



City of Tigard  
**Tigard Business Meeting – Agenda**

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**TIGARD CITY COUNCIL & LOCAL CONTRACT REVIEW BOARD**

**MEETING DATE AND TIME:** October 18, 2016 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

**PUBLIC NOTICE:**

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are *estimated*; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. *Business agenda items can be heard in any order after 7:30 p.m.*

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-718-2419, (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-718-2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

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**VIEW LIVE VIDEO STREAMING ONLINE:**

<http://live.tigard-or.gov>

**CABLE VIEWERS:** The regular City Council meeting is shown live on Channel 28 at 7:30 p.m. The meeting will be rebroadcast at the following times on Channel 28:

Thursday	6:00 p.m.	Sunday	11:00 a.m.
Friday	10:00 p.m.	Monday	6:00 a.m.



City of Tigard

## Tigard Business Meeting – Agenda

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### TIGARD CITY COUNCIL & LOCAL CONTRACT REVIEW BOARD

**MEETING DATE AND TIME:** October 18, 2016 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

6:30 PM

- STUDY SESSION

- A. COUNCIL LIAISON REPORTS
  - B. BRIEFING ON CAPITAL IMPROVEMENT PLAN (CIP) PROJECTS **6:45 p.m. estimated time**
1. BUSINESS MEETING
    - A. Call to Order
    - B. Roll Call
    - C. Pledge of Allegiance
    - D. Call to Council and Staff for Non-Agenda Items
  2. JOINT MEETING WITH TTAC **7:15 p.m. estimated time**
  3. CITIZEN COMMUNICATION (Two Minutes or Less, Please)
    - A. Follow-up to Previous Citizen Communication
    - B. Citizen Communication – Sign Up Sheet
  4. CONSENT AGENDA: (Tigard City Council and Local Contract Review Board) These items are considered routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to: **8:00 p.m. estimated time**

A. RECEIVE AND FILE:

1. Council Calendar
2. Council Tentative Agenda for Future Meeting Topics

B. APPROVE CITY COUNCIL MINUTES:

- August 9, 2016
- August 16, 2016

C. TIGARD STREET HERITAGE TRAIL - GRANT AUTHORIZATION

D. PROCLAIM NATIONAL MANUFACTURING DAY

E. CONTRACT AWARD - CANTERBURY LANE STORM LINE UPGRADE

• *Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council has voted on those items which do not need discussion.*

5. CONTINUED LEGISLATIVE PUBLIC HEARING (FROM SEPTEMBER 27, 2016): ON PROPOSED CODE CHANGES REGARDING MARIJUANA FACILITIES **8:05 p.m. estimated time**
6. LOCAL CONTRACT REVIEW BOARD - CONSIDER AWARDING THE CONTRACT FOR PUBLIC OUTREACH AND MESSAGING **8:35 p.m. estimated time**
7. DISCUSSION OF A CONTRACT WITH A FEDERAL GOVERNMENTAL AFFAIRS AND LOBBYING FIRM **8:40 p.m. estimated time**
8. INFORMATIONAL PUBLIC HEARING: CONSIDER RESOLUTION APPROVING UTILITY FEE ADDITIONS AND CHANGES IN THE MASTER FEES AND CHARGES SCHEDULE **8:45 p.m. estimated time**
9. HUNZIKER INFRASTRUCTURE PROJECT - GRANT AUTHORIZATION **9:00 p.m. estimated time**
10. NON AGENDA ITEMS

• **EXECUTIVE SESSION:** The Tigard City Council will go into Executive Session to discuss real property negotiations under ORS 192.660(2)(e). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public. **9:10 estimated time**

11. ADJOURNMENT **9:25 p.m. estimated time**

**AIS-2841**

**B.**

**Business Meeting**

**Meeting Date:** 10/18/2016

**Length (in minutes):** 25 Minutes

**Agenda Title:** Briefing on Capital Improvement Plan (CIP) Projects

**Submitted By:** Lori Faha, Public Works

**Item Type:** Update, Discussion, Direct Staff      **Meeting Type:** Council  
Business  
Mtg - Study  
Sess.

**Public Hearing:** No

**Publication Date:**

**Information**

**ISSUE**

Briefing and update on the status of Capital Improvement Plan (CIP) projects for the first quarter of Fiscal Year 2016-2017.

**STAFF RECOMMENDATION / ACTION REQUEST**

No action is requested; the purpose of this item is to brief council.

**KEY FACTS AND INFORMATION SUMMARY**

The Capital Improvement Plan (CIP) establishes Tigard's annual budget for capital improvements to the city's public facility system.

A CIP project is any project that improves or adds value to the city's infrastructure, costs \$50,000 or more, and has a useful life or extends the useful life of infrastructure for 5 years or more. Public facilities addressed by the CIP are roads, parks, sanitary sewer, storm drainage, water quality management, domestic water, public buildings and operations facilities.

In most cases, CIP projects are implemented with oversight from the city's Engineering Division. City Engineer Lori Faha will update council on the status of active projects for the first quarter of Fiscal Year 2016-2017.

The attached file will be shown as a PowerPoint presentation at the meeting. Copies of individual status reports for each active CIP project will be delivered to council in the October 13, 2016 City Council Newsletter packet.

**OTHER ALTERNATIVES**

Not applicable.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

The CIP was adopted on June 14, 2016.

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

The last quarterly CIP briefing to council was on July 26, 2016.

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### **Attachments**

CIP Project Status Presentation - October 2016

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C I T Y O F T I G A R D

Respect and Care | Do the Right Thing | Get it Done



# Capital Improvement Project Update

FY 2016-17

First Quarter

Tigard City Council Meeting

October 18, 2016

## Engineering Capital Project Metrics

How do we manage & measure successful Capital Improvement Plan (CIP) implementation?

- ▶ Effective Capital Project Management = Effective Change Management
  - ▶ Manage what we control, deal with the rest
- ▶ Communication is our best project management tool
- ▶ Project Management Manual

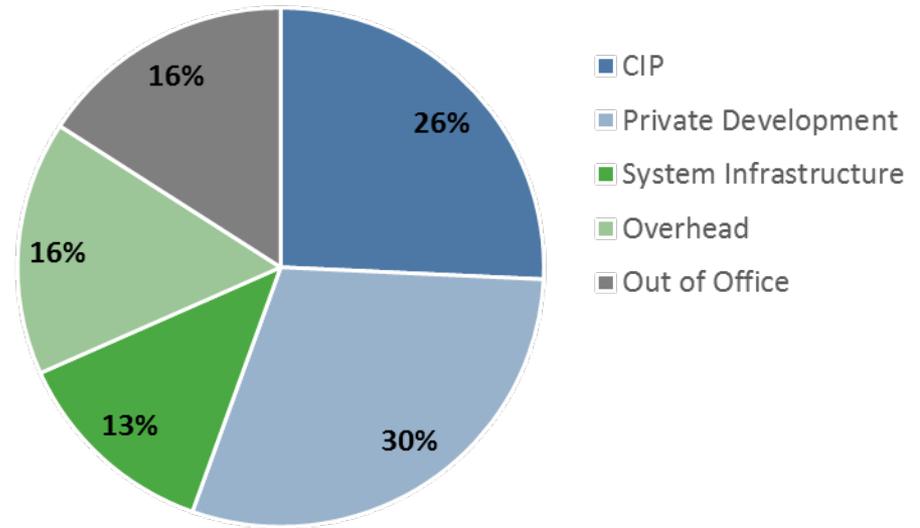
## Management & Measurement

- ▶ Monthly Project Status Reports
  - ▶ Managing to total project budget
  - ▶ Tracking approved changes
  - ▶ Communicating budget, schedule, scope and status
  - ▶ Communicating upcoming tasks & potential risks
  - ▶ Requiring city project managers and consultant project managers to report % spent vs % complete

▶ Staff Time Tracking

- ▶ New Time Sheet
- ▶ Individual and Division level staff time vs planned
- ▶ Use real data for projecting ahead for budgeting

Engineering Division Time Spent



# C I T Y O F T I G A R D

- ▶ Actual Project Costs Analysis
  - ▶ Typical internal staff time/costs to manage projects of various sizes, complexity
  - ▶ Effectiveness Measure: projects don't exceed approved budget by more than 5%

## Example: 95<sup>th</sup> & North Dakota Sidewalks

### External Cost:

\$248,277 (87%)



■ Construction (\$135,545 - 54%)

■ Design (\$90,988 - 37%)

■ Acquisition (\$21,834 - 9%)

### Internal Cost:

\$36,296 (13%)



■ PM (\$24,917 - 69%)

■ Administrative (\$6,713 - 18%)

■ Inspector/Tech (\$3,316 - 9%)

■ Oversight (\$1,350 - 4%)

## Continuous Improvement

“Sharpening the Saw”

- ▶ Continuing education (project management & technical)
- ▶ Design a minimum percentage of projects in-house to keep up proficiency (have to balance with development work load)
- ▶ Weekly internal Project Manager meetings with Finance/Purchasing

## Parks Projects

	<u>Budget</u>	<u>Schedule</u>
▶ Fanno Creek Remeander <i>(still waiting on CWS IGA)</i>	●	●
▶ Dirksen Nature Park		
▪ Oak Savanna Restoration	●	●
▪ Oak Savanna Overlook	●	●
▪ Nature Play Area <i>(waiting to coord w/ Shelter)</i>	●	
▪ Forested Restoration and Boardwalks	●	●
▪ Interpretive Shelter and Restroom	●	●
• <i>Scheduled for FY21, Need to Start sooner for Grant</i>		

## Parks Projects

	<u>Budget</u>	<u>Schedule</u>
▶ Tigard Street Trail <i>(Connect OR VI Grant, IGA's in process)</i>	●	●
▶ Fanno Creek Trail – RFFA Grant <i>(IGA with ODOT completed)</i>	●	●
▶ Fanno Creek Trail/Tiedeman <i>(Contract awarded)</i>	●	●
▶ Bull Mountain Park Trail ▶ <i>(more staff help requested by Friends of Bull Mountain Park)</i>	●	●
▶ Fanno Creek Trail Alignment Study (Bonita to Durham Rd.) ▶ <i>(applied for RFFA grant, study to start later this fall)</i>	●	

## Streets Projects

	<u>Budget</u>	<u>Schedule</u>
▶ Pavement Management Program	●	●
▶ Walnut Street Improvements <i>(adjusted to add water line)</i>	●	●
▶ Pedestrian and Cyclist Connections Program	●	●
▶ Upper Boones Ferry / Durham Adaptive Signals	●	●
▶ Commercial Street Sidewalk and Stormwater Facility	●	●
▶ Hunziker Industrial Core/Wall St ▶ <i>(awarded EDA grant, smaller scope, must issue new RFP)</i>	●	●
▶ Roy Rogers Road <i>(County lead, in design)</i>	●	●
▶ Commercial Street Sidewalk CDBG	●	●

● On Target
● Minor Issues
● Major Issues
● Change in Budget or Schedule

## Streets Projects

	<u>Budget</u>	<u>Schedule</u>
▶ 121 <sup>st</sup> Avenue Sidewalks and Bike Lanes ▶ <i>(selected for MSTIP funding, awaiting schedule)</i>	●	
▶ 72 <sup>nd</sup> Avenue/Tigard Triangle Transportation Study	●	●
▶ Bridge Assessment and Master Plan	●	●
▶ Durham Road School 20 When Flashing	●	●
▶ Hall/Pfaffle Traffic Signal <i>(will propose swapping for signal project at Bonita/Sequoia that was selected for MSTIP funding)</i>	●	●
▶ Hall Blvd Study <i>(not started yet)</i>	●	
▶ North Dakota Street Bridge Replacement ▶ <i>(selected for ODOT grant, awaiting award &amp; schedule)</i>	●	
▶ Main Street Green Street Retrofit (Phase 2) ▶ <i>(waiting for determination for de-federalizing the project)</i>	●	

## Water Projects\*

	<u>Budget</u>	<u>Schedule</u>
▶ Well Abandonment (Tigard High School)	●	●
▶ Cach Reservoir & Pump Station ( <i>scoping underway</i> )	●	●
▶ Red Rock Creek Waterline Relocation ( <i>design underway, moved up to match sewer &amp; Wall St projects</i> )	●	●
▶ Canterbury Pump Station	●	●

*\*not including Lake Oswego/Tigard project*

## Sanitary Sewer Projects

	<u>Budget</u>	<u>Schedule</u>
▶ East Tigard Sewer Replacement <i>(IGA in place, design &amp; permitting underway)</i>	ⓐ	●
▶ Walnut Sanitary Sewer <i>(under construction)</i>	●	●
▶ Pacific Highway Sanitary Sewer Line	●	●
▶ Commercial Street Sanitary Sewer Line	●	●

## Storm Projects

	<u>Budget</u>	<u>Schedule</u>
▶ Greenfield Storm Facility Reconstruction ▶ <i>(Construction contract awarded)</i>		
▶ <i>Derry Dell/118<sup>th</sup> Court</i> Slope Stabilization		
▶ Canterbury Lane Storm Line Upgrade ▶ <i>(Construction contract awarded)</i>		
▶ Ridgefield Lane Water Quality Facility Reconstruction ▶ <i>(Construction contract awarded)</i>		
▶ Stormwater Master Plan <i>(system assessment underway)</i>		
▶ Slope Stabilization – Derry Dell Creek/118 <sup>th</sup> ▶ <i>(preparing RFP)</i>		

 On Target  
  Minor Issues  
  Major Issues  
  Change in Budget or Schedule

## Facilities & Other Projects

	<u>Budget</u>	<u>Schedule</u>
▶ Civic Center Plan (aka Citywide Facilities Plan)	ⓐ	●
▶ Saxony Demolition and Remediation	●	●

C I T Y O F T I G A R D

*City of Tigard*

# STORMWATER



MASTER PLAN

**View project “Story Map” on our website**

**AIS-2833**

**2.**

**Business Meeting**

**Meeting Date:** 10/18/2016

**Length (in minutes):** 45 Minutes

**Agenda Title:** Joint Meeting with TTAC

**Prepared For:** Buff Brown, Community Development

**Submitted By:** Buff Brown, Community Development

**Item Type:** Joint Meeting-Board or Other Juris.    **Meeting Type:** Council Workshop Mtg.

**Public Hearing:** No

**Publication Date:**

**Information**

**ISSUE**

This is the joint meeting of the Tigard Transportation Advisory Committee (TTAC) and the Tigard City Council as described in the TTAC Bylaws Section XI, Item C.

**STAFF RECOMMENDATION / ACTION REQUEST**

No action. Discussion only.

**KEY FACTS AND INFORMATION SUMMARY**

Joint meeting with Tigard Transportation Advisory Committee (TTAC): The Tigard Transportation Advisory Committee meets annually with the City Council to share information and receive feedback regarding Council priorities for TTAC. The TTAC has been staffed by Mike McCarthy (Engineering), Buff Brown (Community Development), attended as needed by Carissa Collins (Finance), and is currently chaired by Kevin Watkins, long-time Tigard resident. TTAC members wish to discuss and seek direction on how they can be engaged in implementing the Strategic Plan, support improvements to transit service, and participate in identifying and solving transportation problems in Tigard. The individual perspectives of TTAC members represent a diverse but mutually-supported range of viewpoints. The committee plans to bring a set of policy objectives for moving forward. In addition, the TTAC liaison to the Pedestrian Bicyclist Subcommittee (PBS) will give an overview of some PBS activities.

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Strategic Vision: to be the most walkable community in the Pacific Northwest where people of all ages and abilities enjoy healthy and interconnected lives.

Council Resolution No 09-14 formed the TTAC in 2009, and Resolution 14-56 was the latest modification to the bylaws. The important bylaw clauses:

#### SECTION I. CHARGE AND DUTIES:

C. It shall be the function of the Committee to act as an advisory body to the City Council and city staff pursuant to these bylaws.

D. The Committee shall create and maintain a project list, which designates in order of priority, the projects for which city motor vehicle fuel tax revenue is to be used.

E. TTAC may serve in an advisory role to staff and Council on a broad range of relevant transportation issues reflecting city priorities and work program capacity, including: Project prioritization for funding in the Capital Improvement Program Preparation of multimodal transportation system plans and corresponding transportation financing/ capital investment programs Developing funding mechanisms and sources to implement transportation projects Traffic safety Input on project development and concept design.

#### SECTION XI. ANNUAL REPORT OF THE COMMITTEE ...

A. Not later than December 1, the Committee shall prepare an Annual Report to the City Council. B. The Annual Report shall include a summary of key activities and proceedings and any specific suggestions or recommendations which the Committee believes would assist its mission or improvement of the City transportation system.

C. The Annual Report may be in the form of a joint meeting with Council. The Annual Report shall not be submitted unless approved by the Committee. Committee members will be provided an opportunity to prepare for and participate in the joint meeting.

Tigard Ordinance 3.65.270 Use of Tax Revenues.

3. The Tigard Transportation Advisory Committee shall create and maintain a project list, which designates in order of priority, the projects for which net revenue shall be used subsequent to sufficient funds being collected to fully finance and pay for the Greenburg Road/Highway 99/Main Street intersection improvements. If, at anytime, the Transportation Advisory Committee has not designated a project for funding, all funds collected pursuant to this chapter shall be maintained in the Tigard City Gas Tax Fund until such time as the Transportation Advisory Committee designates a priority project for the use of such funds. (Ord. 09-12; Ord. 08-20; Ord. 06-21).

#### **DATES OF PREVIOUS COUNCIL CONSIDERATION**

On September 16, 2014, the Tigard Transportation Advisory Committee (TTAC) held its annual joint meeting with the City Council.

On October 20, 2015, the Tigard Transportation Advisory Committee (TTAC) held its annual joint meeting with the City Council.

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**Attachments**

*No file(s) attached.*

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**AIS-2865**

**4. A.**

**Business Meeting**

**Meeting Date:** 10/18/2016

**Length (in minutes):** Consent Item

**Agenda Title:** RECEIVE AND FILE: THREE-MONTH COUNCIL CALENDAR AND TENTATIVE AGENDA

**Submitted By:** Kelly Burgoyne, Central Services

**Item Type:** Receive and File

**Meeting Type:** Consent -  
Receive and  
File

**Public Hearing:** No

**Publication Date:**

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**Information**

**ISSUE**

Receive and file the Council Calendar and the Tentative Agenda for future council meetings.

