REQUEST FOR PROPOSAL

FOR

ENGINEERING SERVICES FOR THE CAPITAL IMPROVEMENT PROJECT:

SANGER WATER STORAGE TANK NO. 3

June 2017

City of Sanger
Department of Public Works
1700 7th Street
Sanger, CA 93657
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUMMARY</td>
<td>4</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>5</td>
</tr>
<tr>
<td>Requests for Information</td>
<td>5</td>
</tr>
<tr>
<td>PROJECT DESCRIPTION</td>
<td>5</td>
</tr>
<tr>
<td>REQUESTED SCOPE OF WORK</td>
<td>5</td>
</tr>
<tr>
<td>Project Management</td>
<td>6</td>
</tr>
<tr>
<td>Preliminary Engineering</td>
<td>6</td>
</tr>
<tr>
<td>Final Design</td>
<td>6</td>
</tr>
<tr>
<td>Engineering Support during Bidding</td>
<td>7</td>
</tr>
<tr>
<td>Engineering Support during Construction</td>
<td>7</td>
</tr>
<tr>
<td>Services Previously Completed, or that will be Provided, by the City</td>
<td>7</td>
</tr>
<tr>
<td>General</td>
<td>7</td>
</tr>
<tr>
<td>Environmental Document</td>
<td>7</td>
</tr>
<tr>
<td>Right of Way</td>
<td>7</td>
</tr>
<tr>
<td>SUBMITTAL REQUIREMENTS</td>
<td>8</td>
</tr>
<tr>
<td>PROPOSAL FORMAT AND CONTENT REQUIREMENTS</td>
<td>8</td>
</tr>
<tr>
<td>General Guidelines</td>
<td>8</td>
</tr>
<tr>
<td>I. Transmittal Letter</td>
<td>8</td>
</tr>
<tr>
<td>II. Executive Summary</td>
<td>9</td>
</tr>
<tr>
<td>III. Qualifications</td>
<td>9</td>
</tr>
<tr>
<td>IV. Project Understanding and Approach</td>
<td>10</td>
</tr>
<tr>
<td>V. Quality Control</td>
<td>10</td>
</tr>
<tr>
<td>VI. Availability</td>
<td>10</td>
</tr>
<tr>
<td>VII. Schedule</td>
<td>11</td>
</tr>
<tr>
<td>VIII. Appendix (Supplemental Information)</td>
<td>11</td>
</tr>
<tr>
<td>IX. Separate Sealed Cost Proposal</td>
<td>11</td>
</tr>
<tr>
<td>Evaluation</td>
<td>12</td>
</tr>
<tr>
<td>SELECTION PROCEDURE</td>
<td>12</td>
</tr>
<tr>
<td>Schedule</td>
<td>13</td>
</tr>
<tr>
<td>Oral Interviews</td>
<td>13</td>
</tr>
<tr>
<td>Award</td>
<td>14</td>
</tr>
</tbody>
</table>
SUMMARY

Proposal Due Date: 4:00 pm, Friday, August 4, 2017
Proposal packages received after the time and date stated above will be returned unopened to the consultant.

Submittals: Six (6) paper copies of the proposal along with either a compact disc or flash drive containing an electronic copy of the proposal in Adobe *.pdf format, the project schedule in Microsoft Project *.mpp format, and the Scope of Work in Microsoft Word *.doc format. (See Submittal Requirement Section for more details)

Addressed to: Rebeca Hernandez, City Clerk
City of Sanger
1700 7th Street
Sanger, CA 93657

Notification List: The full content of the RFP is available through the City’s website (www.ci.sanger.ca.us). If addenda are necessary, they will be posted onto the City’s website as well. Prospective proposers are asked to send an e-mail to City Engineer Josh Rogers at jrogers@yhmail.com by Friday, July 21, 2017 so that the firm can be added to a notification list to directly receive any addendums, changes or responses to written inquires.

Pre-proposal Meeting: A pre-proposal meeting is not required.

Inquiries: Requests for clarification regarding this RFP must be submitted in writing via email to Josh Rogers at jrogers@yhmail.com and received no later than 5:00 pm, Friday, July 28, 2017. Written responses to timely inquiries will be emailed to the proposer notification list up until 72 hours prior to the proposal submittal deadline.

Funding: Funding for this project is from a federal Economic Development Administration (EDA) grant and local funds.

Anticipated Consultant Selection Schedule: Proposal review and evaluation: August 7-16, 2017
Oral interviews (if elected by City): August 21-23, 2017
Selection/Negotiation: August 25-30, 2017
Contract Award: September 7, 2017
INTRODUCTION

The City of Sanger Public Works Department is seeking proposals from qualified engineering firms to prepare the plans, specifications and estimates for Sanger Water Storage Tank No. 3 at Church Avenue and J Street in Sanger, CA. Funding for this project is through the Economic Development Administration (EDA) grant program with local matching funds from the Water Enterprise Fund.

Requests for Information

All requests for information (RFI) and questions regarding this project shall be in writing via email to the City Engineer, Josh Rogers at jrogers@yhmail.com. There are to be NO phone calls to the City for additional information or clarification. The City shall reply to questions or RFI's that the City deem necessary for the preparation of the consultant’s proposal. Response to RFI's and questions shall be done via email. The email list that shall be utilized for distribution of the response shall be the Master List of consultants who requested the RFP. Prospective proposers are asked to send an e-mail to Josh Rogers at jrogers@yhmail.com by Friday, July 21, 2017 so that the firm can be added to a notification list to directly receive any addendums, changes or responses to written inquires. The City does not guarantee the email list is complete and accurate. It is the responsibility of the consultant to ensure a proper email address is on record. Failure to abide by this provision shall deem that consultant non-responsive and the proposal will not be considered.

PROJECT DESCRIPTION

The project will include design engineering for a 0.75 million-gallon, ground level, welded steel water storage tank with booster pumps and emergency generator. Electrical and system control design is needed to provide telemetry and supervisory control and data acquisition (SCADA) equipment to match the current city systems. Booster pumps will be sized to operate individually during low-demand periods, and in parallel for peak flow. Inflow to the tank will be from two different sources, the first of which is the surrounding distribution system. The second will be a direct discharge from nearby Well No. 8, which is currently offline and unavailable due to nitrate contaminants which exceed the maximum contaminant level (MCL). In order to blend and dilute Well 8 water with the distribution system to meet drinking water standards, approximately 1000 lineal feet of 12-inch diameter transmission main piping from Well No. 8 to the tank site is also included in the project scope, as are site frontage improvements including minor road widening, curb, gutter and sidewalk, landscaping, lighting and fencing. Approximately 450 lineal feet of storm drain installation is required to connect the tank overflow drain to the City storm drain system. See Attachment 2 for an area map showing the location of the proposed tank and relation to other existing City wells, including Well 8. See Attachment 3 for a conceptual site plan showing the proposed tank location and site improvements. See Attachment 4 for the preliminary engineer’s estimate used to secure the EDA funding for the project.

REQUESTED SCOPE OF WORK

In general, services will include preparation of necessary plans, specifications, estimates, and conducting necessary utility coordination for the project.

At a minimum the consultant proposal shall include:
Project Management

- The selected consultant shall be responsible for project management activities throughout the life of the contract. The scope of comprehensive project management includes, but is not limited to, efficiently managing the project schedule, setting up and facilitating client meetings, interagency meetings, field reviews, other project related meetings (consultant shall prepare meeting agendas, meeting minutes, identify action items and how they are accounted for, and meeting sign in sheets for all meetings), and managing the consultant team involved in the project (“project team”). Managing the project team includes, but is not limited to, preparing contract paperwork, memos, letters and e-mail, making phone calls and maintaining project files.
- Prepare on a monthly basis a brief written summary of work (typically 1 page long) that has been accomplished in the previous month, anticipated work for the next month and key decisions that need to be made to keep the project on schedule.
- Invoices shall show the original budget, reallocated budget, amount spent to-date, amount spent this period, and percentage spent to-date for each task.
- Participate in coordination meetings with City staff (assume 8 meetings).
- Manage ongoing utility coordination with PG&E, Frontier Communications and Comcast Cable, as necessary.
- Prepare and maintain project design and projected construction schedule.

Preliminary Engineering

- Collect existing water system data from City of Sanger Public Works Department as needed to establish operating parameters and prepare preliminary engineering design for the tank, booster pumps, control valves, Well 8 blending ratios and SCADA coordination and integration into the City’s existing Wonderware system, etc.
- Conduct site investigation(s) needed to prepare construction documents.
- Establish electrical demands and prepare service applications to PG&E, as well as application for undergrounding existing overhead telephone lines across project frontage.
- Conduct geotechnical studies for site grading and preparation, as well as tank foundation and frontage paving designs.
- Prepare conceptual street frontage landscape plan for approval by City Planning Department.
- Prepare preliminary design report documenting all findings from preliminary engineering and recommendations for final design.

Final Design

- Prepare construction plans, technical specifications, and construction cost estimates (PS&E) including but not limited to grading and drainage; foundation structural; yard piping; offsite water transmission and storm drainage pipelines; storage tank plans and details; booster pump, standby generator, site lighting and Well 8 electrical and controls design, frontage street and landscape/irrigation improvements, environmental document or permit conditions, storm water quality, or other requirements of federal, state or local jurisdictions.
- Construction documents shall be submitted at 50%, 90% and final completion for review by City Engineer, Public Works Director and Chief Water Operator. Final approval of construction documents by the City and EDA is required prior to advertisement.
Engineering Support during Bidding
- Attend the pre-bid conference (if any), prepare addenda and clarifications if necessary, and attend bid opening.
- Tabulate bid results and make recommendation to City Engineer for award.

Engineering Support during Construction
- After Construction Authorization, provide engineering support during construction as needed for clarification of construction documents during construction.
- Review and provide technical information for construction submittals, requests for information (RFIs), contract change order requests, if necessary.
- Perform periodic site visits during construction (assume monthly visits at minimum).

Services Previously Completed, or that will be Provided, by the City
The intent for this project is that the consultant will be responsible for the scope of work outlined in this RFP and will minimize the work required from City staff. The City has completed, and/or will provide, the following services and/or information to the consultant:

General
- The City will furnish access to existing information, reports, data, and mapping necessary for carrying out the requested services, including annual water reports and system operational information. The City’s responsibility to provide access to information is limited to data of record in City’s files and in the format as recorded. The consultant shall check and investigate existing information and conditions and notify the City of any deficiencies that are discovered.
- The City will provide meeting space for project team meetings as deemed necessary.
- The City will provide EDA grant administration services.

Environmental Document
- The City of Sanger has prepared and adopted an Initial Study/Mitigated Negative Declaration for the proposed project, which will be provided to the consultant upon request. No environmental document preparation is requested of the consultant.
- The selected consultant shall be responsible for incorporating recommended mitigation measures into the engineering design and construction contract documents.

Right of Way
- The right-of-way for the project has been acquired by the City of Sanger. There are no right-of-way services requested of the consultant.
- The City of Sanger will provide site boundary and right-of-way information and staking as required for the project, and as needed by the consultant.
SUBMITTAL REQUIREMENTS

If your firm is interested in this project, please submit within one envelope or package the following items addressed to:

Rebeca Hernandez, City Clerk
1700 7th Street
Sanger, CA 93657

1. In a sealed envelope, six (6) copies of your Request for Proposals clearly marked “PROPOSAL for Engineering Services for the Capital Improvement Project: Sanger Water Storage Tank No. 3, Consultant’s Name”.

2. Compact disc or flash drive containing an electronic copy of the proposal in Adobe *.pdf format, the project schedule in Microsoft Project *.mpp format, and the Scope of Work in Microsoft Word *.doc format.

3. In another sealed envelope, six copies of your Cost Proposal clearly marked “COST PROPOSAL for Engineering Services for the Capital Improvement Project: Sanger Water Storage Tank No. 3, Consultant’s Name”.

The proposal package must be received by the City of Sanger no later than 4:00 pm on Friday, August 4, 2017. No late submittals will be accepted.

