACH VENDOR/MISCELLANEOUS PAYMENT ENROLLMENT FORM

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

PRIVACY ACT STATEMENT

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

AGENCY INFORMATION

FEDERAL PROGRAM AGENCY

AGENCY IDENTIFIER: | AGENCY LOCATION CODE (ALC): | ACH FORMAT: ☐ CCD+ ☐ CTX ☐ CTP

ADDRESS:

CONTACT PERSON NAME: | TELEPHONE NUMBER: ( )

ADDITIONAL INFORMATION

PAYEE/COMPANY INFORMATION

NAME: | SSN NO. OR TAXPAYER ID NO.

ADDRESS:

CONTACT PERSON NAME: | TELEPHONE NUMBER: ( )

FINANCIAL INSTITUTION INFORMATION

NAME:

ADDRESS:

ACH COORDINATOR NAME: | TELEPHONE NUMBER: ( )

NINE-DIGIT ROUTING TRANSIT NUMBER

DEPOSIT ACCOUNT TITLE:

DEPOSIT ACCOUNT NUMBER | LOCKBOX NUMBER:

TYPE OF ACCOUNT: ☐ CHECKING ☐ SAVINGS ☐ LOCKBOX

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

NSN 7540-01-274-9925 | PAYEE/COMPANY COPY | SF 3881 (Rev. 11/99) Prescribed by Department of Treasury 31 U.S.C. 3322; 31 CFR 210

Exhibit 10.10 Page 1

This page left blank intentionally

FINAL ACCEPTANCE REPORT

EDA Award Number:_____ Contract # _____ of _____ Contracts
Contract Title:_____ Contract Award Date:_____

The following persons were present during the inspection:

Architect/Engineer:_____
Owner:_____
Contractor:_____
Economic Development Representative:_____
Other:_____

RECITAL: The work performed under this contract was inspected on _____ for the purpose of determining acceptability of construction. The Date of Acceptance is hereby established as _____.

Definition of the term "Date of Acceptance": The "Date of Acceptance" is the date which the Owner may occupy and/or use the facility for the purpose for which it is intended in accordance with the contract documents and all work for the facility has been completed with the exception of minor cleanup and minor corrective action as shown in the Architect/Engineer's list made during the final inspection.

_____	_____	_____
Architect/Engineer	Signature	Date

The Contractor agrees that the Date of Acceptance is also the date of commencement of all warranties required by the contract documents and that he/she, the Contractor, has released all liens on the project, including materialmen and mechanics liens or others filed by the Contractor. The Contractor will complete the work on the Architect/Engineer's list of minor cleanup and corrective work within _____ days of the Date of Acceptance.

_____	_____	_____
Contractor	Signature	Date

The Owner accepts the work as complete and will assume full possession thereof at _____ (time) on _____ (date).

_____	_____	_____

Owner	Signature	Date

This page left blank intentionally

SAMPLE

QUARTERLY PERFORMANCE REPORT

This report is for:

EDA Project No._____ Date of report preparation:_____

Period covered by this report: _____ to _____

Report number _____

Grantee: _____ _____

Name Address

Grantee's Authorized Representative: _____

Name

_____

Title

Grantee's Architect/Engineer: _____

Name

_____

Address

Current status of the project:

	YES	NO	
1.	___	___	Is the Grantee's share of expected project cost on hand or immediately available? If not, explain in the Narrative section on the next page why funds are not available and give an estimate here, _____ of when the funds are expected to be on hand.
2.	___	___	Has all land, rights-of-way, and easements necessary for the project been acquired? If not, explain in the Narrative section on the next page what is causing the delay and give an estimate here, _____ of when the problem will be resolved.
3.	___	___	Are any problems expected in meeting any of the Special Conditions to the EDA Grant Award? If so, explain in the Narrative section on the next page giving an estimated date for satisfying each Special Condition if a delay is expected.
4.	___	___	The EDA approved date for completion of design is, _____. Is the design completed? If so, give date of completion, _____. If design is not completed, give date here, _____ of expected completion. If expected date is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.
5.	___	___	The EDA approved date for start of construction is _____. Has construction started? If construction has started, the date was _____. If construction has not started, the estimated date for start of construction is _____. If the expected date is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.