**STAFF RECOMMENDATION / ACTION REQUEST**

No action is requested; these are for information purposes.

**KEY FACTS AND INFORMATION SUMMARY**

Attached are the Council Calendar and the Tentative agenda for future Council meetings.

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

N/A - Receive and File Items

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**Attachments**

Council Calendar

Tentative Agenda

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# MEMORANDUM

TO: Honorable Mayor & City Council

FROM: Kelly Burgoyne, Deputy City Recorder

RE: Three-Month Council/CCDA Meeting Calendar

DATE: October 18, 2016

## October

4	Tuesday	CCDA Meeting – 6:30 p.m., Town Hall
11*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall
18*	Tuesday	Council Workshop & Business Meeting – 6:30 p.m., Town Hall
25*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall

## November

1	Tuesday	CCDA & Council Business Meeting – 6:30 p.m., Town Hall
8*	Tuesday	Council Business Meeting – CANCELLED
15*	Tuesday	Council Workshop Meeting – 6:30 p.m., Town Hall
22*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall
29	Tuesday	City Council Ground Rules Meeting – 4:00-7:00 p.m., Location TBD

## December

6	Tuesday	CCDA Meeting – 6:30 pm, Town Hall
13*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall
15	Thursday	City Council Goal Setting Meeting – 4:00-7:00 p.m., Location TBD
20*	Tuesday	Council Workshop Meeting – 6:30 p.m., Town Hall
27*	Tuesday	Council Business Meeting – CANCELLED

Regularly scheduled Council meetings are marked with an asterisk (\*).

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda**  
 10/10/2016 10:44 AM - Updated

Form #	Meeting Date	Submitted By	Meeting Type	Title	Department	Inbox or Finalized
2634	10/11/2016	Carol Krager	AAA	October 11, 2016 Business Meeting - <b>CANCELLED</b>	Central Services	03/21/2016
2635	10/18/2016	Carol Krager	AAA	October 18, 2016 Workshop Meeting and Council Meeting - <b>Combo</b>	Central Services	03/21/2016
2685	10/18/2016	Carol Krager	ACCSTUDY	15 Minutes - Council Liaison Reports	Central Services	04/15/2016
2841	10/18/2016	Lori Faha	ACCSTUDY	25 Minutes - Receive Briefing on Capital Improvement (CIP) Projects	Public Works	Newton L, Assistant City Manager
<b>Time: 40 Minutes Scheduled</b>						
2833	10/18/2016	Buff Brown	CCWKSHOP	45 Minutes - Joint Meeting with TTAC	Community Development	Brown, B, Assoc Transp Planner
<b>Time: 45 Minutes Scheduled</b>						
2697	10/18/2016	Lloyd Purdy	ACONSENT	Consent Item - Tigard Street Heritage Trail - Grant Authorization	Community Development	Newton L, Assistant City Manager
2852	10/18/2016	Joanne Bengtson	ACONSENT	Consent Item - Proclaim National Manufacturing Day	City Management	10/05/2016
2859	10/18/2016	Joseph Barrett	ACONSENT	Consent Item - Contract Award - Caterbury Lane Storm Line Upgrade	Finance and Information Services	10/10/2016
2855	10/18/2016	Agnes Kowacz	CCBSNS	1 35 Minutes - CONTINUED LEGISLATIVE PUBLIC HEARING (FROM SEPTEMBER 27, 2016) ON PROPOSED CODE CHANGES REGARDING MARIJUANA FACILITIES	Community Development	Patton J, Senior Administrative Sp
2800	10/18/2016	Kelly Burgoyne	CCBSNS	2 5 Minutes - Contract Award - Public Outreach and Messaging	Central Services	Wyatt K, Management

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
 10/10/2016 10:44 AM - Updated**

2801	10/18/2016	Kelly Burgoyne	CCBSNS	3 5 Minutes – Discussion of a Contract with a Federal Governmental Affairs and Lobbying Firm	Central Services	10/05/2016
2853	10/18/2016	Ron Blecker	CCBSNS	4 15 Minutes – INFORMATIONAL PUBLIC HEARING: CONSIDER RESOLUTION APPROVING UTILITY FEE ADDITIONS AND CHANGES IN THE MASTER FEES AND CHARGES SCHEDULE	Finance and Information Services	10/05/2016
2698	10/18/2016	Lloyd Purdy	CCBSNS	5 10 Minutes – Hunzinker Infrastructure Project – Grant Authorization	Community Development	Newton L, Assistant City Manger
2699	10/18/2016	Lloyd Purdy	CCBSNS	6 15 Minutes - Executive Session: Per ORS 192.660(2)(e) Real Property Transaction Negotiations for Development Agreement Hunziker Infrastructure	Community Development	10/05/2016
				<b>Time: 85 Minutes Scheduled – MEETING FULL</b>		
				<b>Total Time: 170 Minutes of 180 Minutes Scheduled</b>		
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2636	10/25/2016	Carol Krager	AAA	October 25, 2016 Business Meeting	Central Services	03/21/2016
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2686	10/25/2016	Carol Krager	ACCSTUDY	15 Minutes - Council Liaison Reports	Central Services	04/15/2016
2850	10/25/2016	Shauna Large	ACCSTUDY	30 Minutes – Civic Center Status Report	Public Works	McMillan K, Engineering Manager
				<b>Total Time: 45 of 45 Minutes Scheduled</b>		
2764	10/25/2016	Gary Pagenstecher	CCBSNS	1 30 Minutes – Public Hearing - Cemetery Setback Code Amendment	Community Development	Pagenstecher G, Assoc Planner
2857	10/25/2016	Marissa Grass	CCBSNS	2 20 Minutes – Lake Oswego Tigard Water Partnership IGA Fourth Amendment	Public Works	Marty , City Manager

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda**  
**10/10/2016 10:44 AM - Updated**

2802	10/25/2016	Kelly Burgoyne	CCBSNS	3 20 Minutes – LCRB Placeholder	Central Services	Barrett J, St Mgmt Analyst
2809	10/25/2016	Kelly Burgoyne	CCBSNS	4 10 Minutes – Placeholder	City Management	Bennett D, HR Director
2854	10/25/2016	Dana Bennett	CCBSNS	5 10 Minutes – INFORMATIONAL PUBLIC HEARING: DISCUSS AND ADOPT STANDARDS, CRITERIA AND POLICY DIRECTIVES TO BE USED IN EVALUATING THE CITY MANAGER	City Management	Bennett D, HR Director
<b>Total Time: 90 of 100 Minutes Scheduled</b>						
2637	11/01/2016	Carol Krager	AAA	November 1, 2016 CCDA Meeting – <b>Combo Meeting – City Council Business Meeting</b> (Business Meeting to start @ 7:00 p.m.)	Central Services	03/21/2016
2815	11/01/2016	Kelly Burgoyne	ACCSTUDY	15 Minutes – Council Liaison Reports (starts @ 6:30 p.m.)	Central Services	08/25/2016
<b>Total Time: 15 of 45 Minutes Scheduled</b>						
2810	11/01/2016	Sean Farrelly	CCBSNS	1 60 Minutes - Council Public Hearing On Development Code Amendments	Community Development	Kowacz A, Associate Planner
2832	11/01/2016	Kelly Burgoyne	CCBSNS	2 20 Minutes – LCRB Placeholder	Central Services	Barret J, Sr Mgmt Analyst
2814	11/01/2016	Kelly Burgoyne	CCBSNS	3 30 Minutes – Present Policy and Implementation Relating to Transient Lodging Tax	Finance and Information Services	LaFrance T, Fin/Info Svcs Director
2851	11/01/2016	John Goodrich	CCBSNS	4 30 Minutes – Willamette Water Supply Project Intake Structure	Public Works	Goodrich J, Division Manager
2827	11/01/2016	John Goodrich	CCBSNS	5 20 Minutes - Executive Sessio: Per ORS 192.660(2)(e) Real Property Transaction Negotiations for Willamette River Water	Public Works	Rager B, PW Director

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda**  
 10/10/2016 10:44 AM - Updated

<b>Total Time: 160 of 180 Minutes Scheduled</b>							
2638	11/08/2016	Carol Krager	AAA	November 8, 2016 Business Meeting - <b>CANCELLED</b>	Central Services	04/15/2016	
2639	11/15/2016	Carol Krager	AAA	November 15, 2016 Workshop Meeting <b>Mayor Cook Absent - (11/15-11/18 Transportation Conference), Councilor Goodhouse (11/15-11/20 NLC Conference)</b>	Central Services	03/21/2016	
2792	11/15/2016	Steve Martin	CCWKSHOP	1 45 Minutes - Joint Meeting with the Park and Recreation Advisory Board	Public Works	Martin S, Division Manager	
2858	11/15/2016	Anna Dragovich	CCWKSHOP	2 20 Minutes - Safe Routes to School Update	Community Development	Dragovich A, Safe Routes Coord.	
2813	11/15/2016	Kelly Burgoyne	CCWKSHOP	3 30 Minutes - Discuss Non-Residential Tigard Transportation SDC	Finance and Info Services	LaFrance T, Fin/Info Svcs Director	
<b>Total Time: 95 of 180 Minutes Scheduled</b>							
2640	11/22/2016	Carol Krager	AAA	November 22, 2016 Business Meeting	Central Services	03/21/2016	
2688	11/22/2016	Carol Krager	ACCSTUDY	15 Minutes - Council Liaison Reports	Central Services	04/15/2016	
<b>Total Time: 15 of 45 Minutes Scheduled</b>							
2845	11/22/2016	Joanne Bengtson	ACONSENT	Consent Item - Proclaim November 26 as Small Business Saturday	Central Services	Krager C, City Recorder	
2834	11/22/2016	Kent Wyatt	CCBSNS	1 30 Minutes - Continue Discussion on the Council Goal to Provide Recreational Opportunities for Tigard Residents	City Management	Wyatt K, Management Analyst	
2804	11/22/2016	Kelly Burgoyne	CCBSNS	2 20 Minutes - LCRB Placeholder	Community Development	Barrett J, Sr Mgmt Analyst	

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda**  
 10/10/2016 10:44 AM - Updated

<b>Total Time: 50 of 100 Minutes Scheduled</b>							
November 29, 2016 – City Council Ground Rules Meeting – Location: Fanno Creek House (4-7 pm)							
2641	12/06/2016	Carol Krager	AAA	December 6, 2016 CCDA and Council Meeting – <b>Combo</b>	Central Services	03/21/2016	
2856	12/06/2016	Kelly Burgoyne	CCDA	45 Minutes – Executive Session: Per ORS 192.660(2)(i) Employment Related Performance of the Chief Executive Officer – Placeholder	City Management	Krager C, City Recorder	
<b>Total Time: 45 Minutes of 180 Minutes Scheduled</b>							
2642	12/13/2016	Carol Krager	AAA	December 13, 2016 Business Meeting	Central Services	03/21/2016	
2689	12/13/2016	Carol Krager	ACCSTUDY	15 Minutes - Council Liaison Reports	Central Services	04/15/2016	
2849	12/13/2016	Lloyd Purdy	ACCSTUDY	25 Minutes – Executive Session per ORS 192.510(6): Property Negotiation	Community Development	Krager C, City Recorder	
<b>Total Time: 40 of 45 Minutes (0 Hours, 15 Minutes)</b>							
2835	12/13/2016	Liz Lutz	CCBSNS	1 5 Minutes – Appoint Budget Committee Members	Finance and Information Services		
2846	12/13/2016	Joe Patton	CCBSNS	2 5 Minutes – Appoint Tigard Transportation Advisory Committee Members	Community Development	Brown B, Assoc Transp Planner	
2847	12/13/2016	Doreen Laughlin	CCBSNS	3 5 Minutes – Appoint Planning Commission Members	Community Development	Laughlin D, Conf Exec. Asst.	
2848	12/13/2016	Joe Patton	CCBSNS	4 5 Minutes – Appoint City Center Advisory Commission Members	Community Development	Krager C, City Recorder	
2555	12/13/2016	Lloyd Purdy	CCBSNS	5 15 Minutes - Second Review: Development Agreement Hunziker Infrastructure (Hold for Scheduling)	Community Development	Purdy, L, Econ Development Mgr	

Meeting Banner  Business Meeting   
 Study Session  Special Meeting   
 Consent Agenda  Meeting is Full   
 Workshop Meeting  CCDA Meeting

**City Council Tentative Agenda  
 10/10/2016 10:44 AM - Updated**

2789	12/13/2016	Susan Shanks	CCBSNS	6 30 Minutes - Tigard Triangle Urban Renewal Plan	Community Development	Shanks S, Senior Planner
2805	12/13/2016	Kelly Burgoyne	CCBSNS	7 20 Minutes - LCRB Placeholder	Central Services	Barrett J, Sr Mgmt Analyst
2828	12/13/2016	John Goodrich	CCBSNS	8 15 Minutes - Willamette Water Supply Project Intake Structure Allocation	Public Works	Grass, M, Conf Exec Assistant
2860	12/13/2016	Sean Farrelly	CCBSNS	9 15 Minutes - Public Hearing for City Center Urban Renewal Plan Substantial Amendment	Community Development	Farrelly S, Redev Project Manager
<b>Total Time: 115 of 100 Minutes Scheduled - MEETING OVERSCHEDULED</b>						
				December 15, 2016 - City Council Goal Setting Meeting - Location: TBD (4-7 pm)		
2653	12/20/2016	Carol Krager	AAA	December 20, 2016 Workshop Meeting	Central Services	03/21/2016
2861	12/20/2016	Sean Farrelly	CCWKSHOP	30 Minutes - CITY COUNCIL BUSINESS MEETING: Tigard Triangle Urban Renewal Plan - Adoption Hearing (if needed)	Community Development	Shanks S, Senior Planner
<b>Total Time: 30 Minutes of 180 Minutes Scheduled</b>						
2645	12/27/2016	Carol Krager	AAA	December 27, 2016 Business Meeting - <b>CANCELLED</b>	Central Services	03/21/2016

**Council Confirmed Travel & Vacation Dates:**

Councilor Woodard: ~~Sept. 24 - Oct. 2, out of town~~  
 Mayor Cook: ~~Sept. 28 - Oct. 2, LOC~~  
 Councilor Goodhouse: ~~Sept. 28 - Oct. 2, LOC~~  
 Councilor Woodard: ~~Oct. 4 - 8, NRPA~~  
 Council Pres. Snider: ~~Oct. 4 - 5, Out of town~~  
 Councilor Goodhouse: Oct. 8 - 12, RailVolution

Mayor Cook: Nov. 2-3, USCM Water Council Task Force  
 Mayor Cook: Nov. 4-7, out of town  
 Mayor Cook: Nov. 15-18, Transp. For America conf.  
 Councilor Goodhouse: Nov. 15-20, NLC

**AIS-2866**

**4. B.**

**Business Meeting**

**Meeting Date:** 10/18/2016

**Length (in minutes):** Consent Item

**Agenda Title:** Approve City Council Meeting Minutes

**Submitted By:** Kelly Burgoyne, Central Services

**Item Type:** Motion Requested

**Meeting Type:** Consent  
Agenda

**Public Hearing:** No

**Publication Date:**

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**Information**

**ISSUE**

Approve City Council meeting minutes.

**STAFF RECOMMENDATION / ACTION REQUEST**

Approve minutes as submitted.

**KEY FACTS AND INFORMATION SUMMARY**

Attached council minutes are submitted for City Council approval:

- August 9, 2016
- August 16, 2016

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

N/A

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**Attachments**

Minutes Placeholder

August 16, 2016 Minutes

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PLACEHOLDER:

- August 9, 2016 Minutes



City of Tigard  
**Tigard Workshop Meeting Agenda**  
**August 16, 2016**

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1. WORKSHOP AND BUSINESS MEETING

- A. Mayor Cook called the meeting to order at 6:33 p.m.
- B. Deputy City Recorder Burgoyne called the roll.

	Present	Absent
Councilor Henderson	✓	
Council President Snider	✓ (arrived at 6:35 p.m.)	
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	

- C. Mayor Cook asked those in attendance to stand with him for the Pledge of Allegiance.
- D. Call to Council and Staff for Non Agenda Items: None.

BUSINESS MEETING:

2. APPOINT AUDIT COMMITTEE MEMBERS

Finance and Information Services Director LaFrance explained what the resolution was for and that it needed to be amended at the end of the resolution to reflect Aaron Fahr and not Drew Bisenius.

Motion by Councilor Woodard seconded by Council President Snider to adopt Resolution No. 16-39 as amended. Motion was approved by unanimous vote of council.

	Yes	No
Councilor Henderson	✓	
Council President Snider	✓	
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	

**TIGARD CITY COUNCIL MEETING MINUTES – August 16, 2016**

3. BLUE ZONES BRIEFING: TUALATIN MAYOR LOU OGDEN

Tualatin Mayor Lou Ogden gave a presentation and explained the issues surrounding childhood obesity, where Oregon ranked in comparison to other states, how the program started and why and the longevity of Blue Zones. He showed a YouTube video on areas that were currently living within Blue Zones and the benefits. He further explained the two pronged approach, the do-it-yourself kit and cost related to the Blue Zone program. He said he had been in contact with Klamath Falls, local grocery stores, hospitals and other government agencies. He went over Blue Zone community statistics, and suggested Tigard and Tualatin partner together along with grocery stores, chambers and other entities to submit an application. He asked Tigard to support and endorse the program, and would like to submit the application the following week.

Mayor Cook asked why Tualatin couldn't do it alone and if sharing a School District factored in. Mayor Ogden replied it did contribute in wanting to partner with Tigard. Councilor Henderson said the program is good.

Councilor Woodard said he received a call inquiring about Blue Zones and was unaware that local cities were currently participating in the program. He asked about resources and investments needed to participate, and said he couldn't see any negatives to the program.

Councilor Goodhouse said he thinks the program is perfect and likes the idea of getting the community back into eating right and exercising.

Mayor Ogden said TVF&R, Providence, Legacy, Fox Steel, Gerber, Chambers, Rotaries, PCC, local churches and many more have already signed on.

Councilor Snider said it's great from a strategic perspective and where Tigard needed to be.

Council asked Mayor Ogden when the deadline to submit was and Mayor Ogden replied August 26.