PROPOSAL FORMAT AND CONTENT REQUIREMENTS

These guidelines were developed to standardize the preparation of proposals by consultants and to help assure consistency in format and content.

General Guidelines

Each page of the proposal must be numbered. Pages must have a minimum of 1” margins. All references to the maximum number of pages are to a single side, not including tabs or section dividers. The minimum font size for the body text shall be 10 point although 11 point is preferred. The use of 11”x17” sheets of paper is acceptable and will only be considered a single page. Divider tabs that follow the order specified below are encouraged.

I. Transmittal Letter

The Transmittal letter should be on the consultant’s letterhead and addressed to the City Clerk, as indicated on the Summary page of this RFP. The letter should indicate the consultant’s basic understanding of the City’s needs and the consultant’s understanding of the work required. If Addenda have been issued by the City, the consultant must acknowledge receipt of the Addenda in the Transmittal letter. The letter shall be wet-signed, in blue ink, by an official or representative authorized to negotiate and contractually bind the consultant firm with the City. Please also provide the telephone number, email, and office location of the consultant’s proposed Project Manager.

Required Statements

The following information is required as part of the Transmittal Letter:

Duration: The consultant shall provide a brief statement affirming that the proposal terms shall remain in effect for ninety (90) days following the date proposal submittals are due.
Non-discrimination: The consultant shall attest to the firm’s non-discrimination plan or other policies aimed at eliminating unlawful discrimination and provide a brief statement about the firm’s adoption and compliance with its plan or policy.

Conflict of Interest: The consultant shall disclose to the City any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required. At the City’s discretion, a potential conflict of interest may be waived or factored into the final award decisions and/or a modified scope of work.

Standard Agreement: The consultant shall indicate his/her/its acceptability of the terms and conditions of the sample consultant agreement included as Attachment 1. The term of the agreement shall be a maximum of 3 years, but shall be defined in the agreement. Any requested deviations from the standard agreement should be noted with blue, underlined text for additions and red, strike-out text for deletions.

EDA Standard Requirements: The consultant agreement and the consultant scope of services shall conform to the requirements stated in the “Summary of EDA Construction Standards”, included as Attachment 5 to this RFP. The consultant shall acknowledge receipt and acceptance of the EDA standard requirements as they affect and impact the consultant’s scope of work.

The Transmittal Letter shall be limited to three pages.

II. Executive Summary
The Executive Summary shall present an understanding of the purpose of the project and the required engineering services, a summary of the approach, and capabilities of the consultant, subconsultants, and professional personnel.

The Executive Summary section of the proposal shall be a maximum of two pages.

III. Qualifications
This section is intended for the consultant to illustrate to the City the consultant’s or consultant team’s ability to deliver projects of a similar size and technical challenge.

Firm profile: Provide a summary of the consultant team’s overall capabilities, history, recent and related experience, and expertise. Emphasize the experience and abilities relevant to the specific engineering services described in this RFP. Emphasize the project team dynamics such as having a working knowledge of the City of Sanger and municipal water system design, specifically water storage tanks and control systems.

Identify the locations of the offices where Key Personnel will accomplish the work. Provide assurance of how the majority of the work can be conducted in close association with the City Staff.

Organizational Chart: Provide an organization chart that shows how the project manager will manage lines of communication between the team, City, subconsultants and key stakeholders. Identify the Key Staff that will interact with the City. At a minimum, Key Staff shall include the Project Manager, Civil Lead and the Electrical Lead. Provide brief resumes of the Key Staff and an explanation of the function each key person will perform. Key Staff must each have a minimum of 10 years of professional experience. Include the following...
statement on the organization chart: “Key Staff will be available for the full duration of the project. Key Staff will not be removed or replaced without the written consent of the City.”

Reference Projects: Provide descriptions of similar projects that the proposed Key Staff have completed. The descriptions of similar projects should include:

- Project description and location;
- Description of services provided;
- Current status (i.e. active, completed, etc);
- Relevant aspects of the project related to this RFP;
- Key personnel involved; and,
- Client name contact person, and his/her current telephone number and email address

The Qualifications section of the proposal shall be a maximum of ten pages.

IV. Project Understanding and Approach

Provide a detailed discussion of the project which illustrates the consultant’s understanding of the project:

- requirements, goals, and constraints.
- description of the process and steps needed to complete the project.

The Project Understanding and Approach section shall be limited to ten pages.

V. Quality Control

Provide a summary of the consultant’s or consultant team’s overall approach to quality control. Describe the methods or practices the team will use to deliver a quality product to the City. Specifically, outline the internal protocol for ensuring clear communication between City staff, the prime consultant, and all sub-consultants. Articulate protocols for ensuring the submittals are complete and timely.

The Quality Control section of the proposal shall be a maximum of one page.

VI. Availability

Provide a description and percentage of the availability for Key Staff identified on the organizational chart. Describe the current projects, duties, and workload. Provide contact information (telephone number at a minimum) of at least three clients of projects that each individual is currently working on. If an individual Key Staff is not currently working on three projects, provide as much description and contact information as possible.

Each client reference will be contacted by City staff. The City will make a good-faith effort to contact the provided references, however, the proposal will not receive the benefit of the reference check if the contact person does not respond to inquiries or if the submitted telephone number is incorrect.

The Availability section of the proposal shall be a maximum of two pages.
VII. Schedule

Consultants shall prepare and submit a comprehensive schedule to reflect the time frames required for completing each task of the Scope of Work. The schedule shall be prepared in Microsoft Project and show: the critical path of the work items, start, finish and predecessors. Tasks or Milestones, which are interdependent, must be identified, along with the completion date of each milestone.

Assume a September 11, 2017 Notice to Proceed. Per the EDA grant requirements, construction is required to commence on or prior to September 14, 2018. The consultant’s project schedule shall reflect this requirement.

The consultant is encouraged to develop additional detail regarding the work schedule, suggest changes within the constraints of the duration and end dates, and suggest changes to expedite delivery of the requested services.

NOTE: The consultant’s schedule should allow for a City review period of at least three weeks for each key project deliverable.

The Schedule section of the proposal shall be a maximum of four pages.

VIII. Appendix (Supplemental Information)

The Appendix must contain the following information:

1. Provide resumes of Key Staff only -- Resumes of Key Staff to be assigned to the project should include a brief biography of the individual’s experience, their registration information, their education, professional affiliations and information on specific projects the individual has been involved with, clearly showing and highlighting relevant experience. 
   Resumes can be two pages each, maximum. Up to 6 key staff may be submitted.

2. Provide as a sample the Agenda and Meeting Minutes from a meeting led by the proposed Project Manager within the past two years. 
   The length of the Agenda and Meeting Minutes is limited to the sample chosen by the consultant.

3. Provide a detailed Scope of Work -- The Scope of Work will be the basis for the consultant agreement and should contain a detailed outline for the required services. The Scope of Work should include all required tasks, as either proposed or optional services. The Scope of Work should indicate key assumptions made to develop the scope, describe the methodology to be used, specific work to be performed, outcomes and deliverables. The Scope of Work section shall be limited to ten pages.

IX. Separate Sealed Cost Proposal

The proposal should not include cost or rate information.

A separate, sealed Cost Proposal shall be submitted which details the consultant team’s proposed fees, broken down by each various work phase. The method of proposal shall be fixed fee for the design phase of the project, including Project Management, Preliminary Engineering, Final Design and Engineering Support During Bidding. The design phase shall commence upon issuance of a notice to proceed and shall terminate at the award of a construction contract. The cost proposal shall also include a budget for Engineering Support During Construction, which shall only be authorized after the City receives authorization to proceed to construction from EDA. The cost proposal for Engineering Support During Construction shall be on a time and material Basis, based on an hourly
fee schedule which shall include all staff billing classifications for the prime consultant and any sub-consultant. The prime consultant may not apply a mark-up to their fee (profit) on sub-consultant fees. Neither the prime consultant nor any sub-consultant may apply a mark-up to their fee (profit) on other direct costs. The fee proposal should break down project costs by phase and task.

The cost proposal must identify the Key Staff identified in the org chart and other classifications that will be billed. New classifications will be required to be approved before they can incur work on the contract.

Evaluation

The City will review the proposals for completeness, clarity, and content quality. Each proposal will be reviewed to determine if it meets the requirements contained in “PROPOSAL FORMAT AND CONTENT REQUIREMENTS.” The City may reject any proposal if it is conditional, incomplete or contains irregularities.

The City may waive an immaterial deviation in a proposal. A waiver of an immaterial deviation shall not modify the proposal documents, and it shall not exempt the consultant from any terms of an executed consultant services agreement, should one be awarded.

The City will assemble a selection committee, comprised of City staff members and other qualified individuals, which will evaluate submitted proposals. A short list of consultants for oral interviews may be selected.

The City reserves the right to select a consultant based on the proposals submitted, without interviews, at its discretion.

Aside from the selection process described herein, consultants or their representatives are prohibited from attempting to influence this consultant selection by contacting Selection Committee members, elected officials, City staff, or other individuals and entities involved in selecting the consultant or awarding the consultant agreement. Any such attempt to influence selection outside of the proscribed process will be grounds for disqualification.

SELECTION PROCEDURE

The City will select the consultant based on the following procedure:

1. After the period has closed for receipt of proposals, each proposal will be examined to determine compliance with the format requirements specified by the City. Any proposal that does not meet the format requirements may be rejected. The City may reject any proposal if it is conditional or incomplete.

2. Evaluate the proposals. Evaluations will be based on qualifications and the quality of the proposal. The total score possible on any proposal would be 100 points. The scoring breakdown (with maximum points possible) will be as follows:
CRITERIA     MAX POINTS POSSIBLE
a.        Completeness of Proposal    10
b.        Firm Qualifications        20
c.        Experience with Similar Contracts and Clients 20
d.        Understanding of the Scope of Work        15
e.        Quality Control Approach        5
f.        Experience & Availability of Project Staff        15
g.        Project Schedule Approach        5
h.        Demonstrated Communication Skills    10

3. Develop a ranking of consultants. Develop a short list of qualified firms that may be asked to participate in oral interviews.

4. Conduct oral interviews, if elected by City.

5. Evaluate oral interviews and develop final ranking of consultants.

6. Notify consultants of the results.

7. Open the cost-proposal from the top ranked consultant and conduct project-scoping meeting with top ranked consultant.

8. Seek City Council approval to negotiate and execute contract based on a fixed fee contract amount for design services with engineering support during construction on Time and Materials basis with a budget.

9. If an agreement on the scope of services and compensation cannot be reached, negotiations with the top ranked consultant will be closed, and negotiations with the next-highest ranked consultant will be opened. The process is repeated until a contract is successfully negotiated.

Schedule
Proposal Due Date: 4:00 pm, Friday, August 4, 2017
Proposal review and evaluation: August 7-16, 2017
Oral interviews (if elected): August 21-23, 2017
Selection/Negotiation: August 25-30, 2017
Contract Award: September 7, 2017

Oral Interviews
The selection process may include oral interviews of the top ranked consultants or consultant teams. The consultants will be notified in advance of the time and place of the oral interview. Consultants will also be notified of additional information, if any, to be submitted at the oral interview. The City reserves the right to select a consultant based on the RFP's submitted, without interviews, at its discretion.
Award

Award of the selected consultant's contract will be subject to City Council approval. Aside from announcing the top ranked proposals, the scored evaluations will be kept confidential.
GENERAL CONDITIONS

Limitations
This RFP does not commit the City to award a contract or to procure or contract for services or supplies. The City is not responsible for any costs incurred in the preparation of proposals in response to this request, as further explained below. The City expressly reserves the right to reject any and all proposals or to waive any irregularity or informality in any proposal or in the RFP procedure and to be the sole judge of the responsibility of any proposer and of the suitability of the materials and/or services to be rendered. The City reserves the right to withdraw this RFP at any time without prior notice. Furthermore, the City reserves the right to modify the RFP schedule described above.

Until award of a contract, the proposals shall be held in confidence and shall not be available for public review. No proposal shall be returned after the date and time set for the opening thereof. All proposals shall become the property of the City.