6. ___ ___ The EDA approved date for completion of construction is _____. Is construction complete? If construction is complete, the date of completion was _____. If construction is not complete, the estimated date for completion is _____ and the percent of completion is ____%. If the estimated date for construction completion is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.

If not previously furnished to EDA please include the following date when applicable:

Architect/Engineer Agreement executed: _____
Design started: _____ Design completed: _____
Design approved by EDA: _____
Advertisement for construction bids: _____
Construction bid opening: _____
Construction bid award: _____
Issue of Notice to Proceed: _____
Construction start: _____
Construction completion: _____
Acceptance of facility by Grantee: _____
Warranty start: _____ Warranty end: _____
Final payment request: _____

NARRATIVE

PROBLEMS BEING EXPERIENCED:

ACTION TAKEN:

ACTION RECOMMENDED:

NOTE: If more space is needed for the above narrative, attach a separate sheet.

SAMPLE

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

ARCHITECT/ENGINEER'S CERTIFICATE

Project No. _____

I, _____, Architect/Engineer for the _____ certify that the following plans and specifications *(check appropriate item)*:

	Sheets numbered
9 **Site Plan**	_____
9 **Architectural**	_____
9 **Structural**	_____
9 **Mechanical**	_____
9 **Electrical**	_____
9 **Equipment**	_____
9 **Other (identify)**	_____

(a) Are adequate and suitable for, and are in conformity with, the project contemplated in the approved application.

(b) Comply with applicable State and local laws, ordinances, and regulations pertaining to standards of construction and safety, and have been approved by:

AUTHORITY	DATE OF APPROVAL
_____	_____
_____	_____
_____	_____
_____	_____

Approved:

_____ Architect/Engineer

_____ Owner

_____ License Number

_____ Address

_____ Date

This page left blank intentionally

SAMPLE

Form ED-126 (Rev. 4-4-72)

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

CERTIFICATE OF GRANTEE/BORROWER'S ATTORNEY

I, the undersigned, _____, the duly authorized and acting legal representative of _____ do hereby certify as follows:

I have examined the attached contracts and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

_____
Signature

Date: _____

This page left blank intentionally

Information Normally Required for
EPA/State Certification as to Adequacy of Treatment

Applicant: _____ EDA Award No.:_____

Contact: _____ Telephone: _____

Project Description:

_____

_____

_____

Sanitary Sewage Contribution

Estimate of flows: _____

Type of sewage: _____

Storm Sewer Contribution

Estimate of flows: _____

Projection of Type of Tenants for Industrial Developments

Type of Tenants: _____

Quantity of flows: _____

Strength of flows: _____

Receiving Sewage Treatment Plant

Name of Receiving Plant: _____

NPDES Number: _____

Design Capacity: _____

Effluent Disposal Capacity: _____

Current Flows: _____

This page left blank intentionally

FINANCIAL STATUS REPORT

(Short Form)

(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted	2. Federal Grant or Other Identifying Number Assigned By Federal Agency	OMB Approval No. **0348-0038**	Page	of pages
3. Recipient Organization (Name and complete address, including ZIP code)				

4. Employer Identification Number	5. Recipient Account Number or Identifying Number	6. Final Report ☐ Yes ☐ No	7. Basis ☐ Cash ☐ Accrual
8. Funding/Grant Period *(See instructions)* From: (Month, Day, Year)	To: (Month, Day, Year)	9. Period Covered by this Report From: (Month, Day, Year)	To: (Month, Day, Year)

10. Transactions:	I Previously Reported	II This Period	III Cumulative
a. Total outlays			
b. Recipient share of outlays			
c. Federal share of outlays			
d. Total unliquidated obligations			
e. Recipient share of unliquidated obligations			
f. Federal share of unliquidated obligations			
g. Total Federal share *(Sum of lines c and f)*			
h. Total Federal funds authorized for this funding period			
i. Unobligated balance of Federal funds *(Line h minus line g)*			

11. Indirect Expense	a. Type of Rate *(Place "X" in appropriate box)* ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed			
	b. Rate	c. Base	d. Total Amount	e. Federal Share

12. *Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.*

13. Certification: **I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.**

Typed or Printed Name and Title	Telephone (Area code, number and extension)
Signature of Authorized Certifying Official	Date Report Submitted

NSN 7540-01-218-4387 269-202 Standard Form 269A (REV 2-92)
Prescribed by OMB Circulars A-102 and A-110

Exhibit N Page1

FINANCIAL STATUS REPORT

(Short Form)

Public reporting burden for this collection of information is estimated to average 90 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0039), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Please type or print legibly. The following general instructions explain how to use the form itself. You may need additional information to complete certain items correctly, or to decide whether a specific item is applicable to this award. Usually, such information will be found in the Federal agency's grant regulations or in the terms and conditions of the award. You may also contact the Federal agency directly.