Motion by Council President Snider seconded by Councilor Goodhouse to adopt Resolution No. 16-40. Motion approved by unanimous vote of council.

Resolution No.16-40 – A RESOLUTION ENDORSING THE APPLICATION BY THE CITIES OF TIGARD AND TUALATIN TO BE DESIGNATED AS A DEMONSTRATION COMMUNITY BY THE BLUE ZONES PROJECT

	Yes	No
Councilor Henderson	✓	
Council President Snider	✓	
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	

TIGARD CITY COUNCIL MEETING MINUTES – August 16, 2016

## WORKSHOP MEETING:

### 4. DISCUSSION ON PROPOSED CHANGES TO TMC CH. 12 – UTILITY SERVICES RULES AND REGULATIONS

Utility Billing Supervisor Blecker and Finance and Information Services Director LaFrance presented this item. Ron Blecker went over the proposed changes with council; highlighting changes to utility charge adjustments and payment agreements in regards to errors; limiting the period of error to one year vs. the current two year period from the date error was identified. He explained the city currently has 152 meters that are obstructed, making it difficult or impossible for the meter to be read. He would like the ability to send customers a thirty day notice to remove any obstruction and if the customer has not complied at the end of the thirty days, the city may impose a fee that could be added to their utility bill. He discussed changing the filing of grievances from the Public Works Director to the Utility Billing Supervisor. Utility Billing Supervisor Blecker and Finance and Information Services Director LaFrance explained the benefits of processing utility bills within ten days vs the current 7 days, updating the phone number listed for credit card payments, changes to final notices; extending single-family and metered business shut-off service to six calendar days vs thirty six hours and multi-family and commercial accounts from thirty calendar days to twenty and other adjustments. Mr. Blecker said these changes would reduce the risk of account discrepancies.

Mayor Cook asked why go to one year vs the current two years. Staff explained this allowed for better efficiency with adjustments and that a recent error had cost the city money because the error wasn't noticed sooner.

Council President Snider asked why the error cost the city money. Utility Billing Supervisor Blecker explained in 2004 staff had made an error in calculating per units in water consumption, that the city had overcharged the account and when corrected the city settled that case. Councilor Snider said he would not characterize that case as the city's money since we had miscalculated units being used. Councilor Snider said nothing in the proposed changes would eliminate future litigation. Mr. Blecker also explained within a year's time the city enters into several payment arrangements with customers who fall behind on their bills and he would like to limit these payment arrangements to two payment arrangements annually per account.

Councilor Woodard asked how many shut-offs for non-payment staff currently handles, and if they were resolved. Mr. Blecker said that in the last six months staff had made 78 payment arrangements and 9 of those were shut-offs.

Mayor Cook asked if there were code enforcement issues and could the city lien their property taxes or bill them for that. City Manager Wine said yes, but the city had maybe done that once since she's been here. She said staff would explore the code enforcement option and see if it could apply to utility meter reading issues.

Mr. Blecker continued to explain the administrative rules were written when they were doing bi-monthly billing and now they were doing monthly billing, so he suggested the billing process change from the current seven day cycle to ten days, update the phone number listed, adding language addressing the Parks and Recreation fee, proposed mailing past due door hanger notices to

TIGARD CITY COUNCIL MEETING MINUTES – August 16, 2016

customers on Thursdays as opposed to staff hanging past due notices on doors, since most of the time they find that customers aren't using the front door to their homes as often; giving customers an extra four days to pay their past due bill, and reducing the past due fee from \$30 to \$10 since this new process would require less staff time. Councilor Goodhouse asked if staff could also send out emails in addition to mailing past due notices. Ron said they could if they had an email on file, and said staff does make calls if the account is left in past due status.

Councilor Woodard asked if there were adjustment considerations and what persuaded staff to be more generous in their final notice days. Ron explained the current billing software doesn't allow staff to run a report to check if accounts are late at the current thirty days; it places those accounts in a perpetual late status, but if they changed this to twenty days for final noticing, staff would be able to run a report and not have to do this by hand each month. Mayor Cook asked if twenty-seven days would work and staff replied yes. Mayor Cook suggested going to twenty-seven days. Councilor Snider asked if they just needed to change the software and have something that does what it should. Councilor Goodhouse agreed the software issue should be fixed. Ron said the city had asked for several accommodations within the software design to fit their needs, and because of this the problem regarding running final notice reports was created.

Council President Snider asked what the time frame was for collecting on accounts if the city found they were under billing customers. He stated that while he doesn't love it, he could live with it, but feels the city has an obligation to customers when there are unusual circumstances.

Mayor Cook agreed it sometimes takes a year to notice an error. If state code is two years then he's more comfortable keeping it at two years. Councilor Woodard and Snider agreed. Council suggested keeping the current two years in the TMC, but that otherwise the changes looked good. Item would return before the council in two weeks.

#### 5. BRIEFING ON THE COUNCIL GOAL TO PROVIDE RECREATIONAL OPPORTUNITIES FOR TIGARD RESIDENTS

Senior Management Analyst Wyatt and Assistant City Manager Newton explained staff had identified Tualatin Hills Park and Recreation District (THPRD), Tigard-Tualatin Aquatics District (TTAD), Tigard-Tualatin School District (TTSD) and the City of Sherwood as potential partners and had begun interviewing each. Mr. Wyatt gave background on Tigard's Recreation Program and discussed the short-term and long-term goals of the city providing recreation programs. He discussed each partner and what level of recreation they each provided:

1. Tigard Tualatin Aquatic District has two pools that offer swim lessons and whose boundaries align with the School District. He said citizens living outside of the Tigard-Tualatin School District were not being served and they would need to figure out how to serve the entire community and secure an additional facility beyond the pools to provide recreation programs beyond swimming lessons.
2. Tigard Tualatin School District has exciting possibilities for partnership with many recreational programs offered through their facilities; however, the school would have first priority and city staff would need to manage and operate programs.

### TIGARD CITY COUNCIL MEETING MINUTES – August 16, 2016

3. Tualatin Hills Park and Recreation District operates over 200 facilities and offers a full scale recreation program. He said that THPRD is considered the top provider of recreation for Tigard residents. The cost is approximately \$1.62 on assessed value and is higher than the aquatic district. He explained there was concern on how Tigard residents would perceive this, but that residents would no longer pay an out of district rate for use of facilities and programs and it would involve THPRD taking over the city's parks and recreation program.

Council President Snider asked if capital investment would be needed from the city. Liz Newton said they would eventually want a facility in Tigard and maybe at some point in time a facility would need to be constructed.

4. City of Sherwood currently contracts with the YMCA for operation and programming and is conducting a feasibility study. Tigard and the City of Sherwood could create a district for offering recreational programs, and Tigard would need to bring something to the table.

Council President Snider asked staff if there was discussion with THPRD on managing the program and the full district. Assistant City Manager Newton replied there are a lot of options; she said staff could contact them and see if they are open to different options.

Mr. Wyatt explained the city is implementing year two of their five year program and what they were currently doing, and said the city could continue implementing the five year program.

Councilor Woodard said there should be a sixth item to consider and the city should take a look at the City of Wilsonville's facility and study their programs. Liz explained they had looked at Wilsonville's program and had been in contact with their staff; that there are a few issues like lack of an aquatic center in Tigard.

Mayor Cook said his biggest worry was capital and operational funding that would be needed, year two was barely in the budget and would need to be changed.

Councilor Goodhouse would like staff to look into any kind of partnership with Tualatin, especially since Tigard shares so many common areas with them.

Council President Snider said everyone is in a different place then in 2000 and the city should look at approaching Sherwood and Tualatin again. Ms. Newton said they would go back to them again.

Councilor Henderson said the facility was what needed to be talked about and that maybe the city needed to look at a for-profit program and the city needed to keep the interest going.

Councilor Woodard discussed looking at Sherwood's facility and stated the city cannot cost recover money, it's an actual cost increase to the tax payers and was above and beyond what the bond provided and that was why the YMCA looked so appealing. He continued to talk briefly about the Blue Zones and that these are different entities and not to confuse the two.

Council President Snider talked about the opportunity for offering different programs that could be available in each city and asked if staff was looking for council direction that night. Staff replied

## TIGARD CITY COUNCIL MEETING MINUTES – August 16, 2016

they were, and asked council if there were any of the five options council didn't want staff to pursue and what steps should be taken next. Council replied they would like to see cost breakdowns and what would be included in those costs, if there were lighter versions to their programs, if residents would need to be annexed in if they were currently in the THPRD District and what would that mean, and if the city handed over park land to THPRD they would give the city buy-in or some kind of trade off for a certain time frame.

Ms. Newton explained staff has information on the cost breakdown, that it wasn't included with their material but could be provided next time.

Councilor Woodard stated he would like to see staff build on what they've already done and would ask that they think about a Citizen Advisory Committee. Councilor Snider agreed they needed a Recreation Advisory Committee.

Mr. Wyatt asked what council would like the group to focus on. Ms. Newton explained one of the things they looked at possibly doing was a survey, but maybe that could be a focus group instead. City Manager Wine said staff would figure out a structure of how they move forward for the next meeting.

## 6. REVIEW PROCESS FOR SOLICITING BIDS FOR GENERAL AND SPECIALIZED LEGAL SERVICES

Senior Management Analyst Wyatt explained staff was focusing on the process; that the city went out for contract every 5 years and the city attorney's service contract was set to expire at the end of December 2016. He said staff was developing a process for going out to bid. He continued to explain how attorney services were broken out in 2011 and that this was an opportunity to get feedback from city council on the process and what level of involvement council wanted.

Council President Snider said council should be very involved since council was one of the biggest users of attorney services. City Manager Marty Wine explained that by charter, city council hires the city attorney and agreed that council should be very involved. She explained staff wanted to know what council's involvement looked like and if the timing of the process looked appropriate to council. Councilor Snider discussed the difference between having a firm that would allow for different attorney expertise services in house vs. a firm that was singular in nature. His desire was to look at firms that had different levels of expertise.

Councilor Woodard agreed that firms offering more levels of expertise was preferred as they were more flexible and focused, and he couldn't remember if they got the same level previously from one firm.

Councilor Henderson said he was impressed with Jordan Ramis's firm, because they have several different skills within the firm; he thought it worked out better and service was better.

Mr. Wyatt said they would go out for two RFP's; one for general attorney services and one for specialized attorney services. He then explained the process.

## TIGARD CITY COUNCIL MEETING MINUTES – August 16, 2016

Mayor Cook didn't think council would interview all of them, but thought there could be two councilors on the sub-committee and asked what the timing was for the RFP. Mr. Wyatt said staff would issue the RFP in mid-September with interviews sometime in mid-October to early November depending on how many responses they receive. Mayor Cook asked council if anyone was interested in participating in interviews. Council President Snider and Councilor Goodhouse volunteered.

#### 7. UPDATE ON THE IMPLEMENTATION OF THE STRATEGIC PLAN

Senior Management Analyst Wyatt updated council how the implementation of the Strategic Plan was going, explained that while they did not win the gold medal standard for the walk-friendly assessment, Tigard did receive honorable mention. He explained this was a free program and the information was compiled by one of the city's interns. He highlighted some of the city's programs and successes: The Rock and Roll Safe Routes to School program, Mayor Cook's participation in public transportation, 17.5 miles of walk friendly greenway, smoke and vape-free zones in city parks and properties, updated walking maps, and how the city engaged with Tigard citizens. He said Tigard was selected for a Brownfield grant, and discussed Tigard's Trivia as being a way to communicate and educate citizens. He ended his presentation asking the council a Tigard Trivia question.

#### 8. CITY PRIORITIES DISCUSSION: SCOPING A LOCAL OPTION LEVY AND FACILITIES BOND PROPOSAL

City Manager Wine suggested holding this item over to the first council business meeting in September due to the late hour and other agenda items still needing to be heard. Council agreed. Mayor Cook continued the item to September 13, 2016 Council Business meeting.

#### 9. PHOTO RED LIGHT REPORT TO COUNCIL

Police Commander McDonald, Lieutenant Frisendahl and Court Supervisor Gliebe presented this item. Commander McDonald said they were tasked a year ago with researching the viability of photo red light program in Tigard. He explained they had contacted a vendor to run a test and discussed the summary of findings. He explained they had tested four areas along Hwy 99W; Hall Boulevard, Gaarde at McDonald interchange, Walnut Street and Durham. Once this was completed, they reached out to Beaverton, Tualatin and Sherwood to learn what their experience has been since they use the photo red light program with the same vendor that had done the test for Tigard.

Mayor Cook explained he was the person who originally asked this item be brought forward. Councilor Snider asked staff if they were more amendable to the program than they seemed to be in the beginning. Commander McDonald said that in doing more research there is an improvement in traffic safety and that the surrounding jurisdictions have seen unsafe traffic areas become safe. Councilor Snider asked Commander McDonald if he would explain what he mean. Commander McDonald explained it allows officers to watch traffic violations, keeps officers safe and monitors problem areas twenty-four hours a day.

TIGARD CITY COUNCIL MEETING MINUTES – August 16, 2016

Mayor Cook discussed the safety of citizens and officers, and said that was why he wanted to look at it, not because it could be a financial gain for the city.

Councilor Woodard stated he is not a fan of the photo red light program, that it's too much technology and not enough human interaction. He said he could be convinced otherwise because of the positive safety data, but needs more information. Council and staff discussed the projected half a million dollar cost of the program, the \$900,000 potential revenue that could net the city \$400,000 annually and what information staff used to get to those dollar figures.

City Manager Wine asked Commander McDonald to discuss how the technology works. Commander McDonald explained the technology would allow police officers to review film of violators and allow for police officer judgment in issuance of citations. He said it enhanced pedestrian safety in needed intersections of the city.

Councilor Henderson was concerned about the people who operate the equipment and worried it would require more money. Commander McDonald explained this was the first time the city had done an actual survey to provide council with data. Councilor Henderson asked how they came to use this vendor in their survey. Commander McDonald explained the vendor was able to do the survey at no cost to the city and was the vendor neighboring jurisdictions (Tualatin, Beaverton and Sherwood) currently use; allowing Tigard the opportunity to reach out to these cities and ask questions about their struggles and successes with the program.

Councilor Henderson agreed with the four intersections defined as being a problem and asked what the likelihood was they would need more. Council President Snider said he believed they needed more and could see more being added in the future. Commander McDonald spoke to the four intersections used in the survey and how these intersections wouldn't necessarily be where they would be located. He said Hwy 99W would need to be permitted through ODOT and that ODOT is familiar with the process and would be the one working with the vendor on permitting.

Council President Snider said that from a public safety concern, this made sense and it's not about money, but about safety. He asked if staff had the ability to scale up if more than four were used. Commander McDonald said currently the data provided was based on installing four.

Councilor Goodhouse asked how many people stop short or are extra cautious because there is a photo red light and are concerned they will get a ticket. Commander McDonald said it increases the awareness of where the camera is located at the intersection. He explained that of the estimated 33,000 annual traffic violation detections at each intersection, approximately 10,000 to 12,000 would actually be issued citations; the vast majority would not receive a citation. He said officers get a twelve second snap shot of each violation. He agreed they would like to make face to face interaction, but this was an alternative to the issue.

Mayor Cook said he knows where photo red lights are located in Beaverton, and because of this he is more careful when traveling in those intersections.

Councilor Woodard explained the data provided were all estimates of what was expected if the photo red light program were to be implemented, and this was what Tigard residents look at.

## TIGARD CITY COUNCIL MEETING MINUTES – August 16, 2016

Council President Snider said many of the costs are scalable and asked Councilor Woodard how he could be convinced. Councilor Woodard replied he can see the positives with the program, but likes to see police officers on the beat communicating with citizens, he doesn't like the digital era and it feels like this would create more regulations and government control, but that with more time and information, he could be convinced.

Councilor Goodhouse asked how much say the vendor has in how the program is run and if the city could negotiate. Commander McDonald said no, and explained the photo red light statute is very specific and the settings were set by the engineering code and they were required to make a report to Legislature every two years. Councilor Goodhouse stated he liked the technology and how far it has come.

City Manager Wine explained staff is looking for guidance from council in how they proceed and what other information council would like, or if they should not proceed at all. Council agreed to proceed and have staff continue to look into the program and move forward with a focus group for public input.

#### 10. NON AGENDA ITEMS

City Manager Wine said Councilor Goodhouse had agreed to be the new PRAB representative.

#### 11. EXECUTIVE SESSION

There was no executive session.

#### 12. ADJOURNMENT

Mayor Cook called for a motion to adjourn the meeting.

Motion by Council President Snider seconded by Councilor Henderson to adjourn. Motion was approved by unanimous vote of council.

	Yes	No
Councilor Henderson	✓	
Council President Snider	✓	
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Goodhouse	✓	

Mayor Cook adjourned the meeting at 9:29 p.m.

\_\_\_\_\_  
Kelly Burgoyne, Deputy City Recorder

Attest:

\_\_\_\_\_  
Mayor, City of Tigard

Date: \_\_\_\_\_

**AIS-2697**

**4. C.**

**Business Meeting**

**Meeting Date:** 10/18/2016

**Length (in minutes):** Consent Item

**Agenda Title:** Tigard Street Heritage Trail - Grant Authorization

**Prepared For:** Lloyd Purdy                      **Submitted By:** Lloyd Purdy,  
Community Development

**Item Type:** Motion Requested                      **Meeting Type:** Consent Agenda

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

**Information**

**ISSUE**

The City of Tigard has been awarded \$700,000 in funds from the State's ConnectOregon VI grant program and \$240,000 in Washington County Major Streets Transportation Improvement Program (MSTIP) funding as a local match for the Tigard Street Heritage Trail.

**STAFF RECOMMENDATION / ACTION REQUEST**

Authorize the City Manager to sign a grant agreement with Washington County for \$240,000 in MSTIP funding.

**KEY FACTS AND INFORMATION SUMMARY**

The City of Tigard's proposal to the ConnectOregon VI grant program received high marks during the review process and was ranked as the third best project in the state and the highest ranking bike/ped project. In August 2016, ODOT announced a \$700,000 grant award for the Tigard Street Heritage Trail. This will be matched against \$240,000 committed from the Washington County MSTIP fund for a \$1.2 million project. The MSTIP grant is attached.