RFP Addendum
Any changes to the RFP requirements will be made by written addenda issued by the City and shall be considered part of the RFP. Upon issuance, such addenda shall be incorporated in the agreement documents, and shall prevail over inconsistent provisions of earlier issued documentation.

Pre-contractual Expenses
Pre-contractual expenses include any expenses incurred by proposers in:

1. Preparing proposals in response to this RFP.
2. Submitting proposals to the City.
3. Negotiations with the City on any matter related to proposals.
4. Other expenses incurred by a proposer prior to the date of award of any agreement.

In any event, the City shall not be liable for any pre-contractual expenses incurred by any proposer. Proposers shall not include any such expenses as part of the price proposed in response to this RFP. The City shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

Signature
The proposal shall also provide the following information: name, title, address, email address, and telephone number of individual with authority to bind the consultant or consultant team and also who may be contacted during the period of proposal evaluation. The proposal shall be wet-signed by an official authorized to bind the consultant or consulting team and shall contain a statement to the effect that the proposal is a firm offer and remains in effect for at least a ninety (90) day period.

Contract Arrangements
The successful consultant is expected to execute a contract the City’s Consultant Agreement. A copy of the City’s Consultant Agreement is attached as Attachment 1.
Conflict of Interest

Consultants and consultant firms submitting proposals in response to this RFP must disclose to the City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided under Agreement for consultant services to be awarded pursuant to this RFP.

If the consultant has no conflict of interest, a statement to that effect shall be included in the transmittal letter.

Insurance Requirements
The successful consultant shall provide a summary of the firm’s insurance coverage for Comprehensive General Liability, Automotive Liability, Professional Liability, and Worker’s Compensation. The limits of insurance coverage shall be as specified in the City’s Consultant Agreement in Attachment 1.

ATTACHMENTS

Attachment 1 – Sample Consultant Agreement
Attachment 2 – Site Location Map
Attachment 3 – Conceptual Site Plan
Attachment 4 – Preliminary Engineer’s Estimate
Attachment 5 – Summary of EDA Construction Standards
AGREEMENT BETWEEN THE CITY OF SANGER AND

_______________

FOR CONSULTANT SERVICES

This agreement is made and entered into effective on ____________, by and between the City of Sanger, a California municipal corporation (hereinafter referred to as “CITY”) and ________________, (hereinafter referred to as “CONSULTANT”).

RECITALS

WHEREAS, CITY desires to obtain consultant services in connection with ________________, hereinafter referred to as [the “Project” or “other” description]; and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as described in CONSULTANT’S Proposal for services to CITY which is attached hereto and incorporated by reference as “Exhibit A” and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, this Agreement will be administered for CITY by ________________.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals which are part of this Agreement and the terms and conditions hereinafter contained, it is mutually agreed as follows:

1. Scope of Services.

CONSULTANT shall perform to the satisfaction of CITY, services as requested by CITY as follows: [describe services] [or as set forth in Exhibit __].

2. Term of Agreement.

This Agreement shall be effective from ____________ to ____________ [or This Agreement shall be effective from ________ to the date of completion as set forth in the Schedule attached hereto as Exhibit __] subject to any earlier termination in accordance with this Agreement.

3. Compensation.

CONSULTANT’S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be as follows: [add] [or as set forth in Exhibit __]
4. **Termination.**

   A. CITY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the notice.

   B. CITY may terminate this contract with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, CITY may proceed with the work in any manner deemed proper by CITY. If CITY terminates this contract with CONSULTANT, CITY shall pay CONSULTANT the sum due to CONSULTANT under this contract prior to termination, unless the cost of completion to CITY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONSULTANT under this contract and the balance, if any, shall be paid to CONSULTANT upon demand.

   C. The maximum amount for which the CITY shall be liable if this contract is terminated is _______________ dollars.

5. **Indemnification.**

   To the furthest extent allowed by law, CONSULTANT agrees to defend, indemnify, and hold harmless the CITY and each of its officers, officials, employees, agents, and volunteers from and against all claims, demands, costs, or liability, and expenses including attorneys’ fees arising out of the performance of the work described in this Agreement, caused in whole or in part by the sole negligence, recklessness, or willful misconduct of CONSULTANT, its principals, officers, employees, agents, or volunteers in the performance of this Agreement or anyone for whose acts any of them may be liable excluding, however, such claims, demands, loss, damages, or arising from CITY’s sole negligence or willful acts.

6. **Insurance.**

   A. Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in Exhibit “A” or as may be authorized, and any additional insurance as may be required, in writing by City Manager or her designee at any time and in her sole discretion.

   B. If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. This phrase “fail to maintain any required insurance” shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
7. **Nondiscrimination.**

To the extent required by controlling federal, state, and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era.

8. **Independent Contractor.**

In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venture, partner, or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

9. **Notices.**

Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party which notice is to be given at the party’s address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of mailing thereof.

10. **Assignment.**

This agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights of obligations under this Agreement without the prior written approval of the City Manager or her designee.

11. **Retention of Records/Audit.**

CONSULTANT and CITY shall maintain and make available for inspection all books, documents, papers, accounting, records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract.

12. **Sub-Contracting.**

Nothing contained in this AGREEMENT or otherwise shall create any contractual relation between CITY and any sub-consultant(s), and no sub-contract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be
as fully responsible to CITY for the acts and omissions of its sub-consultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT’s obligation to pay its sub-consultant(s) is an independent obligation from CITY obligation to make payments to the CONSULTANT.

13. **Compliance with Law.**

In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California, and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

14. **Conflict of Interest.**

A. CONSULTANT shall disclose any financial, business, or other relationship with CITY that may have an impact upon the outcome of this contract, or any ensuing CITY construction project.

B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this contract.

15. **Waiver.**

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

16. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

17. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

18. **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

19. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by
construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

20. **Attorneys’ Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorneys’ fees and legal expenses.

21. **Exhibits.** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

22. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

23. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

24. **No Third Party Beneficiaries.** The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

---

**CITY OF SANGER**

By: ________________________________  By: ________________________________

Tim Chapa, City Manager

Date: ______________________________  Date: ______________________________

**ATTEST:**

By: ________________________________

Rebeca Hernandez
City Clerk
EXHIBIT A

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than $1,000,000 per accident for bodily injury and property damage.

3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

4. **Professional Liability** (Errors and Omissions) Insurance appropriates to the CONSULTANT’s profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate.

If the CONSULTANT maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

**Additional Insured Status**

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT’s insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
Primary Coverage
For any claims related to this contract, the CONSULTANT’s insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT’s insurance and shall not contribute with it.

Notice of Cancellation
Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation
CONSULTANT hereby grants to Entity a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the Entity by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions
Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the CONSULTANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies
If any of the required policies provide coverage on a claims-made basis:
1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONSULTANT must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage
CONSULTANT shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT’s obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
Subcontractors
CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances
Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
PROPOSED STORAGE TANK
(FOR BLENDING WELL 8 & PEAK DEMAND)
ATTACHMENT 3
PROJECT SITE PLAN
# Preliminary Engineer's Estimate

## 0.75 MG Water Storage Tank

**City of Sanger**

December 9, 2015

## Opinion of Probable Construction Costs

### General

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Extension</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mobilization</td>
<td>1</td>
<td>LS</td>
<td>$53,000</td>
<td>$53,000</td>
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<td>2</td>
<td>Clearing and Grubbing</td>
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<td>$16,000</td>
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<td>3</td>
<td>Earthwork</td>
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<td>CY</td>
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<td>4</td>
<td>Traffic and Dust Control</td>
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<td>5</td>
<td>Worker Protection in Excavations</td>
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<td>LS</td>
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<td></td>
<td><strong>General Sub-Total</strong></td>
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### Off-Site Storm Drain

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<th>Unit Price</th>
<th>Extension</th>
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<tbody>
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<td>Storm Drain Manhole</td>
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<td>EA</td>
<td>$3,500</td>
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<td>8</td>
<td>Storm Drain Trench Patch (12-ft width)</td>
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<td>$70</td>
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### Off-Site Water

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<th>Unit Price</th>
<th>Extension</th>
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<tbody>
<tr>
<td>9</td>
<td>Connection to Well 8A Discharge Line</td>
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<td>EA</td>
<td>$3,500</td>
<td>$3,500</td>
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<td>10</td>
<td>Connection to Church Avenue Water Main</td>
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<td>EA</td>
<td>$2,500</td>
<td>$7,500</td>
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<td>11</td>
<td>12&quot; PVC C-900 Water Main</td>
<td>980</td>
<td>LF</td>
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<td>$62,720</td>
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<td>Telemetry Conduit</td>
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<td><strong>Off-Site Water Sub-Total</strong></td>
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### Off-Site Street

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<th>Unit</th>
<th>Unit Price</th>
<th>Extension</th>
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<tbody>
<tr>
<td>14</td>
<td>Remove &amp; Replace 16-ft Alley Driveway</td>
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<td>15</td>
<td>Church Ave. Roadway Excavation</td>
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<td>J Street Roadway Excavation</td>
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<td>J Street Roadway - Pavement</td>
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<td>34-ft Commercial Driveway</td>
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<td>20</td>
<td>Remove Curb &amp; Install Ramp</td>
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<td>Curb &amp; Gutter</td>
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<td>$12,075</td>
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<tr>
<td>22</td>
<td>Church &amp; &quot;J&quot; Sidewalk</td>
<td>1,620</td>
<td>SF</td>
<td>$7</td>
<td>$11,340</td>
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<tr>
<td>23</td>
<td>34-ft Driveway</td>
<td>680</td>
<td>SF</td>
<td>$8</td>
<td>$5,440</td>
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<tr>
<td>24</td>
<td>Sewer Lift Station Rehabilitation</td>
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<td>25</td>
<td>Landscaping</td>
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<td>6-ft CMU Block Wall</td>
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<td>27</td>
<td>Access Gates (30-ft Vehicle &amp; 4-ft Ped.)</td>
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<td>$15,000</td>
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<td><strong>Off-Site Street Sub-Total</strong></td>
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### OFF-SITE UTILITIES

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<th>Unit</th>
<th>Rate</th>
<th>Amount</th>
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<tbody>
<tr>
<td>28</td>
<td>P. G. &amp; E. Rule 16</td>
<td>100</td>
<td>LF</td>
<td>$50</td>
<td>$5,000</td>
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<td>29</td>
<td>P. G. &amp; E. SERVICE PANEL</td>
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<td>$15,000</td>
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<td>30</td>
<td>Telephone (Undergrounding of Ovrhd line)</td>
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<td>$7,000</td>
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Off-Site Utilities Sub-Total $27,000

### ON-SITE

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<tr>
<th></th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Rate</th>
<th>Amount</th>
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<tbody>
<tr>
<td>31</td>
<td>0.75 MG Welded Steel Tank (Foundation, Tank &amp; Painting)</td>
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<td>Tank Special Painting (City Seal)</td>
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<tr>
<td>33</td>
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<td>300</td>
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<td>$19,200</td>
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<td>12&quot; PVC C-900 Fill line (System Water)</td>
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<td>12&quot; PVC C-900 Discharge line</td>
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<td>36</td>
<td>Yard Pipe Fittings</td>
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<td>37</td>
<td>Valving &amp; Booster Pump Piping</td>
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<td>38</td>
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<td>42</td>
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<td>43</td>
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<td>45</td>
<td>Electrical Controls System &amp; Conduits</td>
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<td>Electrical Controls Slab &amp; Covered Port</td>
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On-Site Sub-Total $1,368,820

TOTAL CONSTRUCTION $1,863,000
ATTACHMENT 5

EDA SUMMARY OF CONSTRUCTION STANDARDS
UNITED STATES DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

SUMMARY OF EDA CONSTRUCTION STANDARDS

A REFERENCE TOOL FOR CONSTRUCTION INVESTMENTS MADE UNDER SECTIONS 201 OR 209 OF THE PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965, AS AMENDED (42 U.S.C. § 3121 ET SEQ.)