Item	Entry
1, 2 and 3.	Self-explanatory.
4	Enter the employer identification number assigned by the U.S. Internal Revenue Service.
5	Space reserved for an account number or other identifying number assigned by the recipient.
6.	Check yes only if this is the last report for the period shown in item 8.
7.	Self-explanatory.
8	Unless you have received other instructions from the awarding agency, enter the beginning and ending dates of the current funding period. If this is a multi-year program, the Federal agency might require cumulative reporting through consecutive funding periods. In that case, enter the beginning and ending dates of the grant period, and in the rest of these instructions, substitute the term "grant period" for "funding period."
9.	Self-explanatory.
10	The purpose of columns I, II and **III** is to show the effect of this reporting period's transactions on cumulative financial status. The amounts entered in column I will normally be the same as those in column III of the previous report in *the same funding period*. If this is the first or only report of the funding period, leave columns I and II blank. If you need to adjust amounts entered on previous reports, footnote the column I entry on this report and attach an explanation.
10a	Enter total program outlays less any rebates, refunds, or other credits. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct costs for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to sub-recipients. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase or decrease in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subgrantees and other payees, and other amounts becoming owed under programs for which no current services or performances are required, such as annuities, insurance claims, and other benefit payments.
10b.	Self-explanatory.
10c.	Self-explanatory.
10d.	Enter the amount of unliquidated obligations, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations on a cash basis are obligations incurred, but not yet paid. On an accrual basis, they are obligations incurred, but for which an outlay has not yet been recorded. Do not include any amounts on line 10d that have been included on lines 10a, b or c. On the final report, line 10d must be zero.
10e, f, g, h and i.	Self-explanatory.
11a.	Self-explanatory.
11b.	Enter the indirect cost rate in effect during the reporting period.
11c.	Enter the amount of the base against which the rate was applied.
11d.	Enter the total amount of indirect costs charged during the report period.
11e.	Enter the Federal share of the amount in 11d.
Note.	If more than one rate was in effect during the period shown in item 8, attach a schedule showing the bases against which the different rates were applied, the respective rates, the calendar periods they were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

ECONOMIC DEVELOPMENT ADMINISTRATION
PROGRAM PERFORMANCE REPORT
SECTION 201 AND 209 CONSTRUCTION PROJECTS

REPORTING PERIOD: ☐ PROJECT COMPLETION ☐ 3 YEARS ☐ 6 YEARS

*EDA Project No.:*_____ *Date of EDA Grant Award:*_____

I. GRANTEE ORGANIZATION: (*Information in italics will be generated from OPCS - do not enter)*

1. *Grantee Name*: _____
2. *Address*: _____
   _____
   _____
3. *Telephone:* _____
4. Fax: _____
5. E-mail Address: _____

6. Contact Person: Name: _____
   Title: _____
   Telephone: _____ Fax: _____
   Email Address: _____

II. EDA PROJECT INFORMATION:

1. *EDA Project Budget:*

	Approved	*Final (Actual)*
EDA Funds	*$*_____	*$*_____
Applicant	*$*_____	*$*_____
Local Funds	*$*_____	*$*_____
State	*$*_____	*$*_____
Other Federal	*$*_____	*$*_____
Other	*$*_____	*$*_____
Total Project Dollars:	*$*_____	*$*_____

2. *Construction Schedule:*

	Estimated	*Final (Actual)*
a. Start Dates:	_____	_____
b. Completion Dates:	_____	_____

3. *Project Location:* _____
   County/ State/ Zip Code

4. *Project Description:* _____
   _____
   _____

REPORTING PERIOD: ☐ PROJECT COMPLETION ☐ 3 YEARS ☐ 6 YEARS

*EDA Project No.:*_____ *Date of EDA Grant Award:*_____

III. OUTCOMES (Actual at time of report)

1. Permanent Jobs
   a. Number of Jobs Created: _____
   b. Number of Jobs Retained: _____
   c. Total Number of Direct Jobs: _____