Project funding sources:

- ConnectOregon VI funding \$700,000
- Washington County MSTIP funding \$240,000
- City of Tigard Parks SDC Funds \$160,000
- CCDA/Urban Renewal Funds \$150,000

The Tigard Street Heritage Trail uses a 3/4 mile inactive rail corridor parallel to Tigard Street,

leased by the City in December 2013. It provides a safe off street biking, walking, and skating commuter route connection to Downtown Tigard. In summer 2015, the City laid down a temporary porous asphalt treatment from Tiedeman Avenue to Tigard's downtown commercial core across Main Street from the Tigard Transit Center. This temporary trail has proven the demand to justify a complete multi-use trail that includes a finished surface treatment, lighting, landscaping, amenities, fencing and cultural components.

The Tigard Street Heritage Trail also makes a gateway connection to Downtown Tigard and provides the impetus for a public plaza between the Chamber of Commerce building and rail line. On January 20, 2015, Resolve Architects, presented preliminary heritage trail concepts to the Tigard City Council. A final community discussion was held in February 2016 with a focus group to review the draft concept. These heritage trail themes will be carried forward during final design.

Tigard has 17.5 miles of existing trails. These trails generally followed riparian and wetland areas. Tigard's existing trails are circuitous, and in wooded areas. The Tigard Street Heritage Trail alignment is not isolated, and is in a street corridor that is busy and visually open. ConnectOregon VI and Washington County MSTIP funding will allow this path to be lit – a first for a trail in Tigard. The Tigard Street Trail is also part of a unique cultural resource in the City of Tigard. This bike and pedestrian infrastructure can be a place that illustrates and celebrates local heritage and identity as a “pedestrian boulevard” into downtown Tigard. The Tigard Street Heritage Trail will connect residents and employees to transit and amenities in downtown Tigard and it will connect residents to the history and heritage of this community.

Final design for the Tigard Street Heritage Trail may begin as early as November 2016 with an estimated project completion as early as November 2017.

## **OTHER ALTERNATIVES**

Decline grant award.

## **COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

### Tigard City Council Goals and Milestones 2015-17

Goal #2 Make Downtown Tigard a Place Where People Want to Be.

Increase walkable access to open space by advancing plans for new downtown open space, including the Tigard Street Trail plaza, the Fanno Creek Overlook and a Main Street plaza, including programming.

### Tigard Greenways Trails System Master Plan

Tigard Street Trail: Short-term recommended project list

### City Center Urban Renewal Plan Projects

C. Bike/Pedestrian Facilities

8. Conversion of Existing North Rail Corridor into a Multi-use Pedestrian Trail

City of Tigard Capital Improvement Project List

Ranked on the qualified project list.

City of Tigard Strategic Vision for a more walkable, healthy and interconnected community.

**DATES OF PREVIOUS CONSIDERATION**

November 10, 2015 – ConnectOregon VI grant submission authorization

August 8, 2015 – Tigard Street Heritage Trail Concepts

January 20, 2015 – Tigard Street Heritage Trail Design Concepts

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**Fiscal Impact**

**Cost:** 1,200,000

**Budgeted (yes or no):** yes

**Where budgeted?:** CIP 92034

**Additional Fiscal Notes:**

Connect ORVI funding \$700,000

Washington County MSTIP funding \$240,000

City of Tigard Parks SDC Funds \$160,000

CCDA/Urban Renewal Funds \$150,000

In-kind eligible match \$70,000

---

**Attachments**

MSTIP Grant

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**AGREEMENT  
BETWEEN  
Washington County and the City of Tigard**

**FOR A DISTRIBUTION FROM THE MAJOR STREETS  
TRANSPORTATION IMPROVEMENT PROGRAM (MSTIP) OPPORTUNITY  
FUND**

THIS AGREEMENT is entered into between Washington County, a political subdivision of the State of Oregon, acting by and through its elected officials, hereinafter referred to as "COUNTY"; and the City of Tigard, a municipal corporation, acting by and through its City Council, hereinafter referred to as "CITY."

**RECITALS**

1. COUNTY approved the MSTIP 3d program in July 2012 that contained a \$5,000,000 Opportunity Fund component, hereinafter referred to as "FUND".
2. CITY requested a \$240,000 distribution from the FUND as a match for a Connect OregonVI grant, hereinafter referred to as "COVI", to fund the Tigard Street Heritage Trail.
3. The FUND distribution requested by CITY was approved by the Washington County Coordinating Committee in November 2015. The approval was contingent on the CITY receiving approval for the COVI grant.
4. CITY was awarded the COVI grant in 2016.
5. CITY will enter into a separate agreement with ODOT for COVI grant funds.
6. ORS 190.010 authorizes agencies to enter into intergovernmental agreements for the performance of any or all functions and activities that a party to the agreement has the authority to perform.

**AGREEMENT**

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth below, the parties hereto agree as follows:

**1. COUNTY OBLIGATIONS**

- 1.1 COUNTY shall distribute \$240,000 from the FUND within sixty (60) calendar days of receipt of an invoice from CITY.

## **2. CITY OBLIGATIONS**

2.1 CITY shall invoice COUNTY for the \$240,000 distribution from the FUND within thirty (30) calendar days of the execution of the agreement with ODOT described in Recital 5 of this AGREEMENT.

## **3. FINANCIAL OBLIGATIONS**

3.1 COUNTY and CITY will each bear the cost of performance of their respective obligations under this AGREEMENT.

## **4. GENERAL PROVISIONS**

### **4.1 LAWS OF OREGON**

The parties shall comply with all applicable laws and regulations regarding the handling and expenditure of public funds. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. All relevant provisions required by ORS Chapter 279A and 279C to be included in public contracts are incorporated and made a part of this Agreement as if fully set forth herein.

### **4.2 DEFAULT**

Time is of the essence in the performance of the Agreement. Either party shall be deemed to be in default if it fails to comply with any provisions of this Agreement. The non-defaulting party shall provide the other party with written notice of default and allow thirty (30) days within which to cure the defect.

### **4.3 INDEMNIFICATION**

This Agreement is for the benefit of the parties only. Each party agrees to indemnify and hold harmless the other party, and its officers, employees, and agents, from and against all claims, demands and causes of actions and suits of any kind or nature for personal injury, death or damage to property on account of or arising out of services performed, the omissions of services or in any way resulting from the negligent or wrongful acts or omissions of the indemnifying party and its officers, employees and agents. To the extent applicable, the above indemnification is subject to and shall not exceed the limits of liability of the Oregon Tort Claims Act (ORS 30.260 through 30.300). In addition, each party shall be solely responsible for any contract claims, delay damages or similar items arising from or caused by the action or inaction of the party under this agreement.

#### 4.4 MODIFICATION OF AGREEMENT

No waiver, consent, modification or change of terms of this Agreement shall be binding unless in writing and signed by both parties.

#### 4.5 DISPUTE RESOLUTION

The parties shall attempt to informally resolve any dispute concerning any party's performance or decisions under this Agreement, or regarding the terms, conditions or meaning of this Agreement. A neutral third party may be used if the parties agree to facilitate these negotiations. In the event of an impasse in the resolution of any dispute, the issue shall be submitted to the governing bodies of both parties for a recommendation or resolution.

#### 4.6 REMEDIES

Subject to the provisions in paragraph 4.5, any party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement. All legal actions shall be initiated in Washington County Circuit Court. The parties, by signature of their authorized representatives below, consent to the personal jurisdiction of that court.

#### 4.7 EXCUSED PERFORMANCE

In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delay or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of GOD, governmental restrictions imposed on or mandated by governmental entities other than the parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control to the party to be excused.

#### 4.8 SEVERABILITY

If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement will not be affected or impaired in any way.

#### 4.9 INTEGRATION

This Agreement is the entire agreement of the parties on its subject and

supersedes any prior discussions or agreements regarding the same subject.

**5. TERM OF AGREEMENT**

5.1 This Agreement becomes effective on the last date signed below and shall terminate two (2) years from the effective date except as provided in Paragraph 5.2 below.

5.2 This Agreement may be amended or extended for periods of up to one (1) year by mutual consent of the parties. It may be canceled or terminated for any reason by either party. Termination or cancellation shall be effective thirty (30) days after written notice to the other party, or at such time as the parties may otherwise agree.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF TIGARD, OREGON**

**WASHINGTON COUNTY, OREGON**

\_\_\_\_\_

\_\_\_\_\_  
CHAIR, Board of County  
Commissioners

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
RECORDING SECRETARY

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_

\_\_\_\_\_  
COUNTY COUNSEL

**AIS-2852**

**4. D.**

**Business Meeting**

**Meeting Date:** 10/18/2016

**Length (in minutes):** Consent Item

**Agenda Title:** Proclaim National Manufacturing Day

**Prepared For:** Joanne Bengtson, City Management

**Submitted By:** Joanne Bengtson, City Management

**Item Type:** Receive and File

**Meeting Type:** Proclamation

**Public Hearing:** No

**Publication Date:**

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**Information**

**ISSUE**

Should Mayor Cook proclaim October 27, 2016 as National Manufacturing Day in Tigard?

**STAFF RECOMMENDATION / ACTION REQUEST**

Issue the proclamation

**KEY FACTS AND INFORMATION SUMMARY**

Manufacturing Day is a celebration of modern manufacturing meant to inspire the next generation of manufacturers.

**OTHER ALTERNATIVES**

Not issue the proclamation.

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

In 2015 Mayor Cook issued this proclamation in support of work by two Tigard firms - Fought & Co and PolyCast Inc. - who partnered with Tigard-Tualatin High School students to promote manufacturing careers for their future.

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**Attachments**

National Manufacturing Day Proclamation

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# Proclamation

City of Tigard

## NATIONAL MANUFACTURING DAY October 27, 2016

**WHEREAS**, manufacturing makes a significant contribution to the national, state, and local economy; and manufacturing is the cornerstone of Oregon's economy; and

**WHEREAS**, advanced manufacturing technologies provide high-paying jobs for Tigard residents and form a vital economic base for our community; and

**WHEREAS**, the manufacturing sector provides jobs, including careers like welders, mechanics, machinists, pipefitters, engineers, computer programmers, information technology professionals, researchers and managers; and

**WHEREAS**, many Tigard manufacturing businesses are opening their doors to host tours, to educate & inspire the next generation of manufacturers and to reveal how local firms add value to products that support and power our local, regional and national economy; and

**WHEREAS**, Manufacturing fuels Oregon's economic growth, creates new and rewarding careers, and is estimated that for every traded sector manufacturing job in Oregon (*one that produces goods and services used outside the region*), 2.5 local sector jobs are generated; and

**WHEREAS**, The manufacture of emerging technologies like 3D printing, unmanned aerial vehicles (UAV), solar cells, robotics, and wind turbine components provide high paying jobs for Oregonians and create a need for a well-educated workforce to continue growing this vital economic base for Oregon; and

**WHEREAS**, Partnering with Tigard's economic development leaders like the Columbia-Willamette Workforce Collaborative, Worksystems, Inc., the SW Washington Workforce Development Council and WorkSource Oregon, and the Tigard -Tualatin School District and Portland Community College will assure that Tigard has a well-prepared manufacturing workforce that is ready to make Oregon products today and in the future.

**NOW THEREFORE BE IT RESOLVED THAT I**, John L. Cook, Mayor of the City of Tigard, Oregon, do hereby proclaim October 27, 2016 as

## NATIONAL MANUFACTURING DAY

in Tigard, Oregon and urge all residents to recognize the vital role that local manufacturing firms play in developing a healthy local and national economy.

Dated this \_\_\_\_\_ day of October, 2016.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
John L. Cook, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
Deputy City Recorder

**AIS-2859**

**4. E.**

**Business Meeting**

**Meeting Date:** 10/18/2016  
**Length (in minutes):** Consent Item  
**Agenda Title:** Contract Award - Canterbury Lane Storm Line Upgrade  
**Prepared For:** Joseph Barrett  
**Submitted By:** Joseph Barrett, Finance and Information Services  
**Item Type:** Motion Requested      **Meeting Type:** Consent  
 Agenda -  
 LCRB

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

**Information**

**ISSUE**

Shall the Local Contract Review Board award a contract for construction of the Canterbury Lane Storm Line Upgrade project to D&T Excavation?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff is recommending the Local Contract Review Board award this construction contract to D&T Excavation in the amount of \$398,000 and authorize the City Manager to take the necessary steps to execute the contract.

**KEY FACTS AND INFORMATION SUMMARY**

An existing 12” storm line in Canterbury Lane and 109<sup>th</sup> Avenue was constructed in the late 1960s without regard to future maintenance accessibility. This is due to several blind tee connections and 45 degree bends within the line where no access or visual inspection can occur. It also limits the ability to complete TV inspections on this line to determine their condition and if any cleaning is required.

With this project, a 12” storm line with manholes and catch basins will be constructed meeting the City’s Public Improvement Design Standards and Clean Water Services requirements. This will allow a fully accessible and maintainable system which will also meet the MS4 permit requirements. A water quality manhole will also be placed for treatment of the stormwater runoff. The project will also see 1,180 linear feet of new 12” storm line will be placed on Canterbury Lane and 305 linear feet on 109<sup>th</sup> Avenue.

The City issued an Invitation to Bid for the work in early August and received bids from eight (8) contractors. The contractors and their bids were as follows:

- D&T Excavation - \$398,000
- Trench Line Excavation Inc. - \$398,202
- Pacific Excavation - \$407,000
- Titan Utilities, LLC - \$416,882
- C&M Excavation & Utilities, LLC - \$431,086
- Tapani, Inc. - \$432,070
- James W Fowler Company - \$468,450
- Valley Pacific Construction, Inc. - \$531,841 (correction of scribes' error from first pass)

Staff has reviewed D&T's bid and vetted the company through the Contractors Construction Board and the Bureau of Labor and Industries for any disqualifying sanctions. Finding a sound bid proposal and no disqualifying sanctions, staff is recommending the Local Contract Review Board award a contract for this project to D&T Excavation in the amount of \$398,000.

### **OTHER ALTERNATIVES**

The Local Contract Review Board may reject this contract award and direct staff to resolicit the work or the LCRB could reject this contract award and direct staff to stop the project.

### **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

### **DATES OF PREVIOUS COUNCIL CONSIDERATION**

The Local Contract Review Board discussed this project at their September 27, 2016 business meeting and agreed to have the award presentation come forward on the consent agenda.

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### **Fiscal Impact**

**Cost:** \$398,000

**Budgeted (yes or no):** Yes

**Where budgeted?:** Stormwater Fund

#### **Additional Fiscal Notes:**

The 2016-2017 Stormwater Fund fiscal year budget has \$322,500 allocated for this project. The required additional funding for this project will come from either anticipated cost reductions on other projects in the fund or, if necessary due to unforeseen circumstances, a future supplemental budget action. If a supplemental budget action is needed, the Stormwater Fund's Contingency of \$200,000 is adequate to fund the contract.

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### **Attachments**

*No file(s) attached.*

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**AIS-2855**

**5.**

**Business Meeting**

**Meeting Date:** 10/18/2016

**Length (in minutes):** 35 Minutes

**Agenda Title:** CONTINUED LEGISLATIVE PUBLIC HEARING (FROM SEPTEMBER 27, 2016) ON PROPOSED CODE CHANGES REGARDING MARIJUANA FACILITIES

**Prepared For:** Agnes Kowacz, Community Development

**Submitted By:** Agnes Kowacz, Community Development

**Item Type:** Public Hearing - Legislative

**Meeting Type:** Council  
Business  
Meeting -  
Main

**Public Hearing:** Yes

**Publication Date:**

**Information**

**ISSUE**

City Council will consider proposing changes to the time and place regulations for marijuana facilities located within the City of Tigard.

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends that City Council receive public testimony, deliberate, and provide direction to staff on further action.

**KEY FACTS AND INFORMATION SUMMARY**

City Council expressed interest to explore and discuss the City's current regulations relating to marijuana facilities. At the September 27, 2016 meeting, City Council instructed staff to provide additional information - specifically, hours of operation, a report on any criminal activity associated with marijuana businesses, and maps showing potential locations of where marijuana facilities could be located.

Staff provided a memo showing the hours of operations for the following jurisdictions: Beaverton, Tualatin, Hillsboro, Portland, and Washington County. The state requirement for hours of operation is 7 a.m. to 10 p.m.

Staff contacted the police department regarding information on any police activity or incidents relating to marijuana businesses. The police department found that two calls were generated at the location of Tigard's only retail marijuana facility, however, the incidents were unrelated to marijuana.

Two maps were provided with a memo showing the potential location of marijuana facilities within the City of Tigard. On Map A, the areas identified in blue exclude the 1,000 foot buffer from schools and other retail facilities, 500 foot buffer from parks zones and library and the downtown core (Mixed Use Central Business District). On Map B, the areas identified in blue exclude the 1,000 foot buffer from schools and other retail facilities and the downtown core (Mixed Use Central Business District).

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

Continued public hearing from September 27, 2016.

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**Attachments**

Memo

Map A

Map B

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# City of Tigard Memorandum

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**To:** Tigard City Council  
**From:** Agnes Kowacz, Associate Planner  
**Re:** Marijuana Regulations  
**Date:** October 18, 2016

At the September 27, 2016, City Council instructed staff to provide additional information on the time and place regulations for marijuana facilities. Specifically, City Council asked staff to research hours of operations in other jurisdictions, report on any criminal activity associated with marijuana facilities located within the City and provide maps showing potential locations where marijuana facilities could be located after the change in the minimum distance between facilities from 2,000 feet to 1,000 feet.

## **Hours of Operation**

Staff researched the hours of operations in other jurisdictions. The following table shows the permitted hours of operation for marijuana facilities for six other jurisdictions:

<u>Jurisdiction</u>	<u>Hours of Operation</u>
Tigard	10AM-8PM
Beaverton	7AM-10PM
Tualatin	10AM-8PM
Hillsboro	10AM-8PM
Portland	8AM-10PM
Washington County	8AM-10PM
State/OLCC	7AM-10PM

## **Police Report**

Currently, only one retail marijuana facility is operating within the City of Tigard, The Herbarry located at 11642 SW Pacific Highway. The Police Department reviewed all crimes at and around the business location for the past year and found that two calls were generated at that address. One was a hit and run and the other was an unwanted customer with potentially mental health issues that they wanted removed. No other incidents were reported.