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**TABLE OF CONTENTS**

I. PURPOSE AND SCOPE OF THIS SUMMARY ................................................................. 1
   A. PURPOSE .................................................................................................................. 1
   B. SCOPE ..................................................................................................................... 1

II. DEPARTMENT OF COMMERCE AND EDA POLICIES ........................................... 2

III. REQUIREMENTS APPLICABLE TO EDA INVESTMENTS ...................................... 2
   A. GRANT RECIPIENT AS TRUSTEE ........................................................................... 2
   B. THE RECIPIENT’S RESPONSIBILITIES ................................................................. 2
   C. EMINENT DOMAIN .................................................................................................. 3
   D. RECORD-KEEPING REQUIREMENTS ....................................................................... 4
   E. THE FINANCIAL ASSISTANCE AWARD ............................................................... 4
   F. FINANCIAL REPORTING .......................................................................................... 4
   G. MONITORING AND REPORTING PROJECT PROGRESS ..................................... 5

IV. PRE-CONSTRUCTION REQUIREMENTS .................................................................... 6
   A. ENVIRONMENTAL COMPLIANCE ......................................................................... 6
   B. CIVIL RIGHTS COMPLIANCE ................................................................................ 6
   C. START OF CONSTRUCTION ...................................................................................... 7
   D. PROJECT MANAGEMENT CONFERENCE ............................................................ 7
   E. ARCHITECT/ENGINEER SERVICES ....................................................................... 7
   F. SERVICES PERFORMED BY RECIPIENT’S OWN FORCES .................................. 8
   G. TRIBAL EMPLOYMENT RIGHTS ORDINANCES ................................................... 8
   H. LAND, EASEMENTS AND RIGHTS OF WAY ......................................................... 9
   I. RELOCATION ASSISTANCE ...................................................................................... 9
   J. EDA REVIEW OF PLANS AND SPECIFICATIONS ............................................... 9
   K. NON-EDA WORK .................................................................................................... 10
   L. ALTERNATE CONSTRUCTION PROCUREMENT METHODS ................................ 11
   M. OVERRUN AT THE BID OPENING ......................................................................... 11
   N. PROTEST PROCEDURES ......................................................................................... 11

V. REQUIREMENTS DURING CONSTRUCTION ............................................................ 11
   A. THE RECIPIENT’S RESPONSIBILITIES ................................................................. 11
   B. CONTRACT CHANGE ORDERS ............................................................................. 13
   C. SPECIFIC REQUIREMENTS FOR SUBCONTRACTORS ....................................... 14
   D. CONTRACTING STANDARDS ................................................................................. 14
   E. COMPETITIVE PROCUREMENT REQUIREMENTS ............................................... 15

VI. DISBURSEMENT OF GRANT FUNDS AND FINANCIAL ADMINISTRATION .......... 18
   A. PRE-DISBURSEMENT REQUIREMENTS ............................................................... 18
   B. INTERIM DISBURSEMENTS .................................................................................... 19
   C. FINAL DISBURSEMENT ......................................................................................... 19
I. PURPOSE AND SCOPE OF THIS SUMMARY

A. PURPOSE

1. This “Summary of EDA Construction Standards” (hereinafter referred to as “Summary”) describes the procedures for compliance, reporting, and record-keeping, and administrative requirements that apply to construction investments made by the Economic Development Administration (“EDA”) under sections 201 or 209 (42 U.S.C. §§ 3141 and 3149) of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 et seq.) (“PWEDA”).

2. Terms and Conditions. Form CD-450, “Financial Assistance Award,” (the “Award”), executed by EDA and the recipient, together with the EDA-approved project budget and scope of work, standard terms and conditions, special award conditions, and all applicable federal statutory and regulatory requirements as incorporated by reference, constitute the complete requirements, hereinafter referred to as the “Terms and Conditions,” applicable to the EDA investment. This Summary is designed to help clarify these requirements. In the event that any term or provision in this Summary conflicts with or is inconsistent with any provision contained in the Terms and Conditions, the provisions of the Terms and Conditions are controlling.

B. SCOPE

1. This Summary applies to all Awards for construction projects and is based on the Office of Management and Budget’s (“OMB”) administrative and programmatic requirements for federal grants as set forth in applicable OMB Circulars, and in the following regulations published in the Code of Federal Regulations (“C.F.R.):

   (a) 13 C.F.R. chapter III (Economic Development Administration, Department of Commerce);
   (b) 15 C.F.R. part 14 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations);
   (c) 15 C.F.R. part 24 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);
   (d) 2 C.F.R. part 220 (OMB Circular A-21, Cost Principles for Educational Institutions);
   (e) 2 C.F.R. part 225 (OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments); and
   (f) 2 C.F.R. part 230 (OMB Circular A-122, Cost Principles for Nonprofit Organizations), each as amended from time to time.

2. This Summary supplements the requirements set out in PWEDA, EDA’s regulations at 13 C.F.R. chapter III, the Terms and Conditions of the Award, and the applicable OMB Circulars listed in the Appendix to this Summary and the hyperlinks set out therein (see section IX.). This Summary should be used as a reference tool to implement various requirements that apply to EDA construction investments made under sections 201 or 209 of PWEDA (42 U.S.C. §§ 3141 and 3149). This Summary is not a comprehensive source of information. In addition to PWEDA, a list of primary sources of legal requirements is set out above in section I.B.1. See also section IX. (Appendix) of this Summary.
II. DEPARTMENT OF COMMERCE AND EDA POLICIES

A. As a federal agency, EDA is obligated to promulgate regulations and establish policies and procedures applicable to recipients of EDA investments to:

1. Ensure compliance with applicable federal requirements;
2. Safeguard the public’s interest in the grant assets; and
3. Promote the effective use of grant funds in accomplishing the purpose(s) for which they were awarded.

B. EDA or the Department of Commerce (the “Department” or “Departmental”) may issue changes from time to time to EDA’s regulations and other requirements and policies that apply to the Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering the Award. The implementation of any such regulatory, administrative or programmatic change in administering the Award must have prior EDA written approval.

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

III. REQUIREMENTS APPLICABLE TO EDA INVESTMENTS

A. GRANT RECIPIENT AS TRUSTEE

The recipient of an EDA investment holds grant funds and any EDA-funded project property in trust for the purpose(s) for which the Award was made. The recipient’s obligation to the Federal government continues for the estimated useful life of the project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the “Federal Interest”) in the property improved, in whole or in part, with the EDA investment. See 13 C.F.R. § 314.2.

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

B. THE RECIPIENT’S RESPONSIBILITIES

1. The recipient is responsible for complying with all federal laws (and the regulations issued thereunder), federal, Departmental and EDA policies, Executive Orders, and OMB Circulars, as referenced in the Terms and Conditions, each as may be amended from time to time. These statutes, regulations, policies, Executive Orders and OMB Circulars may include administrative and audit requirements, federal cost principles, programmatic requirements, financial requirements, and property management requirements. See 13 C.F.R. § 302.6. The recipient is responsible for the design, bidding, construction, and operation of the project to ensure compliance with all grant requirements, including those set out at 13 C.F.R. part 305.
2. In order to facilitate timely implementation, EDA may accept the recipient’s certification, accompanied by evidence satisfactory to EDA, that it meets the requirements for receiving the Award and that it will comply with its Terms and Conditions. See 13 C.F.R. § 302.15. EDA also may require the recipient submit specific certifications for critical issues, such as major procurement and costs claimed in requests for disbursement of grant funds. EDA will monitor project progress and compliance with the Terms and Conditions through the:

(a) Recipient’s written reports;
(b) Review of the recipient’s records during EDA visits to the project site;
(c) Department’s Office of Inspector General audits; and
(d) Single or program-specific audit conducted in accordance with OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” and the related Compliance Supplement. See section VIII.A. of this Summary.

3. During the construction period, the recipient is responsible for:

(a) Monitoring project progress and reporting progress to EDA;
(b) Providing for adequate construction inspection;
(c) Paying costs incurred for the project promptly; and
(d) Monitoring contractors’ compliance with applicable local, State and federal requirements.

4. After construction is completed, the recipient is responsible for submitting close-out documentation and properly administering, operating and maintaining the project for its estimated useful life, as determined by EDA and as set forth in the Terms and Conditions. See 13 C.F.R. § 302.12.

5. Failure to satisfy any Term or Condition may result in disallowance of costs, or suspension or termination of the Award and recovery of grant funds. In addition, such failure may have a negative impact on the recipient’s ability to receive future funding from the Department. See 13 C.F.R. § 302.18. In particular, the project development time schedule, a Term of the Award, can be extended only through the recipient’s written request for an amendment to the Award and written approval by EDA. See 13 C.F.R. § 302.7. The Terms and Conditions of the Award place the recipient on notice that the grant may be suspended for not proceeding in accordance with the EDA-approved time schedule set out in the Award. No disbursement of EDA funds is permitted when a project has exceeded the EDA-approved time schedule, unless EDA has given written approval to a time schedule extension. See 13 C.F.R. § 305.9 regarding project phasing and investment disbursement.

C. EMINENT DOMAIN

In making a discretionary award for a construction project, EDA considers the policy on eminent domain set out in Executive Order 13406, “Protecting the Property Rights of the American People.” The Terms and Conditions of the Award include appropriate provisions to ensure that the recipient has agreed:

1. Not to use any power of eminent domain available to the recipient (including the commencement of eminent domain proceedings) for use in connection with the project for the purpose of advancing the economic interests of private parties;
2. Not to accept title to land, easements or other interests in land acquired by the use of any power of eminent domain for use in connection with the project for such purposes; and
3. Any use of the power of eminent domain to acquire land, easements, or other interests in land, whether by the recipient or any other entity that has the power of eminent domain, in connection with the project without prior written consent of EDA is an unauthorized use of the project. If the recipient puts the project to an unauthorized use, the recipient will be required to compensate EDA for its fair share in accord with 13 C.F.R. §§ 314.4 and 314.5, and 15 C.F.R. §§ 14.32 or 24.31, as applicable.

D. RECORD-KEEPING REQUIREMENTS

The recipient is responsible for maintaining records that document compliance with the Terms and Conditions of the Award. At a minimum, the recipient’s records must contain documentation that fully discloses:

1. The amount and disposition of the EDA investment assistance;
2. All project expenditures and procurement actions;
3. The total cost of the project that the Award funds;
4. The amount and nature of the portion of project costs provided by non-EDA sources;
5. Contractor compliance with applicable federal requirements; and
6. Such other records as EDA determines will facilitate an effective audit.


E. THE FINANCIAL ASSISTANCE AWARD

The recipient should pay particular attention to the following provisions of the Award:

1. Description of Project. The description of the project in the Award, together with more detailed information provided in the Award application, determines and defines the scope(s) of work to be funded under the Award.
2. Federal Requirements. The listed federal requirements describe applicable administrative or programmatic obligations for which the recipient is responsible. Critical documents are listed in section IX. (Appendix) of this Summary. These publications provide important information on requirements regarding procurement, record-keeping, eligible project costs and other administrative or programmatic issues.
3. Standard Terms and Conditions. The standard terms and conditions are applicable to all EDA-assisted construction projects.
4. Special Award Conditions. The special award conditions may contain conditions that must be satisfied prior to advertisement for bids, start of construction, or disbursement of Award funds, as well as conditions unique to the Award that are ongoing for the estimated useful life of the project.

F. FINANCIAL REPORTING

1. Semiannual financial reports. Any recipient whose Award has not been fully disbursed is required to submit Form SF-269, “Financial Status Report” to EDA semiannually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable project expenses that have been incurred, but not claimed for reimbursement by the recipient. The first report shall be as of March 30 of each year and shall be submitted to EDA no later than April 30 of each year, and the second report shall be of September 30 of each year and shall be submitted to EDA no later than October 30
of each year. Instructions for completing and submitting Form SF-269 will be furnished to the recipient at least 60 days before the report is due.

2. *Final financial report.* The recipient must submit a final financial report using Form SF-269 within 90 days of the expiration date of the Award (or from the date the recipient accepts the project from the contractor, whichever occurs earlier).