2. Additional dollars invested:

	Direct	*Indirect*
a. Private sector:	$_____	$_____
b. Local public:	$_____	$_____
c. State:	$_____	$_____
d. Other Federal:	$_____	$_____
e. Totals:	$_____	$_____

3. Increase in Local Real or Business Property Tax Base:

   a. Enter value of increase in tax base (prior to any abatement): $_____
   b. Is the project located in a Federal Empowerment Zone or Enterprise Community? Yes ___ No ___
   c. Is the project located in a State enterprise zone? Yes ___ No ___

4. Local Capacity Anticipated and Actual Results: Weigh each objective based on anticipated benefits (total should not exceed 100%) then rate each objective on actual performance (with 10 being the highest).

	Weight (0-100%)	Actual Results (Rate of 1-10)
a. Created infrastructure to support private investment:	____	____
b. Created infrastructure to stimulate private investment:	____	____
c. Stabilized and maintained the local economic base:	____	____
d. Diversified the local economy:	____	____
e. Other non-quantitative benefits	____	____

   Specify: _____

5. Indirect Benefits: Estimate the number of local businesses that realized significant increases in sales or employment due to indirect project affects (i.e. increased consumer/supplier demand): _____

V. Please submit a good quality photograph of the EDA project and/or firms assisted.

AUTHORIZED CERTIFYING OFFICIAL

Signature: _____ Date Report Submitted: _____

Typed or Printed Name & Title: _____ Telephone: _____

GRANTEE REPORTING INSTRUCTIONS
PROGRAM PERFORMANCE REPORT
SECTION 201 AND 209 CONSTRUCTION PROJECTS

Burden Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number 0610-0096, Expires 11/30/2002. The public reporting burden for this collection is estimated to average 3 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC,

The instructions below correspond to items in the Core Performance Measures Report. If there is not sufficient space on the reporting form for a response, please respond on an attachment to the report.

Please check the top of each page to be sure that the EDA project number, date of grant award, and reporting period are entered correctly. Review the data provided on Page 1 from EDA's database. Makes any corrections required to update information on the grantee organization. If no data is shown, please follow the instructions below to complete the report.

PART I: GRANTEE ORGANIZATION.

1. **Grantee Name**: Enter the legal name of the Grantee.

2. **Address**: Enter the physical address of the Grantee.

3. **Telephone**: Enter the telephone number, including area code, of the Grantee.

4. **Fax**: Enter the facsimile number, including area code, of the Grantee.

5. **E-mail Address:** Enter the Internet address of the Grantee.

6. **Contact Person & Title**: Name the person to contact on matters related to this report. Also, provide the contact person's telephone number, including area code, if different from the Grantee's telephone number. Please include current email address in the following format (name@organization.com). Example: jdoe@eda.gov.

7. **Project Location**: Enter the county, state and **zip code** of project location.

PART II: EDA PROJECT INFORMATION.

1. **EDA Project Budget**:

   Enter the project budget as estimated at time of approval.
   Enter the actual project budget at time of project completion and close-out.
   Enter only dollars used as part of the EDA total project cost for the construction project (scope of work and eligible costs defined in the grant agreement).

2. **Construction Schedule**:

   a. *Construction start date: Enter the estimated date (specified in the Special Award Conditions) for starting construction on the EDA project. Also, enter the actual date (substantiated by the Grantee's construction records and source documentation) for starting construction on the EDA project.*

Program Performance Report Instructions (Continued)

b. Construction completion date: Enter the estimated date (specified in the Special Award Conditions) for completing construction on the EDA project. Also, enter the actual date (substantiated by the Grantee's construction records and source documentation) for completing construction on the EDA project.

3. Project Location: Enter county, state and **zip code** of project location.

4. Project Description: Provide a complete description of the project constructed with EDA funds.

PART III: OUTCOMES (Actual at time of report)

1. Permanent Jobs:

a. Number of Jobs Created: Enter the number of private sector jobs created by businesses and other project beneficiaries as a result of the EDA construction project. In tallying direct jobs, only *permanent* and *direct* jobs may be counted. If a business employs a large number of part-time workers; *part-time* jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35-40 hours).