## **Maps**

Two citywide maps have been provided with this memo identifying all the commercial and industrial areas (blue areas) where marijuana facilitates could occur if they were not limited to parcels with frontage on Pacific Highway (99W). On Map A, the areas identified in blue exclude the 1,000 foot buffer from schools and other retail facilities, 500 foot buffer from parks zones and library and the downtown core (Mixed Use Central Business District). On Map B, the areas identified in blue exclude the 1,000 foot buffer from schools and other retail facilities and the downtown core (Mixed Use Central Business District).

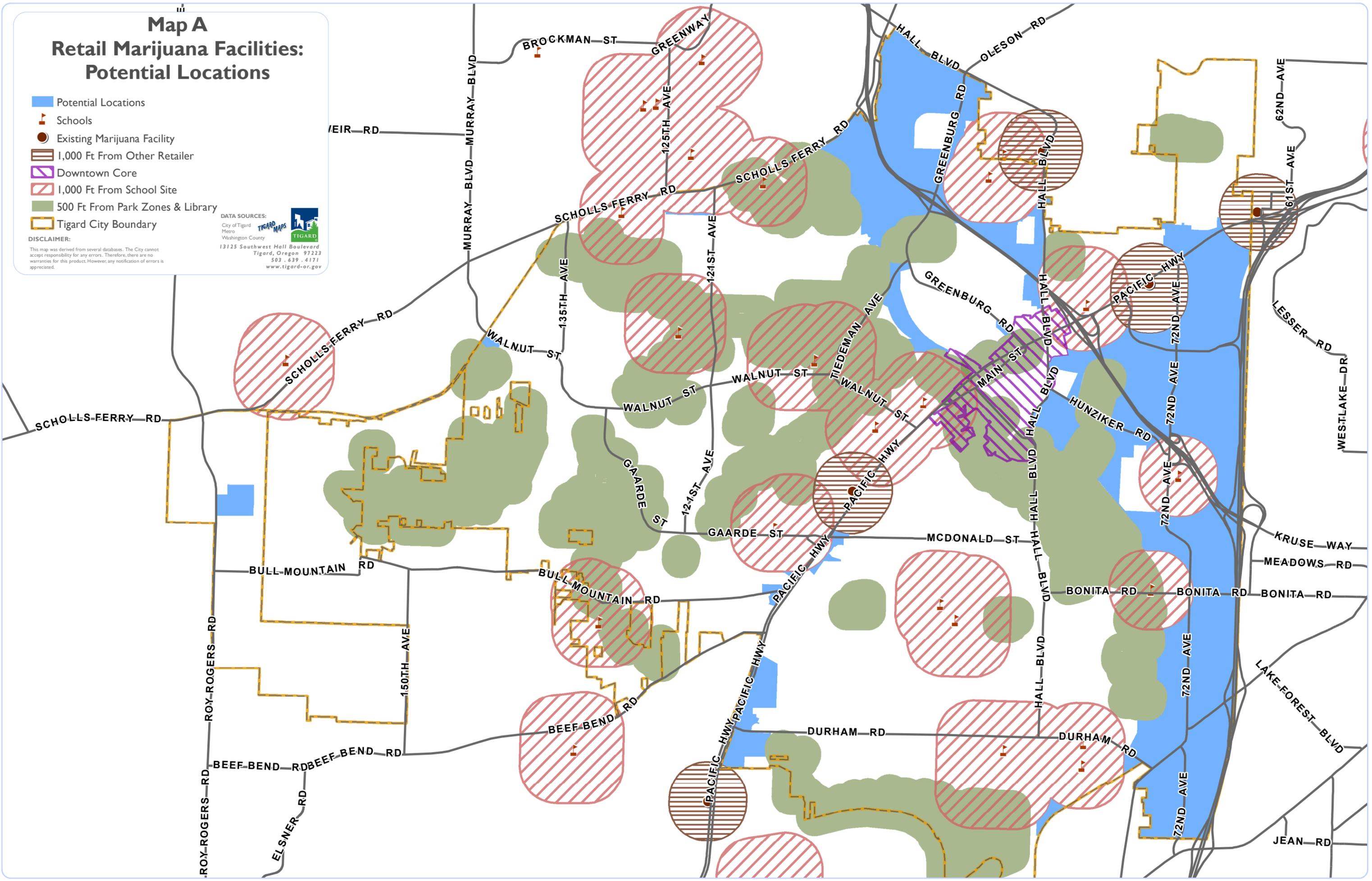
# Map A

## Retail Marijuana Facilities: Potential Locations

- Potential Locations
- Schools
- Existing Marijuana Facility
- 1,000 Ft From Other Retailer
- Downtown Core
- 1,000 Ft From School Site
- 500 Ft From Park Zones & Library
- Tigard City Boundary

**DISCLAIMER:**  
This map was derived from several databases. The City cannot accept responsibility for any errors. Therefore, there are no warranties for this product. However, any notification of errors is appreciated.

**DATA SOURCES:**  
City of Tigard  
Metro  
Washington County  
13125 Southwest Hall Boulevard  
Tigard, Oregon 97223  
503 . 639 . 4171  
www.tigard-or.gov



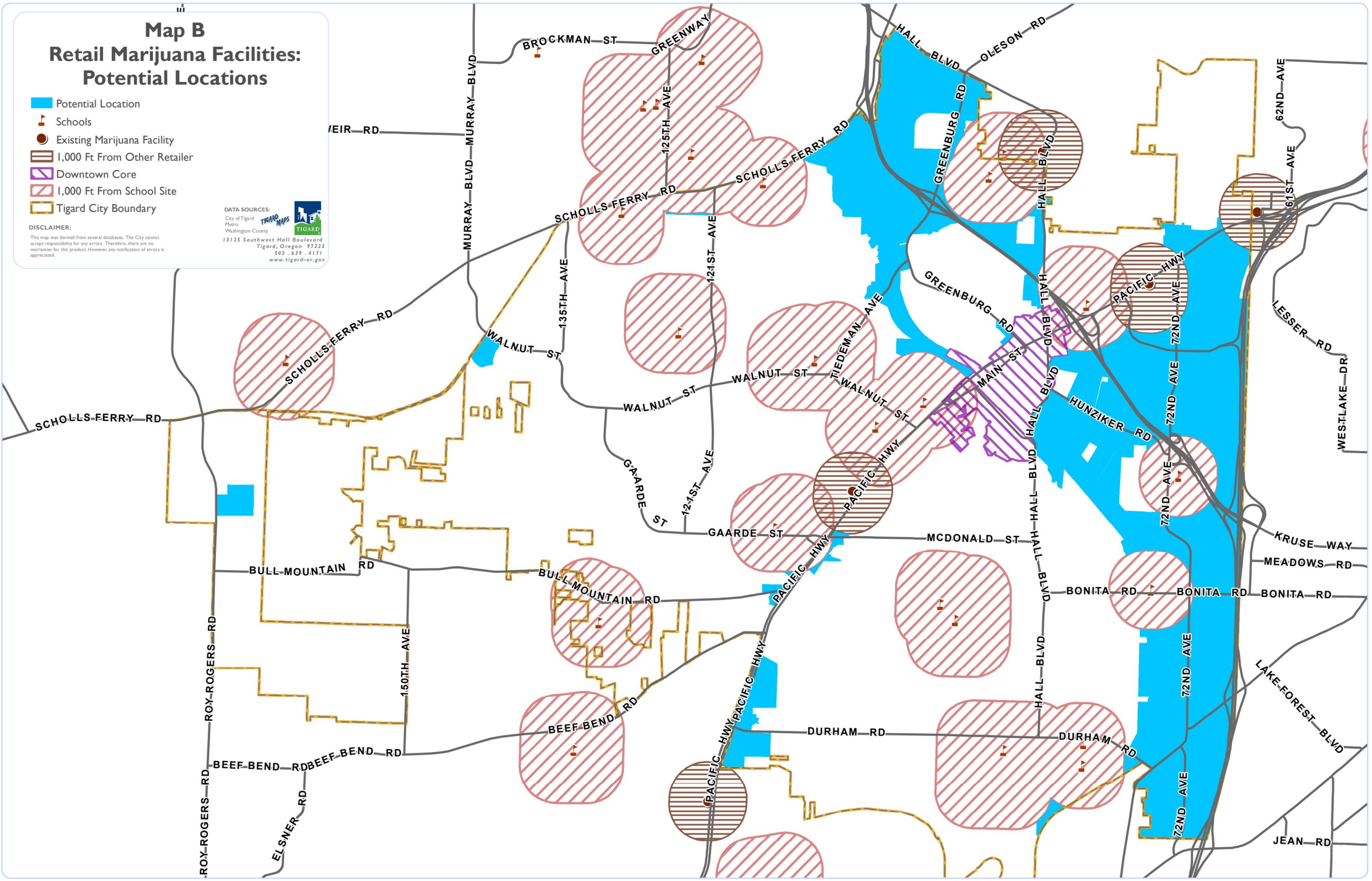
# Map B

## Retail Marijuana Facilities: Potential Locations

- Potential Location
- Schools
- Existing Marijuana Facility
- 1,000 Ft From Other Retailer
- Downtown Core
- 1,000 Ft From School Site
- Tigard City Boundary

DATA SOURCES:  
City of Tigard  
Metro  
Washington County  
TIGARD MAPS  
TIGARD  
13125 Southwest Hall Boulevard  
Tigard, Oregon 97223  
503 . 639 . 4171  
www.tigard-or.gov

DISCLAIMER:  
This map was derived from several databases. The City cannot accept responsibility for any errors. Therefore, there are no warranties for this product. However, any notification of errors is appreciated.





for the Civic Center Plan visioning work currently underway. To determine the degree of public's support for a local option levy and desired services, DHM would use focus groups, telephone surveys, and online surveys to ensure the city's assumptions and decisions align with the community's interests

The purpose of the focus groups would be to learn the "why" from the community. Focus groups are not statistically significant but focus groups provide a deeper understanding of if and why the community supports certain general fund services over others.

The traditional telephone survey, along with an online component, would provide statistically valid data on:

- The general fund services - parks & recreation, police, community development, library - which have the most support for funding.
- The community's understanding of the city's current financial situation,
- The community's willingness to pay more,
- Additional information needed by the community for them to consider supporting a levy.

Beyond the local option levy, the city has a number of other topics needing input from the community. These project include the SW Corridor, red light photo cameras, and recreation: what are the preferred options for creating and operating a recreation center, what services are desired?

The information compiled and presented to city council at the conclusion of the outreach will help inform the council's discussion on the scope and timing of placing a local option levy before voters.

## **OTHER ALTERNATIVES**

The Local Contract Review Board may reject this contract award and inform staff to terminate this project.

The Local Contract Review Board may reject this contract award and direct staff to rework the scope of work and reissue the Request for Proposal based on the revised scope.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Goal 5: Expand Opportunities to Engage People in the Community.

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

The Local Contract Review Board discussed this contract at their September 13, 2016 business meeting.

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### **Attachments**

*No file(s) attached.*

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**AIS-2801**

**7.**

**Business Meeting**

**Meeting Date:** 10/18/2016

**Length (in minutes):** 5 Minutes

**Agenda Title:** Discussion of a Contract with a Federal Governmental Affairs and Lobbying Firm

**Prepared For:** Joseph Barrett                      **Submitted By:** Kelly Burgoyne, Central Services

**Item Type:** Update, Discussion, Direct Staff      **Meeting Type:** Local Contract Review Board

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

**Information**

**ISSUE**

Should the City of Tigard hire a Washington, DC based lobbying firm that would provide technical advice and direct advocacy and support for the City's federal intergovernmental interests?

**STAFF RECOMMENDATION / ACTION REQUEST**

Continue with the approval process for the contract. Provide staff with direction on any additional information needed in preparation of an award decision for the proposed contract.

**KEY FACTS AND INFORMATION SUMMARY**

Since 2011, the city has contracted with CFM Strategic Communications, Inc. to provide federal advocacy. CFM has promoted the City's federal legislative agenda; helped establish relationships between the City of Tigard and federal legislators and agency representatives; and assisted in the preparation of appropriations requests. The city's contract with CFM will end on October 31, 2016.??

The city issued a Request for Proposal (RFP) for the services in early September and received a single proposal at the closing date. The proposal, from the city's current lobbying consultant CFM Strategic Communications, Inc., was reviewed by the evaluation team based on the criteria detailed in the RFP. CFM's proposal was found to be responsible and, based

in part on their previous work with the city, attractive with the approach and pricing. As such, CFM will receive a staff recommendation for contract award at a future Local Contract Review Board meeting. The contract will be for three years with two additional one-year options. The annual spend against the contract is estimated at just over \$70,000. The total amount of the contract over its possible life (5 years) is roughly \$350,000.

Contracting with a Federal Lobbyist will increase Tigard's federal presence by promoting City positions on policy matters to elected officials and their staffs; assisting in the preparation of federal appropriations requests and submit on behalf of the City; and providing a written reports of recent and upcoming activities and actions in Congress and federal agencies.

Contract deliverables will include:

1. Providing strategic and tactical advice and counsel relative to governmental issues affecting the City. Common issue areas include, but are not limited to, transportation, housing, land use, urban development and redevelopment, public safety, environment, tax credits, economic development, and state and federal funding.
2. Assisting the City in pursuing and securing federal, state and local governmental program and discretionary funding, particularly for transportation, economic development and financing programs.
3. Coordinating Washington, DC visits for City Council, City Manager and other key staff. Including arranging and accompanying City representatives to meetings with members of Congress, staff, and key administration officials.
4. Providing oral reports to City staff and City Council in Tigard.
5. Providing written end of annual Congressional session report.
6. Submitting monthly written update reports to provide project manager with updates on relevant federal legislation, availability of appropriations and grants relevant to Tigard's needs and other relevant federal activities impacting local government.
7. Assisting the City in developing and sustaining long-term substantive relationships with state and federal elected and appointed officials.

## **OTHER ALTERNATIVES**

The Local Contract Review Board could reject the contract award recommendation and direct staff to resolicit the work.

## **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

## **DATES OF PREVIOUS COUNCIL CONSIDERATION**

This is the first time the contract has been presented to the Local Contract Review Board.

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### **Fiscal Impact**

**Cost:** \$350,000  
**Budgeted (yes or no):** Yes/Future  
**Where budgeted?:** Central Services

**Additional Fiscal Notes:**

The proposed contract is estimated at \$70,000/annually for a possible total of \$350,000 over the potential life of the contract. The funds are budgeted annually in the City Management division in the Central Services Fund.

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**Attachments**

*No file(s) attached.*

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**AIS-2853**

**8.**

**Business Meeting**

**Meeting Date:** 10/18/2016

**Length (in minutes):** 15 Minutes

**Agenda Title:** INFORMATIONAL PUBLIC HEARING: CONSIDER RESOLUTION APPROVING UTILITY FEE ADDITIONS AND CHANGES IN THE MASTER FEES AND CHARGES SCHEDULE

**Submitted By:** Ron Blecker, Finance and Information Services

**Item Type:** Resolution

**Meeting Type:** Council Business Meeting - Main

**Public Hearing:** Yes

**Publication Date:**

**Information**

**ISSUE**

Shall the Council adopt revised and new utility fees in the Master Fees and Charges to reflect changes made in Ordinance 16-19?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends approval of the revised and new utility fees and charges to be included in the Master Fees and Charges.

**KEY FACTS AND INFORMATION SUMMARY**

On 09/13/2016 the Tigard City Council amended TMC Chapter 12.01 related to Utility Services Rules and Regulations with the approval of Ordinance 16-19. Included in this Ordinance was the ability for the city to charge a fee if grounds maintenance is necessary for the utility billing field crew to read the meter. This is the responsibility of the home owner, however it has increasingly fallen to the utility field staff to perform without a return on the service. This maintenance fee will serve to reduce the burden on the utility field crew or at least a small return on the service.

Staff recommends the meter maintenance fee be set at \$30.00 per instance. This fee amount reasonably represents the costs to provide services of clearing a customer's meter box. In addition, information from surrounding water utility providers and cities noted fees charged to customers for access/clearing meters ranged from no cost to \$85.00.

Also on 09/13/16, staff presented Council with a recommended change to our final notice

process. Currently Tigard uses a very labor intensive process that issues door hangers as final notices. The current fee associated with this is \$30.00. Staff recommends a change to the process where final bills will be mailed rather than the labor intensive door hangers. This process change will save material and staff costs. Staff is recommending the new revised final notification process fee be set at \$10.00, which is consistent with the cost to mail the notice.

### **OTHER ALTERNATIVES**

Council may choose not to adopt the recommended new and revised utility fees per Ordinance 16-19.

### **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Tigard Strategic Goals - Fund the vision while maintaining core services

Tigard Strategic Goals - Engage the community through dynamic communication

Tigard Municipal Code Chapter 12.01

### **DATES OF PREVIOUS COUNCIL CONSIDERATION**

09/13/2016 Changes to TMC Chapter 12, Utility Services Rules and Regulations

08/16/2016 Discussion on Proposed Changes to TMC Chapter 12, Utility Services Rules and Regulations

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### **Attachments**

Resolution for Changes to Master Fees and Charges

Proposed Fees and Changes to Master Fees and Charges

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**CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
RESOLUTION NO. 16-**

A RESOLUTION ADOPTING THE CITYWIDE MASTER FEES AND CHARGES SCHEDULE WHICH REPLACES RESOLUTION NO. 04-99 AND RESOLUTION NO. 16-22 AND ALL SUBSEQUENT AMENDMENTS TO DATE.

---

WHEREAS, the City of Tigard has a Master Fees and Charges Schedule that was adopted during the last budget hearings as Resolution 16-22; and

WHEREAS, city staff has reviewed fees and services provided; and

WHEREAS, the passage of Ordinances 16-19 set forth revised and new fees in utility billing in the areas of meter maintenance and final notices; and

WHEREAS, Tigard Municipal Code (TMC) 3.32.020 authorizes the City Council to adopt any changes to the Master Fees and Charges Schedule reasonably related to the city's cost of service.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The fees and charges for the City of Tigard are enumerated and set as shown in the attached schedule (Exhibit A).

SECTION 2: This resolution is effective October 18, 2016.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2016.