3. *Noncompliance with financial reporting requirements.* Noncompliance with these requirements will result in the suspension of disbursements under the Award. Financial reports are to be submitted to the Project Officer.

G. MONITORING AND REPORTING PROJECT PROGRESS

1. *Quarterly performance reports.*

   (a) Quarterly performance reports must be submitted in accordance with the procedures set out in 15 C.F.R. parts 14 or 24, as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under the Award; deferral of processing of new awards, amendments or supplemental funding pending the receipt of the overdue report(s); or the establishment of an account receivable for the difference between the total federal share of outlays last reported and the amount disbursed. See 13 C.F.R. § 302.18(a)

   (b) Unless otherwise specified in the Award, the quarterly performance report will contain the following information for each project program, function, or activity:

      (i) A comparison of planned and actual accomplishments according to the timetable or list of project objectives in the Award;
      (ii) An explanation of any delays or failures to meet the project timetable or project goals; and
      (iii) Any other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.

   (c) Quarterly performance reports shall be submitted for each calendar quarter to the Project Officer. Each performance report will be due not later than January 15, April 15, July 15, and October 15 for the immediate previous quarter. The final project performance report shall be submitted to EDA no more than 90 days after the project closeout date. This reporting requirement begins with the recipient’s acceptance of the Award and ends when EDA approves project closeout. See 15 C.F.R. §§ 14.51 or 24.40, as applicable.

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

   See 15 C.F.R. §§ 14.51 or 24.40, as applicable.

2. *Interim performance reporting.* Events may occur that have significant impact upon the project, including delays or adverse conditions that may materially affect the ability of the recipient to attain project objectives within established time periods or meet the project development time schedule. The recipient must disclose such problems to EDA in the most expedient way possible and then, if initial notification was not made in writing, report the event in writing, including a statement of the action contemplated, and any federal assistance needed to resolve the situation. If budget changes are required, the
recipient must submit a written budget revision request. See 15 C.F.R. §§ 14.25(h) or 24.30(c)(2), as applicable. Any changes made to the project without EDA’s prior approval are made at the recipient’s risk of nonpayment of costs, suspension, termination, or other applicable EDA action. See 15 C.F.R. § 302.7.

3. Government Performance and Results Act reporting. In addition to quarterly performance reports, EDA may require the recipient to report on project performance beyond the project closeout date for Government Performance and Results Act (GPRA) purposes. In no case shall the recipient be required to submit any report more than 10 years after the project closeout date. Data used by the recipient in preparing reports shall be accurate and from independent sources whenever possible. See 13 C.F.R. § 302.16.

IV. PRE-CONSTRUCTION REQUIREMENTS

A. ENVIRONMENTAL COMPLIANCE

EDA undertakes environmental reviews of projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. No. 91-190; 42 U.S.C. § 4321 et seq., as implemented under 40 C.F.R. chapter V) (“NEPA”), and all other federal environmental statutes, regulations and Executive Orders, as listed in the Terms and Conditions of the Award. These authorities include the implementing regulations of NEPA, which require EDA to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 C.F.R. § 1506.6(b). The recipient must pay special attention to and comply with any special environmental conditions in the Award. See 13 C.F.R. § 302.1.

B. CIVIL RIGHTS COMPLIANCE

In accordance with the following authorities, discrimination is prohibited by a recipient or “Other Party” (as defined in 15 C.F.R. § 8.3(l) and 13 C.F.R. § 302.20(b)) with respect to a project receiving EDA investment assistance under PWEDA:

2. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) prohibiting discrimination on the basis of sex under federally-assisted education programs or activities;
5. The Age Discrimination Act of 1975, as amended (Title III of Pub. L. No. 94-135, 42 U.S.C. § 6101 et seq.), and the Department’s implementing regulations found at 15 C.F.R. part 20;
6. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; and
7. Other federal statutes, regulations and Executive Orders, as applicable. See generally 13 C.F.R. § 302.20.

Consistent with 15 C.F.R. §§ 14.44(b) or 24.36(e), as applicable, the recipient and any subrecipient will take all necessary affirmative steps to ensure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible.

C. START OF CONSTRUCTION

1. Early construction starts. The recipient must make a written request to EDA for early construction start permission. In order for project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the project facilities is in compliance with the Terms and Conditions. If construction commences prior to EDA’s determination, the recipient proceeds at its own risk until EDA’s review and concurrence. See 13 C.F.R. § 305.11.

2. Delayed construction starts. The following requirement is applicable to all EDA-assisted construction projects: If significant construction (as determined by EDA) is not commenced within two years of the approval of the project or by the date estimated for start of construction in the grant Award (or the expiration of any extension granted in writing by EDA), whichever is later, the EDA grant will be automatically suspended and may be terminated if EDA determines, after consultation with the recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. See also sections VII.B. and F. of this Summary.

D. PROJECT MANAGEMENT CONFERENCE

1. Shortly after approval of the Award, EDA may contact the recipient to arrange a project management conference. The purpose of the project management conference is to explain to the recipient its post-approval responsibilities for administration of the Award and applicable federal requirements.

2. Whenever practicable, the project management conference should be held when and where appropriate EDA regional office personnel will be available. The recipient's authorized representative, architect/engineer, attorney and possibly the recipient’s financial representative should attend.

E. ARCHITECT/ENGINEER SERVICES

1. The architect/engineer agreement shall provide for all services required by the recipient for the design and engineering phases of the project. Appropriate standards or guidance developed by professional organizations, such as the American Consulting Engineers Council (“ACEC”), American Society of Civil Engineers (“ASCE”), National Society of Professional Engineers (“NSPE”), or the American Institute of Architects (“AIA”), may be used where the recipient does not have standard procurement or contracting documents.

2. The architect/engineer agreement shall cover all services necessary for the successful execution of the project including consultations, surveys, soil investigations, supervision, travel, “as-built” or record drawings, arrow diagram (“CPM/PERT”) where applicable, and incidental costs. Regardless of who furnishes the construction inspector, the architect/engineer shall be held responsible for making sufficient visits to the project site
to ensure that the work proceeds in accordance with the approved plans and specifications.

3. The recipient must select the architect/engineer in accordance with the procurement standards set forth in 15 C.F.R. parts 14 or 24, as applicable. Unless EDA has approved a different type of award, the compensation to the architect/engineer for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on EDA’s determination (subject to audit) that the compensation is reasonable. The “cost-plus-a-percentage-of-cost” and “percentage of construction cost” methods of contracting are specifically prohibited. See 15 C.F.R. §§ 14.44(c) or 24.36(f)(4), as applicable.

4. All architect/engineer contracts awarded by recipients shall include a provision to the effect that the recipient, EDA, the Comptroller General of the United States, the Departmental Inspector General, or any of their duly authorized representatives, shall have access to any paper or electronic documents, books, correspondence, and records of the architect/engineer (which are pertinent to the Award) to verify the recipient’s compliance with Award requirements. See 13 C.F.R. § 302.14.

5. The recipient must require the architect/engineer to maintain all records for at least three (3) years after the recipient makes final payment and all pending matters are closed. See 15 C.F.R. §§ 14.53(b) or 24.36(i)(11), as applicable.

F. SERVICES PERFORMED BY RECIPIENT’S OWN FORCES

The recipient may have a portion or all of the design, construction, inspection, legal services, or other work or services in connection with the project performed by personnel who are employed by the recipient either full-time or part-time (“force account construction”). See 13 C.F.R. § 305.7.

EDA may approve the use of “force account construction” subject to the following conditions:

1. The services are routinely performed by the recipient for all construction projects performed by the recipient;
2. The recipient has a special skill required for the construction of the project;
3. The recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors such as the remoteness of the project site or an overabundance of construction work in the region; or
4. The recipient demonstrates substantial cost savings.

“Force account construction” may be considered an eligible cost for EDA reimbursement if the work or services performed are in conformance with OMB Circulars A-122 (“Cost Principles for Nonprofit Organizations”), A-21 (“Cost Principles for Educational Institutions”), or A-87 (“Cost Principles for State, Local and Indian Tribal Governments”), as applicable. See 2 C.F.R. parts 230, 220, or 225, as applicable.

G. TRIBAL EMPLOYMENT RIGHTS ORDINANCES

In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances (“TEROs”), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference(s) in contracting, hiring, and firing and the payment of a TERO fee generally are allowable.
provisions under federal awards granted to American Indian and Alaska Native tribal
governments. The payment of the TERO fee, which supports the tribal employment rights
office to administer the preferences, should generally be allowable as an expense that is
“necessary and reasonable for proper and efficient performance and administration” of an
Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

H. LAND, EASEMENTS AND RIGHTS OF WAY

1. Except as provided in 13 C.F.R. § 314.6(b) or as otherwise authorized by EDA, recipient-
owned property acquired or improved in whole or in part with investment assistance must
not be used to secure a mortgage or deed of trust or in any way otherwise encumbered.

2. The recipient must disclose to EDA all encumbrances. EDA will not accept any
encumbrance that interferes with the construction, intended use, operation or maintenance
of the project during its estimated useful life. See 13 C.F.R. § 314.7. Prior to the
advertisement of bids or at such other time as EDA requires, the recipient must furnish
evidence, satisfactory in form and substance to EDA, that title to real property needed for
the project is vested in the recipient and that it has obtained any rights-of-way, easements,
State or local government permits, long-term leases or other property interests required
for the project.

I. RELOCATION ASSISTANCE

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies
Act”), apply to all recipients of EDA investment assistance.

The Uniform Act provides assistance to persons, businesses, or farm operations affected by
the acquisition, rehabilitation or demolition of real property acquired for a project financed
wholly or in part with federal assistance funds. It also requires compliance with specific
guidelines pertaining to reimbursable costs incidental to such land acquisition. Recipients
are required to comply fully with the intent of the Uniform Act and to provide evidence of
such compliance if requested. See 13 C.F.R. § 302.5.

J. EDA REVIEW OF PLANS AND SPECIFICATIONS

1. The recipient (with the assistance of its architect/engineer) is responsible for the accuracy
and completeness of the design, dimensions, details, proper selection of materials,
compliance with local building codes or ordinances, and is expected to use the
“EDA Contracting Provisions for Construction Projects,” which provides a list of
applicable EDA and other federal requirements as guidance in developing all
construction contracts.

2. Plans, specifications, and related documents must be submitted for EDA review and
concurrence prior to advertising for bids. EDA’s review is to ensure compliance with the
Terms and Conditions of the Award and does not attest to the accuracy of design,
dimensions, details, proper selection of materials, nor compliance with local building
codes or ordinances. This responsibility rests with the recipient.

EDA’s review is intended to confirm that:

(a) The project as designed complies with the scope of work as described in the
    project application and in the Award;
(b) Deductive alternates, if used, are taken in a specific order as shown in the bid documents;
(c) Any non-EDA funded work, if included, is identified so separate project progress and separate project costs can be determined; and
(d) The EDA project number and applicable EDA participation appears on the cover of all contract drawings and on the face sheet of the specification document(s).

3. EDA also will review for acceptability after advertising but before award of the contract if:
   (a) The procurement is expected to exceed the simplified acquisition threshold (currently set at $100,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation;
   (b) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;
   (c) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold;
   (d) The recipient’s procurement procedures or operations fail to comply with the procurement standards set out in the Award; or
   (e) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a “name brand” product.

4. Until EDA has reviewed and concurred with the recipient’s proposed contracts and related documents and determined they comply with the Terms and Conditions, the recipient will be proceeding at its own risk regarding the eligibility of any costs incurred. See 13 C.F.R. § 305.11.

K. NON-EDA WORK

If the recipient plans to include both EDA-funded and non-EDA-funded work in a single contract, the following requirements apply:

1. The plans and specifications must clearly define and separate costs included in the EDA project scope of work from other costs;
2. The recipient may offer for bid and award work in addition to the EDA project, provided the:
   (a) recipient understands that EDA will participate only in the EDA-approved project; and
   (b) additional work does not adversely affect the original intent or economic impact of the EDA-approved project;
3. Plans and specifications must be drawn so that the EDA project is clearly identifiable at all times during construction; and
4. Bid underruns cannot be applied to fund work that is not a part of the EDA project. It is the responsibility of the recipient to pay in full for all additional work beyond the scope of the EDA project. See 13 C.F.R. § 305.10.