Direct jobs include those by employers located at the project sit or by require services of the EDA-funded facility in order to locate, expand or operate in the project area. Applicants normally estimate the number of direct jobs anticipated as result of the project and often identify employers or project "beneficiaries" that will benefit from the project and create job as part of the application. In addition, to the direct jobs anticipated at the time of application, grantees should report other direct or *directly-related* jobs, including subsequent employers that locate or expand in the project area as a result of the project. For some projects (e.g., roads, water and sewer lines) directly-related jobs may include those created by firms that were not originally anticipated as part of the project; however, required the facility or service provided by the EDA-funded project in order to locate or expand in the area.

b. Retained jobs: Enter the number of permanent jobs retained by project beneficiaries as a result of the EDA construction project. Retained jobs are normally included in the application as estimates provided by applicants for identified "beneficiaries" that need the project or service provided by EDA-funded facility in order to continue operating in the area.

c. Total jobs: Add the number of created jobs to the number of retained jobs and enter the total jobs.

NOTE: **Do not report indirect jobs.** *(Jobs created within the local labor marked area by the EDA project through increased supplier or consumer demand-commonly referred to as spin-off jobs resulting from increased employment by local suppliers and increased commercial/retail jobs due to increased wages generated by direct jobs.)* Report indirect benefits under item 5 below.

2. Additional Dollars Invested:

(**NOTE:** Dollars should be separated between: (1) dollars invested in the EDA construction project; and (2) dollars directly related to, but not a part of, the EDA construction project. Dollars invested in the EDA construction project are the non-Federal matching funds that were identified at the time of EDA grant approval and are included in the total project costs for the construction project shown in Section II above. Do not double count these dollars below.)

Additional dollars invested include dollars that support project objectives, but are not included as part of the EDA project costs. Though occasionally difficult to quantify an attempt should be made to identify, and estimate the value of other public and private investments directly related to the EDA project.

Examples are private investments in business facilities served by the project or other related facilities that were constructed with other public or private funds as a result of the EDA project. Also include investments by firms using residual capacity of EDA-financed infrastructure (notably water and sewer services) as indirect investments.

1. Private sector: Enter the total dollars from private sector investors, employers and other private sector sources such as the local financing institutions, and private donors. Include private investment in plant and equipment.

b. Local public: Enter the total dollars from local public sources such city/county appropriations, G.O./revenue bond issues, and economic development sales taxes.

c. State: Enter the total dollars from state sources such as state appropriations and CDBG funds to the state.

4. Other Federal: Enter the total dollars from other Federal sources as HUD, Agriculture, and Transportation funds.

e. Totals: Add the other dollars from lines a through d and enter the total dollars on line e.

3. Increase in Local Tax Base:

Enter the dollar value of the increase in the local tax base (the taxable real and business/personal property base) attributable to the EDA project. This is the value of the investment or the property prior to any form of tax abatement. Indicate if the project is located in a federal empowerment zone or enterprise community, or state enterprise zone.

4. Local Capacity Anticipated and Actual Results:

Identify the primary objectives for this project at the time of grant award and assign a weight to each based on relative importance (e.g., if two objectives are equally weighted enter 50% for each). Next, evaluate the level of success the project has achieved to date in meeting each objective. Individual ratings (with 10 being the "best" (i.e., the project has totally met the objective in every conceivable way) and 1 being the "worst" (i.e., the project has not met the objective in any way at all)).

Determine if the project has resulted in any unanticipated benefits. As an example, a project may have initially been intended to support a single private business (100%), but may actually have resulted in creating jobs associated with other businesses, perhaps diversified the local economy, or provided other community benefits. Significant benefits not fully anticipated at the time of applications should be noted.

NOTE: A narrative explaining results or any unique situations associated with the project may be submitted as an attachment to this report, if desired.

5. Indirect Benefits: Report the estimated number of businesses that are realized from significant increases in sales and/or employment due to increased consumer or supplier demands generated by the project.

IV. Provide a photograph of the project and/or business activity assisted by the project *(The best pictures are those showing people at work or some form of business or investment activity)***.**

U.S. Department of Commerce
Economic Development Administration
14th and Constitution Avenue, N. W.
Washington, D.C. 20230
www.doc.gov/eda