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Mayor - City of Tigard

ATTEST:

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City Recorder - City of Tigard

**City of Tigard**  
**Master Fees and Charges - FY2017**

<b>Department</b>	<b>Revenue Source</b>	<b>Fee or Charge</b>	<b>Effective Date</b>
	<b><u>Customer Charge</u></b>		
	<i>(Basic fee charged to customers to have the City deliver water)</i>		
	<b>Meter Size (diameter inches)</b>		
	<b>5/8 x 3/4</b>	\$26.67 /monthly	1/1/2016
		\$27.54 /monthly	1/1/2017
		\$28.44 /monthly	1/1/2018
		\$29.36 /monthly	1/1/2019
	<b>3/4 x 3/4</b>	\$38.42 /monthly	1/1/2016
		\$39.67 /monthly	1/1/2017
		\$40.96 /monthly	1/1/2018
		\$42.29 /monthly	1/1/2019
	<b>1</b>	\$59.84 /monthly	1/1/2016
		\$61.78 /monthly	1/1/2017
		\$63.79 /monthly	1/1/2018
		\$65.86 /monthly	1/1/2019
	<b>1.5</b>	\$158.02 /monthly	1/1/2016
		\$163.16 /monthly	1/1/2017
		\$168.46 /monthly	1/1/2018
		\$173.93 /monthly	1/1/2019
	<b>2</b>	\$256.39 /monthly	1/1/2016
		\$264.72 /monthly	1/1/2017
		\$273.32 /monthly	1/1/2018
		\$282.20 /monthly	1/1/2019
	<b>3</b>	\$504.66 /monthly	1/1/2016
		\$521.06 /monthly	1/1/2017
		\$537.99 /monthly	1/1/2018
		\$555.47 /monthly	1/1/2019
	<b>4</b>	\$958.60 /monthly	1/1/2016
		\$989.75 /monthly	1/1/2017
		\$1,021.92 /monthly	1/1/2018

**City of Tigard  
Master Fees and Charges - FY2017**

<b>Department</b>	<b>Revenue Source</b>	<b>Fee or Charge</b>	<b>Effective Date</b>
		\$1,055.13 /monthly	1/1/2019
	6	\$1,074.83 /monthly	1/1/2016
		\$1,109.76 /monthly	1/1/2017
		\$1,145.83 /monthly	1/1/2018
		\$1,183.07 /monthly	1/1/2019
	8	\$1,678.68 /monthly	1/1/2016
		\$1,733.24 /monthly	1/1/2017
		\$1,789.57 /monthly	1/1/2018
		\$1,847.73 /monthly	1/1/2019
	10	\$3,097.58 /monthly	1/1/2016
		\$3,198.25 /monthly	1/1/2017
		\$3,302.19 /monthly	1/1/2018
		\$3,409.51 /monthly	1/1/2019
	12	\$4,382.87 /monthly	1/1/2016
		\$4,525.31 /monthly	1/1/2017
		\$4,672.38 /monthly	1/1/2018
		\$4,824.23 /monthly	1/1/2019
	<b><u>Final Notification Process Fee</u></b>	<del>\$30.00</del> /per instance	7/1/2009
		<b>\$10.00</b>	<b>11/1/2016</b>
	<b><u>Meter Maintenance Fee</u></b>	<b>\$30.00 per instance</b>	<b>11/1/2016</b>
	<b><u>Fire Hydrant Flow Test</u></b>	\$375.00 /test	<b>7/1/2016</b>

**AIS-2698**

**9.**

**Business Meeting**

**Meeting Date:** 10/18/2016

**Length (in minutes):** 10 Minutes

**Agenda Title:** Hunziker Infrastructure Project - Grant Authorization

**Submitted By:** Lloyd Purdy, Community  
Development

**Item Type:** Update, Discussion, Direct Staff  
**Meeting Type:** Council  
Business  
Meeting -  
Main

**Public Hearing** No

**Newspaper Legal Ad Required?:**

**Public Hearing Publication**

**Date in Newspaper:**

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**Information**

**ISSUE**

A combination of state and federal funding is available to support the City of Tigard's investment in the Hunziker Infrastructure Project. The City Manager needs authorization from council to enter into grant agreements with state and federal funding partners.

**STAFF RECOMMENDATION / ACTION REQUEST**

Authorize the City Manager to sign two grant agreements to help finance the Hunziker Infrastructure project. The State of Oregon's \$1.5 million appropriation for the Hunziker Infrastructure Project, secured by Mayor Cook in 2015, requires a grant agreement between the City of Tigard and the State's Department of Administrative Services. A \$2 million grant from the U.S. Department of Commerce Economic Development Administration for the Hunziker Infrastructure Project requires acceptance by the City of Tigard before October 28, 2016.

**KEY FACTS AND INFORMATION SUMMARY**

In the previous legislative session, the State of Oregon appropriated \$1.5 million of State of Oregon Lottery Revenue Bonds for use by the City of Tigard in 2017. Award of these funds requires a grant agreement with the State's Department of Administrative Services. A copy of the grant agreement is attached.

Tigard's economic development staff submitted a grant proposal to the U.S. Department of Commerce Economic Development Agency in November 2015. The proposal passed two rounds of EDA grant review, a review by the EDA funding committee and an EDA technical

review. In June 2016, EDA staff, asked the city to revise its original proposal down to a \$2,080,000 request of federal funds to help fund more than \$4.2 million in public infrastructure. This federal grant will be matched against state funding and a developer's contribution in order to support infrastructure improvements in the Hunziker Industrial Core. The terms and conditions for this award and the award acceptance form are attached to this AIS. The city must agree to the terms and conditions of the federal grant before October 28, 2016.

Combined, state and federal funding will cover the majority of the cost of property acquisition, new public access, transportation, sewer and water service from Hunziker Road to the rail road tracks that is expected to spur more than \$22 million in private investment and increased employment in the Hunziker Industrial Core.

### **OTHER ALTERNATIVES**

Decline grant awards.

### **COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

Investing in public infrastructure in the Hunziker Core is consistent with Tigard's Comprehensive Plan Goal 9 and the city's 2011 Economic Opportunity Analysis. This project also furthers the strategic vision of a more interconnected and healthy community, specifically Goal #2 -- ensuring development supports the strategic vision and Goal #4 -- funding the vision while paying for core services.

### **DATES OF PREVIOUS CONSIDERATION**

June 28, 2016 - update during quarterly economic development program review.

December 15, 2015 - review of 30% design contract.

November 17, 2015 - review of schematic details and budget estimates in preliminary engineering report.

September 22, 2015 - authorization for staff to prepare and submit grant proposal to the U.S. Department of Commerce EDA.

June 16, 2015 - review of Hunziker Infrastructure project.

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### **Fiscal Impact**

**Cost:** 5,200,000

**Budgeted (yes or no):** yes

**Where budgeted?:** CIP 95047

#### **Additional Fiscal Notes:**

\$1.5M award from State of Oregon for CIP 95047. Funds available for reimbursement spring 2017.

\$2.1M requested from U.S. Department of Commerce for CIP 95047. Funds available for reimbursement spring 2017.

\$1.6M (estimated) through development agreement for 3/4 street frontage.

Available funds (\$5.2M anticipated) must cover right-of-way acquisition, design, permits and construction.

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**Attachments**

EDA Award Agreement

State of Oregon Appropriation Grant

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**U. S. DEPARTMENT OF COMMERCE**  
Economic Development Administration  
915 Second Avenue, Room 1890  
Seattle, WA 98174  
Fax: 206.220.7669  
Voice: 206.220.7660

September 28, 2016

In reply refer to:  
Investment No.: 07-01-07346

Lloyd Purdy  
Economic Development Manager  
City of Tigard  
13125 SW Hall Boulevard  
Tigard, OR 97223

Dear Mr. Purdy,

I am pleased to inform you that the Department of Commerce's Economic Development Administration (EDA) has approved your application for a \$2,083,000 EDA investment to upgrade infrastructure for City's Hunziker Industrial Core area.

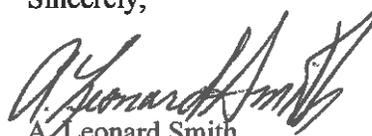
Enclosed are three signed copies of the Financial Assistance Award. Your agreement to the terms and condition of the award should be indicated by the signature of your principal official on each of the signed copies of the Financial Assistance Award. Two executed originals should be returned to A. Leonard Smith, Regional Director, EDA Seattle Regional Office, 915 Second Avenue, Room 1890, Jackson Federal Building, Seattle, Washington 98174. If not signed and returned within 30 days of receipt, EDA may declare the Award null and void. Please retain one executed original for your records.

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

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

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

Sincerely,

  
A. Leonard Smith  
Regional Director

Enclosures

Copy: Shalini Bansal, Economic Development Specialist  
David Porter, Economic Development Representative

GRANT     COOPERATIVE AGREEMENT

**FINANCIAL ASSISTANCE AWARD**

FEDERAL AWARD ID NUMBER  
**07-01-07346**

RECIPIENT NAME  
**City of Tigard**

PERIOD OF PERFORMANCE  
**60 months from the date of award**

STREET ADDRESS  
**13125 SW Hall Boulevard**

FEDERAL SHARE OF COST  
\$ **2,083,000.00**

CITY, STATE, ZIP CODE  
**Tigard, OR, 97224-0001**

RECIPIENT SHARE OF COST  
\$ **2,083,000.00**

AUTHORITY  
42 U.S.C. 3141, Section 201 of the Public Works and Economic Development Act of 1965 (Public Law 89-136), as amended by the Economic Development Administration Reauthorization Act of 2004 (Public Law 108-373)

TOTAL ESTIMATED COST  
\$ **4,166,000.00**

CFDA NO. AND NAME  
**11.300/Public Works & Economic Development Facilities Program**

PROJECT TITLE  
**Infrastructure for Hunziker Industrial Core**

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

- DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS (DECEMBER 2014)
- R & D AWARD
- FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE
- SPECIAL AWARD CONDITIONS
- LINE ITEM BUDGET
- 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101
- 48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES
- MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIAL AWARD CONDITION.
- OTHER(S): EDA Standard Terms and Conditions for Construction Projects (February 12, 2016)

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

DATE



**A. Leonard Smith, Regional Director**

**September 28, 2016**

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

DATE

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

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**CONSTRUCTION PROJECTS: Public Works and Economic Adjustment Assistance under  
Section 201 of PWEDA Programs**

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Public Works and Economic Adjustment Assistance Programs

<b>Project Title: Infrastructure for Hunziker Industrial Core</b>	
<b>Recipient Name: City of Tigard</b>	<b>Project Number: 07-01-07346</b>

1. This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work*. All work on this project should be consistent with this *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized by a fully executed Form CD-451.

The *Authorized Scope of Work* for this project includes:

The project will include a new road along SW Wall Street connecting from Hunziker Road to south-east corner of the property that Trammell Crow is developing along the railroad. The road will be 46 feet wide by about 2,040 feet long, and will include curbs and gutters, 5 feet sidewalks, bike lane, street lighting and a storm water planter area for water quality treatment within the 70 foot right-of-way, a looped 12 inch water line connecting to existing water service on SW Tech Center Drive, and an 8 inch sewer and 15 inch storm system within the new road.

2. The Recipient Contact's name, title, address, and telephone number are:

Lloyd Purdy City of Tigard Phone: (503)-718-2442 Email: lloydp@tigard-or.gov	Economic Development Manager 13125 SW Hall Blvd. Tigard, OR 97223
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3. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

A. Leonard Smith, Regional Director Seattle Regional Office  Fax: (206) 220- 7657	Economic Development Administration Jackson Federal Building 915 Second Avenue, Room 1890 Seattle, WA 98174-1001
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4. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

<p>Kerstin Millius, Area Director          Seattle Regional Office          Phone: (206) 220 -7700          FAX: (206) 220-7657          Email: KMillius@eda.gov</p>	<p>Economic Development Administration          Jackson Federal Building          915 Second Avenue, Room 1890          Seattle, WA 98174-1001</p>
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5. The EDA Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

<p>Nympha Garces, Civil Engineer          Phone: (206) 220 – 7729          FAX: (206) 220 - 7669          Email: ngarces@eda.gov</p>	<p>Economic Development Administration          Jackson Federal Building          915 Second Avenue, Room 1890          Seattle, WA 98174-1001</p>
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6. **ADDITIONAL INCLUDED DOCUMENTS:**

In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award form (Form CD-450) the following additional documents are included with and considered to be part of the Award’s terms and conditions:

- A Recipient’s final completed Application (this item not enclosed in this Award package);
- EDA Construction Standard Terms and Conditions;
- Any other Plans, schedules, or documents included in the original application, including subsequently submitted documentation, attached hereto, not already captured in other documents (if applicable, named in Attachment 1).

Should there be a discrepancy among these documents the Special Award Conditions (this document) and associated attachments hereto shall control.

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

Return of Executed Financial Assistance Award.....	30 calendar days after receipt of Form CD-450/CD-451
Start of Construction.....	15 Months from Date of Award
Construction Completed.....	48 Months from Date of Award
Authorized Award End Date.....	60 Months from Date of Award
Submission of Final Financial Documents (SF-425) ...	No later than 90 calendar days from Award End Date

Project Closeout – All Project closeout documents, including final financial reports (Form SF-425) and any required program reports, shall be submitted to EDA not more than 90 calendar days after the date the Recipient accepts the completed project from the contractor(s).

The Recipient shall diligently pursue the development of the Project so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that

could substantially delay meeting any of the prescribed time limits for the Project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA's taking action to terminate the Award in accordance with the regulations set forth at 2 C.F.R. § 200.338 through § 200.342.

## 8. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:

**A. AWARD DISBURSEMENTS: Reimbursable basis only:** EDA will make disbursements under this Award on a reimbursement basis only, based on actual costs when specific milestones have been met, in accord with procedures outlined during the grant kick-off meeting.

The "*Outlay Report and Request for Reimbursement for Construction Programs*" (Standard Form 271) is used to request a disbursement, which shall be approved in writing by the Civil Engineer/Project Officer.

Please note that prior to the initial disbursement, Recipients must complete the attached Form SF-3881, "*ACH Vendor/Miscellaneous Payment Enrollment Form*" and submit it to NOAA's Accounting Office by FAX to 301-528-3675 (*FAX is required to secure confidentiality of sensitive information*). The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

### B. REPORTS:

- a. *Project Progress Reports:* The Recipient shall submit project progress reports to the Project Officer on a quarterly basis for the periods ending **January 31, April 30, July 31, and October 30**, or any portion thereof until the final grant payment is made by EDA. Reports should be submitted using the approved EDA template, which will be provided by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than 1 month following the end of the quarterly period.
- b. *Financial Reports:* The Recipient shall submit a "*Federal Financial Report*" (Form SF-425) on a semi-annual basis for the periods ending **March 31 and September 30**, or any portion thereof, for the entire project period. Form SF-425 (and instructions for completing this form) is available at: [http://www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).

A final Form SF-425 must be submitted no more than 90 calendar days after the expiration date of the Award (e.g., the Award end date specified on the Form CD-450 or Form CD-451). Final Financial reports should follow the guidance outlined by the form instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire project period, and that all matching and program income (if applicable) is fully reported. Final grant rate and determinations of final balances owed to the government will be determined by the information on the final Form SF-425, so it is imperative that this final financial form is submitted in a timely and accurate manner.

9. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined at the conclusion of the award period in accordance with the administrative authorities applicable pursuant to the *Financial Assistance Award* (Form CD-450), including 2 C.F.R. Part 200 - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, after Final Financial Documents are submitted.

Except as otherwise expressly provided for within these Special Award Conditions, the Investment Rate for the award shall apply to allowable costs incurred by the Recipient in connection with the project. The Federal share in the allowable costs shall be based upon the Investment. In the event of an under run in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate established in the Form CD-450, or previously executed Form CD-451. The Federal share of total allowable costs shall not exceed the dollar amount of the original Award and subsequent amendments, if any, absent a determination by the Assistant Secretary.

Line Item Budget:

A. Under the terms of the Award, the total approved authorized budget is:

Federal Share (EDA Amount)	\$2,083,000.00
Non-Federal Matching Share	\$2,083,000.00
Total Project Cost	\$4,166,000.00

B. Under the terms of this Award, the total approved line item budget is:

COST CLASSIFICATION	Proposed	Approved
Administrative and legal expenses	\$ 114,000	\$ 114,000
Land, structures, rights-of-way, etc.	0	0
Relocation expenses and payments	0	0
Architectural and engineering fees	421,000	365,000
Other architectural and engineering fees	0	56,000
Project inspection fees	110,000	110,000
Site work	0	0
Demolition and removal	0	0
Construction	3,293,000	3,293,000
Equipment	0	0
Miscellaneous	0	0
Contingencies	228,000	228,000
Total Project Costs	\$ 4,166,000	\$ 4,166,000

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10. **MATCHING SHARE:** The Recipient agrees to provide the Recipient's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expenses. The Recipient also certifies that, in accepting the Financial Assistance Award, the Recipient's Matching Share of the project costs is committed and unencumbered, from authorized sources, and shall be available as needed for the project.

11. **REFUND CHECKS, INTEREST, OR UNUSED FUNDS:** Treasury has given EDA two options for having payments deposited to EDA's account:

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

- ii. The second option is Paper Check conversion. All checks must identify on their face the name of the DOC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, who processes EDA's accounting functions at the following address:

U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
Finance Office, AOD, EDA Grants  
20020 Century Boulevard, Germantown, MD 20874

The accounting staff will scan the checks in to an encrypted file and transfer to the Federal Reserve Bank, where the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

- If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.
- EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, EDA will charge you a one-time fee of \$25.00, which will be collected by EFT.

12. **CONSTRUCTION COMPLETION:** In keeping with prudent grants management policy, EDA construction projects must be completed within five (5) years from the date the Form CD-450 is signed by the Recipient accepting the Award. If construction is not completed by this date and the Grants Officer determines, after consultation with the Grant Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously, the grant may be terminated. Extensions beyond the five-year project period are exceedingly rare and can only be authorized by the Assistant Secretary. Nothing in this paragraph is intended to alter the Project Development Time Schedule set forth in provision 7 above.