Where a proposed contract includes EDA-funded and non-EDA-funded scope(s) of work, the contract will normally be awarded to the lowest bidder on all the work. EDA’s participation will be determined based on the bid price for the lowest qualified bid for the EDA-funded scope of work. The recipient must include pertinent information with the contract award documentation prior to submitting it for EDA concurrence.
L. ALTERNATE CONSTRUCTION PROCUREMENT METHODS

1. Recipients may use alternate construction procurement methods to the traditional design/bid/build procedure (including lump sum or unit price-type construction contracts). These methods include but are not limited to construction management at-risk and force account. If an alternate method is used, the recipient shall submit to EDA for approval a construction services procurement plan and the recipient must use a design professional to oversee the process. See 13 C.F.R. § 305.6.

2. If the recipient elects to use the force account method, EDA will furnish specific guidance to the recipient to determine if the cost for such work is eligible for EDA reimbursement. See section IV.F. of this Summary.

M. OVERRUN AT THE BID OPENING

If there is an overrun at bid opening, the recipient may:

1. Take deductive alternatives to eliminate certain project elements in case of insufficient funds – if provided for in the bid documents – in the exact order shown on the invitation for bid until at least one of the responsive bids, less deductive alternative(s), results in a price within the budget for that item of work. It should be noted that the use of deductive alternates may result in a new low bidder. Therefore, care must be taken that the above procedure is followed exactly when deductive alternates are used to determine the lowest bid within the funds available.

2. Reject all bids and re-advertise. There should be a rational basis for believing that re-advertising will result in a lower bid (i.e., the recipient will have the project redesigned or there will be wider advertising).

3. Augment the recipient’s share by an amount sufficient to cover the excess cost. If the recipient intends to finance the overrun from its own funds, it must furnish a letter to EDA identifying the source of the additional funds. The funds must be from an acceptable source and cannot include conditions that may negatively affect the project.

4. Request additional EDA financial assistance as a last resort. EDA may not approve the request for additional funds, which may require the termination of the project. See sections VII.C. and D. of this Summary.

N. PROTEST PROCEDURES

No protest or complaint regarding a contractor selection action shall be accepted by EDA until all administrative remedies at the recipient level have been exhausted. EDA’s review will be limited in accordance with the regulations set out at 15 C.F.R. §§ 14.41 or 24.36(11) and (12), as applicable.

V. REQUIREMENTS DURING CONSTRUCTION

A. THE RECIPIENT’S RESPONSIBILITIES

1. General. The recipient (with the assistance of the architect/engineer) is responsible for:
   (a) ensuring project completion in accordance with approved plans and specifications;
   (b) monitoring project progress;
   (c) keeping EDA advised of project progress;
   (d) providing for adequate construction inspection;
   (e) paying costs incurred for the
project promptly; and (f) monitoring the contractors’ compliance with local, State and federal requirements. See also section III.B. of this Summary.

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

3. **Inspection of construction.** The recipient must provide competent project inspection during the construction period. The inspector may be an employee of the recipient, an employee of the architect/engineer, or a person(s) under contract with the recipient. EDA must review and concur with the extent of the inspection and the selection of the inspector.

4. **Occupancy prior to completion.** If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the recipient must:
   
   (a) follow the requirements of local or State law;
   
   (b) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;
   
   (c) secure the written consent of the contractor;
   
   (d) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and
   
   (e) secure permanent fire and extended coverage insurance and, where applicable, grant the contractor a permit to complete construction. See 13 C.F.R. § 305.14.

5. **Labor standards.** All contractors on EDA-assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by U.S. Department of Labor’s regulations (29 C.F.R. part 5). The recipient or its architect/engineer should periodically check the contractor’s compliance. The recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA-assisted project.

6. **Inspection for final acceptance.** The recipient will schedule a final inspection when all construction has been completed, the architect/engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed. Representatives of the recipient, the architect/engineer and the contractor(s) will make the final inspection. EDA must be notified in advance of the final inspection so that an EDA representative also may have the opportunity to participate.

7. **Contractor payrolls.** The recipient must require each contractor and subcontractor to maintain weekly payroll records. EDA may require that copies of payroll records be furnished to the applicable regional office.

8. **Equal employment opportunities.** The regulations at 41 C.F.R. § 60-1.7 issued pursuant to Executive Order 11246, “Equal Employment Opportunity”, as amended, require all “prime contractors” and “subcontractors,” as those terms are defined in 41 C.F.R. § 60-1.3, to submit compliance reports regarding equal employment opportunities. The purpose of the regulations at 41 C.F.R. part 60-1 is to achieve the aims of parts II, III and
IV of Executive Order 11246, as amended, for promoting and ensuring equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with Federal government contractors or with contractors performing under federally-assisted construction contracts.

**B. CONTRACT CHANGE ORDERS**

1. After the construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. See 13 C.F.R. § 305.13.

2. The work on the project may continue pending EDA review and concurrence with the change order but the recipient should be aware that all such work is at the recipient’s risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.

3. The recipient (or its architect/engineer) shall perform a cost or price analysis in connection with every change order that affects the contract price. Generally, change orders should be submitted to EDA for review and concurrence as such changes occur. The recipient will prepare proposed contract change orders in sufficient quantity so that one (1) copy can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications and plans should be attached. Before submission to the EDA regional office, the change order must be signed by the recipient, the architect/engineer and the contractor. The recipient will be notified in writing of EDA’s concurrence if the change order is acceptable to EDA.

4. EDA will not allow changes to the authorized purpose and intent of the project. Change orders that add minimally or incidentally to the cost of the project but do not alter the project scope may be allowed by EDA, provided, that either:

   (a) The recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or

   (b) There are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.

5. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA-approved project budget. EDA will concur with a change order if the work in the change order is within the project scope and is necessary for the proper implementation of the project.

6. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. Variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity that will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract. A change order also may be required at project completion to establish final quantities for unit price contracts.
C. SPECIFIC REQUIREMENTS FOR SUBCONTRACTORS

1. The recipient is responsible for ensuring that the contractor causes applicable provisions to be inserted in all subcontracts to bind subcontractors to EDA and Departmental requirements as contained in the Terms and Conditions of the Award and in 15 C.F.R. parts 14 or 24, as appropriate.

2. Each subcontractor must agree to comply with all applicable federal, State, and local requirements.

3. As required by 15 C.F.R. §§ 14.44(d) and 24.35, as appropriate, the recipient (or subrecipient) must not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, “Debarment and Suspension.” The recipient may access the Excluded Parties List System (“EPLS”), maintained by the General Services Administration, at www.epls.gov. See also 2 C.F.R. part 1326.

4. The Terms and Conditions of the Award may impose additional requirements, which the recipient will be required to have the prime contractor impose on any subcontractor(s).

D. CONTRACTING STANDARDS

1. States. If a State is the recipient of EDA investment assistance, the State will follow the same policies and procedures it uses for procurements from its non-federal funds, provided those policies and procedures conform to applicable federal law and standards found in 15 C.F.R. § 24.36. The State must ensure that every purchase order or other contract includes clauses required by federal statutes and Executive Orders and their implementing regulations. For reimbursable cost determinations, OMB Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” is applicable. See 2 C.F.R. part 225.

2. Recipients other than States. Consistent with the requirements of 15 C.F.R. §§ 14.40 or 24.36, as applicable, a recipient of EDA investment assistance other than a State will use its own procurement procedures which reflect applicable State and local laws and regulations; provided that the procedures conform to applicable federal law and the standards identified in 15 C.F.R. §§ 14.40-14.48 or 24.36(b) – (i), as applicable. A State or local government or Indian tribal government recipient may request EDA to review its procurement system to determine whether its system meets these standards. See 15 C.F.R. § 24.36(g)(3)(i).

Additionally, the recipient or subrecipient may self-certify its procurement system. Under a self-certification procedure, EDA may rely on written assurances from the recipient or subrecipient that it is complying with the standards in 15 C.F.R. § 24.36(b) – (i). The recipient or subrecipient must cite specific procedures, regulations, and standards as being in compliance with 15 C.F.R. § 24.36(b) – (i), and have its system available for EDA to review. In the absence of written procurement procedures and policies provided by the recipient that meet EDA and other federal requirements, applicable federal procurement standards will govern the project. For reimbursable cost determinations, OMB Circulars A-122, Cost Principles for Nonprofit Organizations, or A-21, Cost Principles for Educational Institutions, are applicable as appropriate. See 2 C.F.R. parts 220 and 230. See also section IV.G. for special provisions applicable to certain Indian tribal recipients.
3. Standards of conduct. Recipients shall maintain a written code of conduct, which shall govern the actions of any Interested Party (as defined in 13 C.F.R. § 300.3) engaged in the award and administration of contracts supported by EDA funds. No Interested Party shall participate in selection or in the award or administration of a contract supported by EDA funds if a conflict of interest, real or apparent, is or could be involved. A conflict may arise when any Interested Party has a financial or personal interest in the firms selected for award. A conflict also may exist where there is an appearance that an Interested Party’s objectivity in performing his or her duties is impaired. See 13 C.F.R. § 302.17.

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

5. Maintenance of records. Recipients will maintain records sufficient to detail the history of each procurement transaction related to the EDA project. These records will include but are not necessarily limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for concluding the contract price.

6. Settlement of issues. Recipients alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues (e.g., source evaluation, protests, disputes and claims) arising out of procurements. EDA will not substitute its judgment for that of the recipient unless the matter, as determined in EDA’s sole discretion, primarily involves a federal issue.

7. Wage rate requirements. Wage rates paid for labor must not be less than the prevailing area wages, as determined by the U.S. Secretary of Labor and must be embodied in the construction contract pursuant to the requirements of the Davis-Bacon Act, as amended (40 U.S.C. § 276a et seq.). See also section IX. (Appendix) of this Summary.

E. COMPETITIVE PROCUREMENT REQUIREMENTS

1. General. All procurement transactions in relation to the EDA project must be conducted in a manner providing full and open competition consistent with applicable federal requirements. See 15 C.F.R. parts 14 or 24, as applicable.

2. Geographic preferences. Recipients must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this guidance preempts State licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion, provided its application leaves an appropriate number of qualified firms (given the nature and size of the project) to compete for the contract.

3. Written selection procedures. Recipients must have written selection procedures for procurement actions. These procedures must ensure that all solicitations:

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

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


(a) Should the recipient, acting upon the advice of his/her consultant architect/engineer, desire to obtain competitive prices for differing materials, such bids should be requested on the basis of “alternate bids.” As used herein, this term refers to the method used to obtain bids on more than one material to be used for the same purpose. For example, for 2,000 linear feet of sewer line, Bid A might call for the pipe material to be cast iron. Bid B might call for the pipe material to be ductile iron. Bid C might call for the material to be asbestos cement.

(b) If bids are asked for on the basis of two or more alternate bids, the bid documents must clearly state that the contract will be awarded to the bidder having the lowest responsible bid price based upon the availability of funds.

(c) If the recipient wishes to use a material that will result in increased cost, EDA may permit the use of such material, but the amount of EDA's participation in the project must remain based on the lowest bid from a responsible bidder.

5. Allowable methods of procurement and related requirements.

(a) Procurement by sealed bids (formal advertising). Bids are to be publicly solicited and a firm fixed-price contract (lump sum or unit price) is to be awarded to the bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction services. The following requirements apply to sealed bids:

(i) The invitation for bids is publicly advertised and solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids;

(ii) The invitation for bids includes applicable specifications and pertinent attachments and adequately defines the items or services, in order for the bidder to properly respond;

(iii) All bids are publicly opened at the time and place prescribed in the invitation for bids;

(iv) A firm fixed-price contract award will be made in writing to the lowest responsive responsible bidder; and

(v) Any or all bids may be rejected if there is a sound and properly documented reason. See 15 C.F.R. § 24.36(d)(2).
The advertising process for inviting bids should be in compliance with applicable State or local requirements where the project will be constructed. In the absence of State or local requirements, the advertisement should appear in publications of general circulation a minimum of four (4) times within a 30-day period prior to the opening of bids. Generally, a minimum of thirty (30) days should be allowed for submission of bids.

(b) **Procurement by competitive proposals.** Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. This method generally is used when conditions are not appropriate for the use of sealed bids. The following requirements apply to competitive proposals:

(i) Requests for proposals are publicized and identify all evaluation factors; any response to a request for proposals must be considered to the maximum extent practical;

(ii) Proposals are solicited from an adequate number of qualified sources (generally, EDA requires responses from at least three responsible firms);

(iii) Recipients have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards are made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered, as appropriate; and

(v) Recipients may use competitive proposal procedures for qualification-based procurement of architectural/engineering professional services whereby competitors’ qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not a selection factor, can be used only for procuring architectural/engineering professional services. See 15 C.F.R. § 24.36(d)(3).

(c) **Procurement by noncompetitive proposals.** This technique requires EDA’s prior written concurrence and is conducted by solicitation of a proposal from only one source. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and when one of the following circumstances applies:

(i) The item is available only from a single source;

(ii) The public exigency or emergency will not permit a delay resulting from competitive solicitation; or

(iii) After soliciting a number of sources, competition is determined inadequate. See 15 C.F.R. § 24.36(d)(4).

(d) **Contract cost analysis.**

(i) The recipient must perform a cost or price analysis in connection with every procurement action, including contract modifications. See 15 C.F.R. § 24.36(f).

(ii) Costs based on estimated costs for contracts under grants will be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (see section VI.A.3. of this Summary). The recipient may reference its own cost principles that comply with applicable federal cost principles.
Bonding and insurance requirements. For construction or facility improvement contracts or for subcontracts exceeding $100,000, the following minimum requirements apply:

(i) The bonding company selected must be listed in the U.S. Treasury Department’s Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.”

(ii) A bid guarantee must be obtained from each bidder equivalent to five (5) percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will upon acceptance of the bid execute such contractual documents as may be required.

(iii) A performance bond must be required from the contractor for one hundred (100) percent of the contract price.

(iv) A payment bond must be required from the contractor for one hundred (100) percent of the contract provisions.

The recipient shall require each construction contractor and all subcontractors to maintain, during the life of its contract, Workmen’s Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by applicable State or local law. Where appropriate, the recipient shall require the prime contractor to provide Builder’s Risk Insurance as part of the construction contract. In all cases, the recipient is responsible for seeing that coverage is obtained and kept in force. When obtained by the recipient directly, such coverage is an eligible project cost.

VI. DISBURSEMENT OF GRANT FUNDS AND FINANCIAL ADMINISTRATION

A. PRE-DISBURSEMENT REQUIREMENTS

1. General. Eligible cost reimbursement is EDA’s preferred method of grant disbursement. Disbursements of grant funds must be made by electronic transfer based on the recipient’s actual rate of expenditure. EDA will make disbursements based on the percentage of EDA participation, but in no event for more than the total sum stated in the Award. The initial disbursement will be made only after the following conditions have been met:

(a) EDA determines that the recipient has satisfied all applicable Terms and Conditions of the Award (see 13 C.F.R. § 305.9(b));

(b) The recipient has requested disbursement by submitting Form SF-271, “Outlay Report and Request for Reimbursement for Construction Programs” (OMB Control No. 0348-0002), for incurred costs that are itemized and eligible;

(c) The recipient certifies that its proportionate share of funds (including overruns) is on deposit; and

(d) The recipient meets such other requirements as EDA may establish.

Recipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds (see paragraph A.2. below) before requesting additional grant disbursements.

2. Interest earned on advances. Under OMB Circular A-102, recipients and subrecipients may retain $100 per year of interest earned on federal advances for administrative
expenses. Under OMB Circular A-110, recipients may retain interest amounts up to $250 per year for administrative expenses. While these are general provisions regarding interest earned on grant funds, see 15 C.F.R. §§ 14.22(l) or 24.21(i), as applicable, for specific requirements.

3. **Allowable costs.** EDA allowable costs are determined by reference to the following OMB Circulars: Circular A-122 titled “Cost Principles for Nonprofit Organizations” (2 C.F.R. part 230); Circular A-21 titled “Cost Principles for Educational Institutions” (2 C.F.R. part 220); and Circular A-87 titled “Cost Principles for State, Local and Indian Tribal Governments” (2 C.F.R. part 225). Generally, costs that are allowable include salaries, supplies and other expenses that are reasonable and necessary for the completion of the scope of work. Allowable costs must be determined in accordance with the cost principles applicable to the organization incurring the costs.

4. **Acceptable costs and contributions.** In determining the amount of the non-federal share of the cost of a project, EDA may provide credit towards the non-federal share of all contributions both in cash and in-kind, fairly evaluated, including contributions of space, equipment, assumptions of debt, and services. See section 204(b) of PWEDA (42 U.S.C. § 3144).

The matching share may include funds from other federal agencies only if authorized by statute that allows such use, which may be determined by EDA’s reasonable interpretation of such authority. See 13 C.F.R. § 300.3.

Neither cash nor the value of in-kind contributions may count towards satisfying a cost-sharing requirement of a grant agreement if it has been or will be counted towards satisfying a cost-sharing requirement of another federal grant agreement, a federal procurement contract, or any other award of federal funds. The eligible applicant must show that the matching share is committed to the EDA project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Award. See 13 C.F.R. § 301.5.

**B. INTERIM DISBURSEMENTS**

After the initial disbursement has been made, the recipient may request interim disbursements by submitting Form SF-271, as required for reimbursement of EDA’s share of eligible project costs. Interim disbursements will normally continue until ninety (90) percent of the grant funds have been disbursed, with the remaining ten (10) percent normally held pending final disbursement and project close-out.

**C. FINAL DISBURSEMENT**

When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient can begin the close-out process by submitting the following documentation to EDA:

1. A request for final disbursement on an executed Form SF-271;
2. A written certification that all costs claimed are for eligible activities under the grant agreement, for which there is documentation included in the recipient’s records;
3. A final acceptance report;
4. A certification signed by the authorized representative of the recipient that the recipient’s currently valid OMB Circular A-133 audit has been or will be transmitted to the Federal Audit Clearinghouse and that if the audit contains any material findings, a copy of the audit in its entirety has been submitted to EDA; and

5. Other documentation as may be required by EDA.

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

VII. AWARD AMENDMENTS, APPROVALS, AND NOTIFICATIONS

Between approval and closeout of an EDA construction project, modifications to the Terms and Conditions may be necessary to resolve unforeseen problems. In most instances, the proposed modification can be accomplished only if EDA agrees to a formal amendment to the Award.

A. AMENDMENTS

In order to amend the Award, the Project Officer shall prepare Form CD-451, “Amendment to Financial Assistance Award,” for execution by both the Regional Director and the recipient’s authorized representative. Form CD-451 is required for any of the following amendments to an Award:

1. Changes to project scope of work;
2. Budget revisions requiring additional EDA or non-EDA sources of funds;
3. Budget revisions that result in cumulative transfers among direct cost categories in excess of 10 percent of the total project cost when the federal share exceeds $100,000;
4. The inclusion of certain costs for which EDA’s prior approval is needed under the following OMB Circulars: Circular A-21, “Cost Principles for Educational Institutions” (2 C.F.R. part 220); Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments” (2 C.F.R. part 225); and Circular A-122, “Cost Principles for Non-Profit Organizations” (2 C.F.R. part 230), as applicable;
5. Change of site location;
6. Change to or addition of recipient;
7. Time extensions; and
8. Modifications to the Terms and Conditions of the Award, other than time extensions.

When Form CD-451 is required, the recipient must submit a request for amendment in writing to the EDA regional office. If the request is approved, the EDA regional office completes and transmits the Form CD-451 to the recipient. The recipient’s authorized representative must execute the Form CD-451 and return it to the EDA regional office.

B. TIME SCHEDULE EXTENSIONS

1. The recipient is responsible for implementing the project in accordance with the project development time schedule contained in the Award. As soon as the recipient becomes aware that it will not be possible to meet the project development time schedule, it must notify the EDA regional office. Grant disbursements cannot be made if the recipient is not in compliance with the time schedule. The recipient’s notice to EDA should contain the following information:
(a) An explanation of the reason for the recipient’s inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor’s ability to excavate the site; major re-engineering required in order to obtain State or federal approvals; unplanned environmental mitigation required);

(b) A statement that no other changes to the project are contemplated;

(c) Documentation that demonstrates there is still a bona fide need for the project; and

(d) Confirmation that no further delay is anticipated and that the project can be completed within the revised time schedule.

2. EDA will perform a mandatory review of the project’s progress for any project that is not under construction within two (2) years of the grant award date. In accordance with EDA policy, the maximum construction start time extension that any region can grant is restricted to a date three (3) years from the grant award date. Any extension beyond that limit must be approved by the Assistant Secretary of Commerce for Economic Development.

3. EDA reserves the right to suspend or terminate an Award if the recipient fails to proceed with reasonable diligence to accomplish the project as intended. See also sections VII.B. and F. of this Summary.

C. BUDGET REVISIONS

1. The tabulation of estimated project costs contained in the Award is the controlling budget plan for the project. Recipients shall request EDA’s prior written approval for any anticipated budget revision in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable. The recipient must notify EDA of any proposed deviation from the budget or program plans, including changes in scope or the objective of the project (even if there is no associated budget revision requiring prior written approval). See 15 C.F.R. §§ 14.25 and 24.30.

2. The transfer of funds from line items other than the contingencies line item may be permitted, provided there will be no significant adverse effect on the objective of the line item from which the transfer is to be made.

3. The construction line item will be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts will be transferred to the contingencies line item. Recipients are reminded that contingency funds are to be used to cover situations resulting from unknown conditions and changes required for the fulfillment of authorized project activities under the Award. Underrun funds may be used to further improve the project, as long as the improvements are consistent with the original purpose of the approved-EDA investment and with prior approval from EDA. See 13 C.F.R. § 305.10.

D. ADDITIONAL EDA FUNDING

1. In accepting financial assistance from EDA, the recipient agreed to fund any overrun(s). Additional EDA assistance for an approved project is unlikely to be approved. To be considered for approval, it must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, before EDA will consider a formal request for additional EDA funds, it is necessary for the recipient to furnish the following documentation:
(a) A written statement from the recipient’s architect/engineer, giving reasons for his professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and

(b) A written statement from the administrative head of the recipient’s organization justifying why the recipient cannot furnish the additional funds required, why non-EDA sources of funds cannot be secured, and certifying that the recipient’s borrowing capacity has been exhausted.

2. EDA’s consideration of a request for additional EDA assistance does not indicate approval.

E. ADMINISTRATIVE APPROVALS AND NOTIFICATIONS

1. EDA shall issue a written administrative approval for budget revisions that result in the cumulative transfer among direct cost categories of less than 10 percent of the total project cost and to approve budget revisions that result in the transfer of funds between direct and indirect cost categories, as long as those transfers are also less than 10 percent of the total project cost.

2. EDA shall issue a written administrative notification upon EDA’s approval and acceptance of the recipient’s documentation of compliance with special award conditions (for example, compliance with environmental or State historic preservation law requirements) and upon EDA’s change in the Project Officer or other administrative official assigned to the recipient’s project, if applicable.

F. TERMINATION OF INVESTMENT ASSISTANCE

1. Termination for cause.

(a) If a recipient materially fails to comply with any Term or Condition of the Award, EDA may take one or more of the actions set out in 15 C.F.R. §§ 14.62(a) or 24.43(a), as applicable.