13. **GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth in 41 C.F.R. § 60-4 establishes goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 C.F.R. § 60-4 from contractors and subcontractors employed in the completion of the Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. § 60-4. The goal for the participation of women in each trade area shall be as follows: From April 1, 1981, until further notice: 6.9 percent.

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions.

Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall include the "*Standard Federal Equal Employment Opportunity Construction Contract Specifications*" (or cause them to be included, if appropriate) in all Federally-assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6.

14. **USEFUL LIFE:** The useful life of this project is hereby determined to be 20 years.
15. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with Department of Commerce adopted Regulations at 2 C.F.R. part 200 and the EDA regulations contained in 13 C.F.R. Chapter III, particularly 13 C.F.R. part 305 and 13 C.F.R. 302.17 ("Conflicts of Interest").
16. **ARCHITECT/ENGINEER AGREEMENT:** Prior to initial disbursement of funds by EDA, the Recipient must submit to the Government for approval, an Architect/Engineer Agreement that meets the requirements in the EDA's "Summary of EDA Construction Standards," as well as the competitive procurement standards of 2 C.F.R. part 200 and the EDA regulations. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.
17. **PROJECT INSPECTION AGREEMENT:** Prior to the disbursement of funds by EDA, the Recipient must submit to the Government for approval a Project Inspection Agreement that meets the requirements of EDA publication "Summary of EDA Construction Standards" Section V. Requirements During Construction, E. Competitive Procurement Requirements, as well as the competitive procurement standards of 2 CFR part 200 and the EDA regulations. The fee for Project Inspection services will be a lump sum or an agreed maximum and no part of the fee for services will be based upon a cost-plus-a-percentage-of-cost or a cost using a multiplier.
18. **EVIDENCE OF GOOD TITLE:** Prior to the initial disbursement of funds by EDA, the Recipient shall provide evidence satisfactory to the Government that the Recipient has acquired good and marketable title to land, free of all encumbrances, as well as rights-of-way, and easements necessary for the completion of the project, or of a long-term leasehold interest in accordance with 13 C.F.R. 314.
19. **PROPERTY MANAGEMENT STANDARDS FOR PRIVATE PROPERTY:** As a purpose of the project is to construct facilities to serve privately owned land to establish an industrial/commercial center, including an industrial/commercial park with sites for sale or lease, such ownership, sale or lease is permitted so long as EDA requirements continue to be met. Development of residential units is not considered an industrial/commercial purpose. The Recipient is responsible for ensuring the industrial/commercial park served by the improvement shall serve the purpose of the Award in accordance with its terms and conditions. Prior to the first disbursement of funds under the Award, EDA requires evidence that the private owner has good marketable title to the industrial/commercial park and a complete ED-900B form. EDA conditions the award of project assistance upon a binding, enforceable agreement by the private owner with the Recipient that for the useful life of the project assures consistency with the project purpose of establishing an industrial/commercial zone and the terms and conditions of the award, even when parcels may be leased or sold.

To assure compliance with this requirement, EDA in its sole discretion may require that a restrictive covenant of purpose, use and ownership be recorded in the appropriate public records. This covenant is subject to EDA approval and the covenant shall, at a minimum, provide that the current owner and

future owners or lessees at all times comply with the project purposes and the Federal nondiscrimination and environmental requirements.

20. **NONRELOCATION:** In signing this award of financial assistance, the Recipient attests that the EDA funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award. In the event that EDA determines that its assistance was used for such relocation purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements and termination of the award for convenience or cause, and disallowance of any costs attributable, directly or indirectly, to the relocation and the recovery of the Federal share thereof.

For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project assisted by EDA. EDA considers an employer to be a "primary beneficiary" if, in seeking EDA assistance, the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application to EDA to make the Award. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more jobs permanent jobs so identified.

21. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010.

At this time, all Awards for construction assistance require Recipients to report actual job creation/retention and private investment leverage three (3), six (6), and nine (9) years after an EDA investment. Recipients are to retain sufficient documentation so that they can submit these required reports. Failure to submit this required report can adversely impact the ability of the Recipient to secure future funding from EDA.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact Recipients in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. Recipients should ensure adequate and sufficient records are kept to support the methodology for computing initial job and private investment estimates and all subsequent actual performance data calculations so that this information can be made available to EDA in the event of an audits or performance site visits.

22. **STATE HISTORIC PRESERVATION OFFICER (SHPO):** Prior to any ground-disturbing activities, the Recipient shall provide evidence satisfactory to the EDA that the National Historic Preservation Act Section 106 consultation has been completed with the SHPO, tribal contacts, and other interested parties and that either: 1) a qualified archaeological monitor be present during ground-disturbing activities; or 2) site workers be trained to recognize potential artifacts.
23. **U.S. ARMY CORPS OF ENGINEERS (ACOE):** Prior to the advertisement of construction bid, the Recipient shall provide evidence satisfactory to the EDA that: 1) a wetlands delineation has been completed; 2) a jurisdictional determination has been made regarding Waters of the U.S.; 3) the appropriate ACOE permit has been obtained.
24. **U.S. FISH AND WILDLIFE SERVICE (FWS):** Prior to the advertisement of construction bid, the Recipient shall provide evidence satisfactory to the EDA that either: 1) all vegetation removal will occur between August 1 and January 31; or 2) the FWS Migratory Bird Office has been consulted with

and migratory bird mitigation measures recommended by the FWS have been included in the plans and specifications.

25. **OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ):** Prior to any earth-disturbing activities, the Recipient shall provide evidence satisfactory to the EDA that it has obtained a National Pollutant Discharge Elimination Systems (NPDES) stormwater permit for general construction from the DEQ.
26. **OREGON WATER RESOURCES DEPARTMENT (WRD):** Prior to the final ten percent (10%) disbursement of funds, the Recipient shall provide evidence satisfactory to the EDA that the water well has been properly decommissioned by a licensed and bonded well driller and the well abandonment log has been sent to the WRD.
27. **POSSIBLE CONTAMINATION:** If contaminated soil and/or contaminated groundwater is encountered during construction, then prior to any further ground disturbing activities associated with the EDA-funded project, the Recipient shall provide evidence satisfactory to the EDA that the contamination has been remediated to applicable standards. All expenses related to site assessment and remediation work shall be the responsibility of the Recipient and EDA funds shall not be expended for assessment and remediation work.

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

**STANDARD TERMS AND CONDITIONS  
FOR CONSTRUCTION PROJECTS**

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



February 12, 2016

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

**STANDARD TERMS AND CONDITIONS  
FOR CONSTRUCTION PROJECTS**

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

**PREFACE**

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

This Award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the Terms and Conditions specified in this Award will be resolved according to the following order of precedence: public laws, regulations (including applicable notices published in the *Federal Register (Fed. Reg.)*), executive orders, OMB circulars, EDA’s Construction ST&Cs, and special award conditions. A special award condition may amend or take precedence on a case-by-case basis over a Construction ST&C when warranted by specific Project circumstances.

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

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

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

**A. GENERAL REQUIREMENTS AND RESPONSIBILITIES.**

**1. Purpose.**

The Economic Development Administration's ("EDA's") grants for (i) public works (42 U.S.C. § 3141) and (ii) construction economic adjustment assistance (42 U.S.C. § 3149) Projects awarded under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) ("PWEDA") are designed to enhance regional competitiveness and promote long-term economic development in regions experiencing substantial economic distress. EDA provides construction, design, and engineering grants to assist distressed communities and regions revitalize, expand, and upgrade their physical infrastructure to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investment. The requirements set forth in these Construction ST&Cs are applicable to construction, design, and engineering Projects funded in whole or in part by EDA. Any necessary modifications of these requirements will be addressed in special award conditions to accommodate individual Projects. In addition, these Construction ST&Cs apply to construction projects of revolving loan funds ("RLFs") awarded between January 1, 1975 and February 10, 1999 under EDA's Title IX Economic Adjustment Assistance Program, as well as to RLFs funded after February 11, 1999 under section 209 of PWEDA (42 U.S.C. § 3149).

**2. Authority and Policies.**

EDA is a bureau within the U.S. Department of Commerce ("DOC" or "Department") established under PWEDA. *See* 13 CFR § 300.1 ("Overview of eligibility requirements"). As a Federal agency, EDA is obligated to promulgate regulations and establish policies and procedures to:

- a. Ensure compliance with applicable Federal requirements;
- b. Safeguard the public's interest in the grant assets; and
- c. Promote the effective use of grant funds in accomplishing the purposes for which they were awarded.

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

EDA's policy is to administer all awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA will consider

requests for variances to the procedures set out in these Construction ST&Cs if they do not conflict with applicable Federal statutory and regulatory requirements, are consistent with the goals of EDA's programs, and make sound economic and financial sense.

### 3. Definitions.

Whenever used in these Construction ST&Cs, the following words and phrases shall have the following meanings:

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

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

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

#### **4. Grant Recipient as Trustee.**

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

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

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

#### **5. Reaffirmation of Application and Award Acceptance.**

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

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

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

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

#### **6. Noncompliance with Award Provisions.**

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

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

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

### **B. FINANCIAL REQUIREMENTS.**

#### **1. Financial Reports.**

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

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

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

## 2. Disbursements.

- a. *Method of Payment.* The Grants Officer determines the appropriate method of payment. Unless otherwise specified in a special award condition, the method of payment under this Award will be reimbursement. Payments will be made through electronic funds transfers directly to the Recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3720B *et seq.*). The Award number shall be included on all payment-related correspondence, information, and forms.
  - i. *State Recipients.* Consistent with 2 CFR § 200.305(a) ("Payment"), for States, payments are governed by Treasury-State Cash Management Improvement Act agreements and default procedures codified at 31 CFR part 205 ("Rules and Procedures for Efficient Federal-State Funds Transfers") and *Treasury Financial Manual Volume I, 4A-2000* ("Overall Disbursing Rules for All Federal Agencies").
  - ii. *Recipients Other than States.* Consistent with 2 CFR § 200.305(b), for Recipients other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.
- b. *Disbursement Requests.* The Recipient shall use Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs," to request reimbursement under the Award. Substantiating invoices and/or vouchers also must be provided. Each request for the disbursement of funds shall be made to the Project Officer. Form SF-271 can be downloaded from OMB's website at [www.whitehouse.gov/omb/grants/grants\\_forms.html](http://www.whitehouse.gov/omb/grants/grants_forms.html).
  - i. *Initial Disbursement Request.* For the initial disbursement only, the Recipient must complete and submit Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," along with Form SF-271, to the Project Officer.
  - ii. *Interim Disbursement Requests.* All requests for interim disbursement shall be submitted using Form SF-271 and include substantiating invoices and/or vouchers.

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

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

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

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

The EDA-approved budget is the budget plan for the Project. The Recipient must notify EDA of deviations from the budget or program plans in accordance with 2 CFR § 200.308 (“Revision of budget and program plans”), including any change in scope of work or the objective of the Project (even if there is no associated budget revision requiring prior written approval). If prior written approval is not required under 2 CFR § 200.308, the Recipient may request the Grants Officer’s review of and guidance on proposed revisions to the budget.

- a. Requests for budget revisions to the EDA-approved budget in accordance with the provisions below must be submitted through the Project Officer to the Grants Officer, who shall make the final determination on such requests and notify the Recipient in writing.
- b. In accordance with 2 CFR § 200.308(g), EDA's prior written approval and an amendment executed by the Grants Officer and the Recipient using Form CD-451 or any successor form are required for budget revisions when:
  - i. The revision results from changes in the scope or the objective of the Project;
  - ii. The need arises for additional EDA funds to complete the Project;
  - iii. The Federal share exceeds \$150,000 and the cumulative amount of transfers among direct cost categories exceeds or is expected to exceed 10 percent of the total budget as last approved by EDA; and
  - iv. A revision is desired that involves specific costs for which prior written approval requirements may be imposed consistent with applicable cost principles listed in subpart E of 2 CFR part 200 ("Cost Principles").
- c. When an Award supports both construction and non-construction work, the Recipient must obtain prior written approval from the Grants Officer before making any fund or budget transfers from non-construction to construction or vice versa. *See* 2 CFR § 200.308(g)(5).
- d. Transfers shall not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior written approval. *See* 2 CFR § 200.308.
- e. *Project Underrun Amounts.* Underrun amounts shall be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized activities under this Award. EDA may approve the use of underrun funds to increase the Federal share of the Project or further improve the Project, as long as EDA determines that the use is consistent with the original purpose of the approved EDA investment. *See* 13 CFR § 308.1 ("Use of funds in projects constructed under projected cost").
- f. *Additional EDA Funding in Case of Project Overrun Amounts.* In accepting this Award, the Recipient agrees to fund any overrun amounts from non-Federal sources. Additional EDA assistance for the Project may not be approved.

**5. Indirect Costs and Facilities and Administrative Costs.**

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

- d. Under 2 CFR § 200.306(c) (“Cost sharing or matching”), unrecovered indirect costs, including indirect costs on cost sharing or matching, may be included as part of cost sharing or matching only with the prior written approval of EDA.
- e. *Cognizant Agency for Indirect (F&A) Costs.* OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas, including reviewing and approving indirect cost rates applicable to Federal grants.
  - i. *Determining the Cognizant Agency for Non-Commercial Organizations.* In accordance with 2 CFR § 200.19 (“Cognizant agency for indirect costs”), the cognizant agency for indirect costs is the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals on behalf of all Federal agencies. Approved rates must be accepted by other agencies, unless a Federal statute or regulation requires use of a different rate or a Federal agency awarding head or delegate approves a different rate in accordance with 2 CFR § 200.414(c) (“Indirect (F&A) costs”).  
 If indirect costs are permitted, but the Recipient has not previously established an indirect cost rate with a Federal agency, the Recipient may consult Appendices III–VII to 2 CFR part 200 for information on determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans:
    - (1) Appendix III to 2 CFR part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
    - (2) Appendix IV to 2 CFR part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
    - (3) Appendix V to 2 CFR part 200 – State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans;
    - (4) Appendix VI to 2 CFR part 200 – Public Assistance Cost Allocation Plans; and
    - (5) Appendix VII to 2 CFR part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.
  - ii. *General Review Procedures When DOC Is the Cognizant Agency.*
    - (1) Within 90 days of the Award start date the Recipient shall submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow the agency to perform the indirect cost rate proposal review.
    - (2) The Recipient may use the fixed rate proposed in the indirect cost plan as a provisional rate until DOC provides a response to the submitted plan.
  - iii. *When DOC Is Not the Oversight or Cognizant Agency.* When the cognizant Federal agency is not DOC, the non-Federal entity shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.
- f. If the Recipient entity fails to submit required documentation to DOC within 90 days of the Award start date, the Grants Officer may amend the Award to preclude the recovery of any indirect costs under the Award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the Recipient’s delay in

submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

- g. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of:
  - i. The line item amount for the Federal share of indirect costs contained in the approved Award budget, including all budget revisions approved in writing by the Grants Officer; or
  - ii. The Federal share of the total indirect costs allocable to the Award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the Award end date.
- h. In accordance with 2 CFR § 200.414(g) (“Indirect (F&A) costs”), any Recipient that has a negotiated indirect cost rate may apply to the entity’s cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.
- i. Any Recipient that has never received a negotiated indirect cost rate, except for those Recipients described in Paragraph D.1.b of Appendix VII to 2 CFR part 200 (specifically, a governmental department or agency that receives more than \$35 million in direct Federal funding), may elect to charge a *de minimis* rate of 10 percent of modified total direct costs. See 2 CFR § 200.414(f).

#### **6. Incurring Costs Prior to Award.**

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

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

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

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

#### **8. Time Extensions.**

- a. Unless otherwise authorized in 2 CFR § 200.308 (“Revision of budget and program plans”), or a special award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date of the period of performance.
- b. The Recipient is responsible for implementing the Project in accordance with the development time schedule contained in this Award. As soon as the Recipient becomes aware that it will not be possible to meet the development time schedule, the Recipient must notify the Grants Officer. The Recipient’s notice to EDA must contain the following:
  - i. An explanation of the Recipient’s inability to complete work by the specified date (*e.g.*, a lengthy period of unusual weather delayed the contractor’s ability to excavate the site, major re-engineering required in order to obtain State or Federal approvals, unplanned environmental mitigation required);
  - ii. A statement that no other changes to the Project are contemplated;
  - iii. Documentation that demonstrates there is still a bona fide need for the Project; and
  - iv. A statement that no further delay is anticipated and that the Project can be completed within the revised time schedule.

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

#### **9. Tax Refunds.**

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

#### **10. Program Income.**

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

determined by EDA) of the EDA-assisted facility, to use such income generated from the rental or lease of any Project facility in the following order of priority:

- a. Administration, operation, maintenance, and repair of Project facilities in a manner consistent with good property management practice and in accordance with established building codes. This includes, where applicable, repayment of indebtedness resulting from any EDA approved encumbrance (*e.g.*, approved mortgage) on the EDA-assisted facility.
- b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA.
- c. Any income in excess of paragraphs a. and b. of this section must be deducted from total allowable Project costs in accordance with 2 CFR § 200.307(e).

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

### **C. PROGRAMMATIC REQUIREMENTS.**

#### **1. Project Progress and Performance Reporting.**

- a. Project progress reports must be submitted in accordance with the procedures set out in 2 CFR § 200.328 (“Monitoring and reporting program performance”), as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under this Award; deferral of processing of new awards, amendments, or supplemental funding pending the receipt of the overdue reports; or the establishment of an account receivable for the difference between the total Federal share of outlays last reported and the amount disbursed. *See* 13 CFR § 302.18 (“Post-approval requirements”).
- b. Unless otherwise specified in this Award, the Project progress report will contain the following information for each Project program, function, or activity:
  - i. A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;
  - ii. An explanation of any delays or failures to meet the Project timetable or Project goals; and
  - iii. Any other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

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

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

## **2. Reporting on Real Property.**

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

## **3. Interim Reporting of Significant Project Developments.**

The Recipient must report any event that will or may have a significant impact upon the Project, including delays or adverse conditions that materially may affect the ability of the Recipient to attain Project objectives within established time periods or meet the development time schedule. The Recipient should report such events to the Project Officer in the most time-expedient way possible and then, if the initial report was not in writing, report the event to the Project Officer in writing. Such a report shall include a statement of the event or issue, a statement of the course of action taken or contemplated to resolve the matter, and any Federal assistance needed to resolve the situation. If budget changes are required, the Recipient must submit a written budget revision request. *See* 2 CFR § 200.328(d) (“Monitoring and reporting program performance”).