(b) In taking an enforcement action, EDA will provide the recipient an opportunity to appeal if the recipient is entitled to an appeal under any statute or regulation applicable to the action involved. See 15 C.F.R. §§ 14.62(b) or 24.43(b), as applicable.

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

(i) The costs result from obligations that were properly incurred by the recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are non-cancellable; and

(ii) The costs would be allowable if the Award were not suspended or expired normally at the end of the funding period in which the termination takes effect. See 15 C.F.R. §§ 14.62(c) or 24.43(c), as applicable.
(d) The enforcement remedies identified in 15 C.F.R. §§ 14.62 or 24.43, as applicable, including suspension and termination, do not preclude the recipient from being subject to debarment or suspension under Executive Orders 12549 and 12689 and the Department’s implementing regulations at 2 C.F.R. part 1326.

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

VIII. **POST-CONSTRUCTION REQUIREMENTS**

A. **OMB CIRCULAR A-133 AUDIT REQUIREMENTS**

1. **Requirement to have an A-133 audit performed.** The recipient is subject to the requirements contained in OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations” and the related Compliance Supplement (Appendix B to OMB Circular A-133), each as revised from time to time. OMB Circular A-133 is issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156, 31 U.S.C. §§ 7501-7507). OMB Circular A-133 requires any non-federal entity (i.e., non-profit organizations, including non-profit institutions of higher education and hospitals, States, local governments and Indian tribes) that expends federal awards of $500,000 or more in one fiscal year to conduct a single or program-specific audit in accordance with the requirements set out in the Circular.

2. **Requirement to submit audit to Federal Audit Clearinghouse.** A recipient expending federal awards of $500,000 or more in a fiscal year and therefore, having a single or program-specific audit for that year conducted in accordance with OMB Circular A-133, must submit a copy of the single or program-specific audit to the Bureau of the Census, designated by OMB as a central clearinghouse, at the following address:

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

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

   Email:  govs.fac@census.gov  
   Telephone:  (301) 763-1551  
               (800) 253-0696 (toll free)  
   Fax:  (301) 457-1592

   The Federal Audit Clearinghouse operates on behalf of OMB to disseminate audit information to federal agencies and to the public, and to help auditors and auditees minimize the reporting burden of complying with Circular A-133 requirements. For more information, access the website at [http://harvester.census.gov/fac/](http://harvester.census.gov/fac/).

   The audit will be considered “on time” if it is received by the Federal Audit Clearinghouse no later than thirty (30) days after the recipient receives the auditor’s report or nine (9) months after the end of the recipient’s fiscal year. The Federal Audit Clearinghouse also offers an online entry system for submission of Form SF-SAC at [http://harvester.census.gov/fac/collect/ddeindex.html](http://harvester.census.gov/fac/collect/ddeindex.html).
3. **Requirement to submit audit to EDA.** If the recipient’s currently valid OMB Circular A-133 audit contains material findings, the recipient shall submit the audit in hard copy to the regional office.

**B. DEPARTMENTAL AUDIT RESOLUTION PROCESS**

1. Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 et seq.), EDA or the Department’s Office of the Inspector General (“OIG”) may conduct an audit of the Award at any time. The recipient will be notified in advance if it is selected for an audit. The recipient must permit EDA, the Comptroller General of the United States, the Departmental Inspector General, or any of their duly authorized representatives, access to all books, documents, papers and records, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to verify the recipient’s compliance with the Terms and Conditions of the Award. See 13 C.F.R. § 302.14.

When the OIG requires a program audit on the Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by an independent accountant under contract with the Department, OIG personnel, or any other federal, State or local audit entity.

2. An audit of the Award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (an account receivable) due to the Department. For this reason, the recipient should take seriously its responsibility to respond to all audit findings, questioned costs and recommendations with adequate explanations and written evidence when disputing audit determinations.

3. A recipient whose Award is audited will have an opportunity to dispute the audit findings.

   (a) Unless the Inspector General determines otherwise, the recipient will have thirty (30) days from the date of the transmittal of the OIG’s draft audit report to submit written comments and documentary evidence.

   (b) The recipient will have thirty (30) days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.

   (c) EDA will review any documentary evidence submitted by the recipient, and will notify the recipient of the results in an “Audit Resolution Determination Letter,” which will specify the timeframe in which the Recipient is able to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the findings in the Audit Resolution Determination Letter.

   (d) An appeal of the findings in the Audit Resolution Determination Letter does not prevent the establishment of any audit-related debt, nor does it prevent the accrual of interest on the debt. If the findings in the Audit Resolution Determination Letter are overturned or modified on appeal, appropriate corrective action will be taken. An appeal will stay the offset of funds owed by the recipient against funds due to the recipient.

   (e) EDA will review the recipient’s appeal and notify the recipient of the results in an “Appeal Determination Letter.” After the opportunity to appeal has expired or after the appeal determination has been rendered, the Department will not accept
any further documentary evidence from the recipient. No other administrative appeals are available in the Department.

C. PROPERTY MANAGEMENT

1. Any property that is acquired or improved, in whole or in part, with EDA investment assistance, whether through a grant or a cooperative agreement, is subject to the requirements of PWEDA and the regulations at 13 C.F.R. part 314. Title, authorized use, successor recipient, property disposition, and Federal Share (as defined in 13 C.F.R. § 314.5) requirements are set out at 13 C.F.R. part 314.

2. During the estimated useful life of the project, as determined by EDA, EDA retains a Federal Interest in the project property. See section III.A. of this Summary. The Federal Interest secures compliance with the ownership, purpose, scope and intended use of the EDA project and may be reflected by a recorded lien, statement or other recordable instrument setting forth EDA’s property interest (e.g., a mortgage, covenant, or other statement of EDA’s real property interest in the case of a project involving the acquisition, construction or improvement of a building). See 13 C.F.R. § 314.8.

3. A recipient may request a release of the Federal Interest in property acquired or improved with EDA investment assistance and fully compensate EDA for its Federal Share in the property. A release pursuant to 13 C.F.R. § 314.2(b) gives the recipient title to the property free and clear of any further governmental interest.

In contrast, a recipient may request a release of the Federal Interest in project assets that are subject to an estimated useful life in excess of the statutory twenty (20) year limitation. See section 601(d)(2) of PWEDA (42 U.S.C. § 3211) and 13 C.F.R. § 314.10. In that case, EDA may release its Federal Interest, however, the property acquired or improved with EDA investment assistance may not be used: (a) in violation of the nondiscrimination requirements set forth in 13 C.F.R. § 302.20; or (b) for inherently religious activities prohibited by applicable federal law.

D. CLOSEOUT PROCEDURES

1. After construction is completed and the project is closed out financially, the recipient has an ongoing responsibility to properly administer, operate and maintain the project for its estimated useful life in accordance with its original purpose. See 13 C.F.R. § 302.12. The recipient must comply with all Award requirements, including but not limited to ongoing compliance with applicable environmental law, performance measurement reporting requirements, and federal statutes, regulations and Executive Orders prohibiting discrimination and inherently religious activity. The recipient must maintain records to document such compliance, which shall be made available for inspection by EDA or other government officials as required. When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient may begin the closeout process. See section VI.C. of this Summary. The recipient must take the following actions:

(a) Confirm to EDA compliance with all Terms and Conditions.
(b) Confirm to EDA that it will procure permanent insurance for above-ground facilities.
(c) Notify EDA of the results of a review of the project to ensure that all changes to the project have been brought to the attention of EDA.
(d) Confirm to EDA that it will retain for three (3) years all records pertaining to the
Award.

(e) Submit to EDA a completed and executed Certificate of Final Completion.

(f) Submit and obtain from the contractor or the architect/engineer as-built drawings.

(g) Certify to EDA that a currently valid single or program-specific audit (in compliance with OMB Circular A-133 and the related Compliance Supplement) has been submitted to the Federal Audit Clearinghouse. If no single or program-specific audit is available but is required, the recipient’s plan to secure the audit must be furnished to EDA. If no single or program-specific audit is required, the recipient must advise EDA.

(h) Submit to EDA the currently valid audit required under OMB Circular A-133 if the audit contains material findings. Otherwise, the recipient shall certify to EDA that the audit does not contain material findings.

(i) Confirm to EDA that no outstanding Davis-Bacon Act or local labor employment violations exist.

(j) Notify EDA of any change, lien, mortgage or other encumbrance relating to the ownership of the property acquired or improved with EDA investment assistance.

(k) Notify EDA of any unresolved contract/contractor disputes.

(l) Maintain the facility during its estimated useful life, as determined by EDA, during which period the recipient may not alienate its ownership or alter the use and purpose of the EDA-assisted facility without EDA’s written permission.

2. The recipient shall submit, within ninety (90) calendar days after the completion of the project, all financial, performance and other reports as required by the Terms and Conditions of the Award.

3. Unless EDA authorizes an extension, the recipient must liquidate all obligations incurred under the Award no later than ninety (90) calendar days after acceptance of the project from the contractor or before the end of project period, whichever occurs earlier, as specified in the Terms and Conditions of the Award.

4. The following documentation should accompany the recipient’s final disbursement request, as applicable, unless such documentation has been previously furnished:

   (a) Copies of all executed contracts, subcontracts (if claimed separately from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the EDA investment;

   (b) A certification signed by the authorized representative of the recipient that the recipient’s currently valid OMB Circular A-133 audit has been or will be transmitted to the Federal Audit Clearinghouse;

   (c) A certification signed by the authorized representative of the recipient that the recipient’s currently valid OMB Circular A-133 audit does not contain material findings. If the recipient’s currently valid OMB Circular A-133 audit does contain material findings, the recipient must provide the regional office with a hardcopy of the audit;

   (d) Payroll forms, if any of the costs claimed is for work performed by force account construction;

   (e) Title opinions, legal descriptions, appraisals, bills of sale, title records, etc., for any land cost being claimed; and

   (f) Specifics of any administrative costs being claimed.

5. The closeout of an Award does not affect any of the following:

   (a) The right of EDA to disallow costs and recover funds on the basis of a later audit
or other project review;

(b) The recipient’s obligation to return any funds due as a result of later corrections or other transactions;

(c) Requirements for property management, records retention and performance measurement reports; and

(d) Single or program-specific audit requirements per OMB Circular A-133 and the related “Compliance Supplement.”
IX. APPENDIX

The following documents are available from the Office of Management and Budget’s, the Department of Commerce’s, and the Government Printing Office’s websites at www.whitehouse.gov/omb/, www.commerce.gov, www.gpoaccess.com, public libraries, and other sources. Each document listed below contains a link that will take you directly to that document on the internet.

1. 15 C.F.R. part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit and Commercial Organizations

2. 15 C.F.R. part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

3. 2 C.F.R. part 225, Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)

4. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and the related Compliance Supplement (Appendix B to OMB Circular A-133)

5. 2 C.F.R. part 230, Cost Principles for Nonprofit Organizations (OMB Circular A-122)

6. 2 C.F.R. part 220, Cost Principles for Educational Institutions (OMB Circular A-21)

7. 48 C.F.R. part 31, Contract Cost Principles and Procedures

8. 2 C.F.R. part 1326, Nonprocurement Debarment and Suspension

9. 15 C.F.R. part 29, Governmentwide Requirements for a Drug-Free Workplace (Financial Assistance)


11. Davis Bacon Wage Rate Determinations: www.wdol.gov/

The following are available as exhibits to this Summary from EDA’s Internet website at www.eda.gov:

1. CHECKLIST FOR ARCHITECT/ENGINEER CONTRACTS
2. CHECKLIST FOR PLANS AND SPECIFICATIONS
3. CHECKLIST FOR INITIAL DISBURSEMENT OF EDA FUNDS
4. CHECKLIST FOR PROJECT CLOSEOUT
5. EDA CONTRACTING PROVISIONS FOR CONSTRUCTION PROJECTS
6. NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
7. CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS AND LOBBYING (CD-512)

8. QUARTERLY PERFORMANCE REPORT

9. CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY AND EASEMENTS (INCLUDING TITLE OPINION)

10. ACH VENDOR/MISCELLANEOUS PAYMENT ENROLLMENT FORM