## **4. Government Performance and Results Act Reporting.**

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

## **5. Unsatisfactory Performance.**

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

## **6. Programmatic Changes.**

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

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

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

**7. Other Federal Awards with Similar Programmatic Activities.**

The Recipient shall immediately notify the Project Officer and the Grants Officer in writing if, after receipt of this Award, other financial assistance is received to support or fund any portion of the scope of work incorporated into this Award. EDA will not pay for costs that are funded by other sources.

**8. Beneficiary Compliance.**

In the event a beneficiary of the Project fails to comply in any manner with certifications, assurances, or agreements that such beneficiary has entered into in accordance with EDA’s requirements, the Recipient will reimburse the Government the Award amount or an amount to be determined by the Government pursuant to 13 CFR §§ 314.4 (“Unauthorized use of property”) and 314.5 (“Federal share”). Where the Government determines that the failure of a beneficiary to comply with EDA requirements affects a portion of the property benefited by the Award, the Recipient will reimburse the Government proportionately.

**9. Prohibition Against Assignment by the Recipient.**

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

**10. Disclaimer Provisions; Hold Harmless Requirement.**

- a. The United States expressly disclaims any and all responsibility or liability to the Recipient, subrecipient, or third persons for the actions of the Recipient, subrecipient, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any subaward or subcontract under this Award.

- b. The acceptance of this Award or any subaward by the Recipient or subrecipient does not in any way constitute an agency relationship between the United States and the Recipient or subrecipient.
- c. To the extent permitted by law, the Recipient agrees to indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of the Project site or construction, renovation, or repair of any facility on the Project site, to the extent that such liabilities are incurred because of toxic or hazardous contamination or groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Government or its agents) on the property. *See* 13 CFR § 302.19 (“Indemnification”).

**11. Prohibition on Use of Third Parties to Secure Award.**

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

**12. Payment of Attorneys’ or Consultants’ Fees.**

No Award funds shall be used, directly or indirectly, to reimburse attorneys’ or consultants’ fees incurred in connection with obtaining Investment Assistance under PWEDA, such as, for example, preparing the Application for EDA Investment Assistance. However, ordinary and reasonable attorneys’ and consultants’ fees incurred for meeting Award requirements (e.g., conducting a title search or preparing plans and specifications) may be eligible Project costs and may be paid out of Award funds, provided such costs are otherwise eligible. *See* 13 CFR § 302.10 (“Attorneys’ and consultants’ fees, employment of expeditors, and post-employment restriction”).

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

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

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

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

#### **14. Commencement of Construction and Project Sign.**

- a. *Delayed Construction Starts.* If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously.
- b. *Early Construction Starts.* The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For Project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the Terms and Conditions of this Award. If construction commences prior to EDA’s determination, the Recipient proceeds at its own risk until EDA’s review and concurrence. *See* 13 CFR § 305.11 (“Contract awards; early construction start”).
- c. *Project Sign.* The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. *See* 13 CFR § 305.12 (“Project sign”).

#### **15. Efficient Administration of Project.**

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

## 16. Conflicts-of-Interest Rules.

- a. An “Interested Party” is defined in 13 CFR § 300.3 (“Definitions”) as “any officer, employee, or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants, or shareholders.” An Interested Party includes the Interested Party’s “Immediate Family” (defined in 13 CFR § 300.3 as “a person’s spouse (or domestic partner or significant other), parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person”) and other persons directly connected to the Interested Party by law or through a business organization.
- b. The Recipient must disclose in writing any potential conflicts of interest to EDA or the pass-through entity. In addition, the Recipient must maintain written standards of conduct to establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain in the administration of an award. *See* 13 CFR § 302.17(a) and (b) (“Conflicts of interest”), 2 CFR § 200.112 (“Conflict of interest”), as applicable, and Forms SF-424B (“Assurances – Non-Construction Projects”) and SF-424D (“Assurances – Construction Projects”).
- c. An Interested Party must not receive any direct or indirect financial or personal interests or benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest or benefit may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance, services, or advice. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. *See* 13 CFR § 302.17(a) and (b).
- d. Procurement-related conflicts of interest. In addition, in accordance with 2 CFR § 200.318(c) (“General procurement standards”), the Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. *See* 2 CFR §§ 200.317–200.326 (“Procurement Standards”).

## 17. Record-Keeping Requirements.

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

- v. The benefits/impacts of the Project, as reported through GPRA and other reports to EDA;
  - vi. The amount and nature of the portion of Project costs provided by non-EDA sources;
  - vii. Contractor compliance with applicable Federal requirements; and
  - viii. Such other records as EDA determines will facilitate an effective audit.
- b. *Records Retention.* In general and in accordance with 2 CFR § 200.333 (“Retention requirements for records”), all records pertinent to this Award must be retained for a period of three years from the date of submission of the final Project expenditure report (the final Form SF-271 for disbursement). The only exceptions are the following:
- i. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final actions taken.
  - ii. When the Recipient is notified in writing by EDA, the cognizant agency for either audit or indirect costs, the oversight agency for audit, or the relevant pass-through entity to extend the retention period, it must retain the records as directed.
  - iii. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition of the relevant real property or equipment.
  - iv. When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the Recipient.
  - v. Records for program income transactions after the period of performance. In some cases Recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the Recipient’s fiscal year in which the program income is earned.
  - vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
    - (1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.
    - (2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
- c. *Monitoring and Reporting Obligations.* The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer if records are lost,

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

## 18. Termination Actions.

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

## 19. Project Closeout Procedures.

As noted above in section C.15 "Efficient Administration of Project" of these Construction ST&Cs, after construction is completed and the Project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate, and maintain the Project for its estimated useful life (as determined by EDA) in accordance with its original purpose. See 13 CFR § 302.12 ("Project administration, operation and maintenance"). The Recipient must comply with all Award requirements and maintain records to document such compliance, which shall be made available for inspection by EDA or other Government officials as required.

- a. *Final Disbursement.* When Project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the Project from the contractor, the Recipient can begin the Closeout process by submitting the following documentation to EDA:
  - i. A request for final disbursement on an executed Form SF-271;
  - ii. A written certification that all costs charged against this Award (Federal and non-Federal shares) are for eligible activities and represent allowable costs, for which there is documentation in the Recipient's records;
  - iii. An executed certificate of final acceptance signed by the Recipient and the Recipient's architect/engineer;
  - iv. The Recipient's certification that its currently valid single or program-specific audit in accordance with subpart F of 2 CFR part 200 ("Audit Requirements"), if applicable, does not contain any material findings (if the Recipient's currently valid audit does contain material findings, the Recipient shall submit the applicable audit preferably via e-mail to the Project Officer, who will review with the Grants Officer);
  - v. The Recipient's certification that its currently valid audit (in accordance with subpart F of 2 CFR part 200), if applicable, has been submitted to the Federal Audit Clearinghouse; and
  - vi. Other documentation as may be required by EDA.

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

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

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

- c. As required under GPRA and in accordance with a schedule that will be provided by EDA, the Recipient must submit additional Performance Measurement Reports, generally three, six, and nine years after the date of the Award to accurately and completely report the impacts of the Project, especially in terms of job creation and private investment leveraging.
- d. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations incurred under this Award no later than 90 calendar days after acceptance of the Project from the contractor or within 90 calendar days of the expiration date of this Award, whichever occurs earlier.
- e. In accordance with 2 CFR § 200.344 “Post-closeout adjustments and continuing responsibilities,” the Closeout of this Award does not affect any of the following:
  - i. The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;
  - ii. The Recipient’s obligation to return any funds due as a result of later corrections or other transactions;
  - iii. Audit requirements per subpart F of 2 CFR part 200; and
  - iv. Requirements for property management and disposition, records retention, and performance measurement reports. *See* subpart D of 2 CFR part 200 (“Post Federal Award Requirements”), as applicable.

**20. Freedom of Information Act.**

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

**D. ADDITIONAL REQUIREMENTS RELATING TO CONSTRUCTION PROJECTS.**

The Recipient and any subrecipients must, in addition to other statutory and regulatory requirements detailed in these Construction ST&Cs and the assurances made to EDA in connection with the Award, comply and require each of its contractors and subcontractors employed in the completion of the Project to comply with all applicable Federal, State, territorial, and local laws, and in particular, the following Federal public laws (and the regulations issued thereunder), executive orders, OMB circulars, Uniform Guidance, and local law requirements.

- 1. **The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141–3144, 3146, 3147; 42 U.S.C. § 3212)**, which requires minimum wages for mechanics and laborers employed on Federal Government public works projects to be based on the wages that the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the Project is to be performed, or in the District of Columbia if the Project is to be performed there.

2. **The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701-3708)**, which provides work hour standards for every laborer and mechanic employed by any contractor or subcontractor in the performance of a Federal public works project.
3. **The National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101 *et seq.*), and the Advisory Council on Historic Preservation Guidelines (36 CFR part 800)**, which require stewardship of historic properties in projects involving Federal funds.
4. **The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 *et seq.*)**, which requires appropriate surveys and preservation efforts if a Federally licensed project may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data.
5. **The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*)**, and the regulations issued thereunder, which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.
6. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*)**, and implementing regulations issued at 49 CFR part 24 (“Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs”), which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a project financed wholly or in part with Federal financial assistance.
7. **The Energy Conservation and Production Act (42 U.S.C. § 6834 *et seq.*)**, which establishes energy efficiency performance standards for the construction of new residential and commercial structures undertaken with Federal financial assistance.
8. **Compliance with Local Construction Requirements.** The Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

#### **E. NONDISCRIMINATION REQUIREMENTS.**

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient agrees to comply with the nondiscrimination requirements below.

##### **1. Statutory Provisions.**

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

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

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

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

## 2. Other Provisions.

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

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

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

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

## **F. AUDITS.**

Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), an audit of the Award may be conducted at any time. The Department’s Inspector General, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the Recipient’s personnel for the purpose of interview and discussion related to such documents. *See* 2 CFR § 200.336 (“Access to records”). When the Office of the Inspector General (“OIG”) requires a program audit on a DOC Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

### **1. Organization-Wide, Program-Specific, and Project Audits.**

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by subpart F of 2 CFR part 200 (“Audit Requirements”). Recipients that expend \$750,000 or more in Federal awards during their fiscal year shall have an audit conducted for that year in accordance with the requirements set forth in subpart F of 2 CFR part 200. Within the earlier of 30 calendar days after receipt of the auditor’s report, or nine months after the end of the audit period, a copy of the audit shall be submitted electronically to the Federal Audit Clearinghouse website at <http://harvester.census.gov/sac/>.

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

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

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

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

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

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

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

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

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

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

## **3. Audit Resolution Process.**

- a. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
- b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 *Fed. Reg.* 4053), a Recipient has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt after an audit:
  - i. The Recipient has 30 business days from the date of the transmittal of the "Draft Audit Report" to submit written comments and documentary evidence.
  - ii. The Recipient has 30 business days from the date of the transmittal of the "Final Audit Report" to submit written comments and documentary evidence. There will be no extension of this deadline.
  - iii. EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an "Audit Resolution Determination Letter." The Recipient has 30 business days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.
  - iv. An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
  - v. The EDA or DOC, as applicable, shall review the Recipient's appeal. EDA shall notify the Recipient of the results in an Appeal Determination Letter. After the opportunity to

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

## G. DEBTS.

### 1. Payment of Debts Owed the Federal Government.

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

### 2. Late Payment Charges.

- a. Interest shall be charged on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act, as amended (31 U.S.C. § 3701 *et seq.*). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury’s Current Value of Funds Rate (“CVFR”). The CVFR is available online at <http://www.fms.treas.gov/cvfr/index.html> and also published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. Penalties shall accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.
- c. Administrative charges (*i.e.*, the costs of processing and handling a delinquent debt) shall be determined by the DOC entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

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

Pursuant to 31 U.S.C. § 3720B and 31 CFR § 901.6, unless waived, DOC is not permitted to extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person delinquent on a non-tax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

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

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

**H. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT).**

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

**I. DRUG-FREE WORKPLACE.**

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

**J. LOBBYING RESTRICTIONS.**

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

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

2. *Disclosure of Lobbying Activities.* Any Recipient that receives more than \$100,000 in Federal funding shall submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Recipient must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Project Officer.
3. *Special Provisions Relating to Indian Tribes.* As set out in 31 U.S.C. § 1352, special provisions are applicable to Indian tribes, tribal organizations, and other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with DOC policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Federal awards granted to American Indian and Alaska Native tribal governments generally may provide for preference in contracting, hiring, firing, and the payment of a TERO fee. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for the performance of the Federal award," as provided under 2 CFR § 200.403 ("Factors affecting allowability of costs").

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

### **1. Code of Conduct for Recipients.**

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

## 2. Applicability of Award Provisions to Subrecipients.

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

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

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

### **3. Competition and Codes of Conduct for Subawards.**

- a. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition.
- b. The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he or she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the Recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.
- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

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

- a. The Recipient shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:

*Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR part 28, "New Restrictions on Lobbying."*

*Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, Applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying—Lower Tier Covered Transactions," completed without modification.*

- b. The Recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts) requiring lower tier participants to comply with subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)."
- c. Required subaward and contractual provisions:
  - i. The Recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal funds that the subaward, contract, or subcontract is subject to 31 U.S.C. § 1352, as implemented at 15 CFR part 28 ("New Restrictions on Lobbying"). The Recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Project Officer within 30 days following the end of the calendar quarter.
  - ii. In addition to other provisions required by the Federal agency or Recipient, in accordance with 2 CFR § 200.326 ("Contract provisions"), all contracts made by the Recipient under this Award must contain the applicable provisions set out in Appendix II to 2 CFR part 200 ("Contract Provisions for Non-Federal Entity Contracts Under Federal Awards"), which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. See Appendix II to 2 CFR part 200 for a full explanation of these requirements.

**5. Pilot Program for Enhancement of Employee Whistleblower Protections.**

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

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

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

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

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

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

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

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

**7. Subaward to or Contract with a Federal Agency.**

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

**8. EDA Contracting Provisions for Construction Projects.**

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

**L. PROPERTY.**

**1. Standards.**

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

**2. Title.**

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

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

### 3. EDA’s Interest in Award Property.

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

Before advertising for construction bids or at such other time as EDA requires, the Recipient must furnish evidence, satisfactory in form and substance to the Government, that title to real property required for the Project (other than property of the United States and as provided in 13 CFR § 314.7(c) (“Title”)) is vested in the Recipient and that such easements, rights-of-way, State or local government permits, long-term leases, or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by the Government. All liens, mortgages, other encumbrances, reservations, reversionary interests, or other restrictions on title or the Recipient’s interest in the property must be disclosed to EDA. With limited exceptions set forth at 13 CFR § 314.6(b) (“Encumbrances”) or as otherwise authorized by EDA, Recipient-owned property acquired or improved in whole or in part with EDA investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered. See 13 CFR § 314.6.

- b. *Recording EDA’s Interest in Real Property.*
  - i. For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute and furnish to the Government, prior to initial Award disbursement, a lien, covenant, or other statement, satisfactory to EDA in form and substance, of EDA’s interest in the property acquired or improved in whole or in part with the funds made available under this Award. EDA may require such statement after initial Award disbursement in the event that grant funds are being used to acquire such property. The statement must specify the estimated useful life of the Project and shall include but not be limited to the disposition, encumbrance, and the Federal Share compensation requirements. See 13 CFR §§ 314.1 (“Definitions”) and 314.8(a) (“Recorded statement for real property”). See also 2 CFR § 200.316 (“Property trust relationship”).
  - ii. This lien, covenant, or other statement of the Government’s interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with applicable law. EDA may require an opinion of counsel for the Recipient to substantiate that the document was validly executed and properly recorded. See 13 CFR § 314.8(b).
  - iii. Facilities in which the EDA investment is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs L.3.b.i and ii above. See 13 CFR § 314.8(c).

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

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

#### **4. Insurance and Bonding.**

- a. *Insurance.* The Recipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided for property owned by the Recipient. Federally owned property need not be otherwise insured unless required by the Terms and Conditions of the Award. *See* 2 CFR § 200.310 ("Insurance coverage").
- b. *Bonding.* If the Award exceeds the simplified acquisition threshold as defined at 2 CFR § 200.88, EDA may accept the Recipient's or subrecipient's bonding policy and requirements if EDA or the pass-through entity determines that the Federal Interest is adequately protected. If not, the following minimum requirements shall apply:
  - i. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
  - ii. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - iii. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. *See* 2 CFR § 200.325 ("Bonding requirements").

#### **5. Leasing Restrictions.**

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

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

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

#### **6. Eminent Domain.**

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

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

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

#### **7. Disposal of Real Property.**

- a. During the estimated useful life of the Project, if EDA and the Recipient determine that property acquired or improved in whole or in part with EDA investment assistance is no longer needed for the original purposes of this Award, EDA may, in its sole discretion, approve use of the property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 CFR Chapter III. See 13 CFR § 314.3(b) ("Authorized use of property").
- b. When property is not disposed of as provided in section L.7.a above, the Government shall determine final disposition and must be compensated by the Recipient for the Federal Share of the value of the property, plus costs and interest, as provided in 13 CFR § 314.4 ("Unauthorized use of property").

### **M. FEDERAL ENVIRONMENTAL REQUIREMENTS.**

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

sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

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

The National Environmental Policy Act (“NEPA”) and the Council on Environmental Quality (“CEQ”) implementing regulations (40 CFR parts 1500–1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency’s decision to fund non-Federal projects under grants and cooperative agreements when the Award activities remain subject to Federal authority and control. Recipients are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency in complying with NEPA. Recipients may also be requested to assist EDA in drafting an environmental assessment if EDA determines an assessment is required. Until the appropriate NEPA documentation is complete, and if any additional information is required during the period of performance to assess Project environmental impacts, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit the appropriate NEPA documentation sufficient to enable EDA to make an assessment on any environmental impacts of a Project.

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

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

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

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

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

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

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

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

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

**6. Executive Order 11988 ("Floodplain Management") and Executive Order 11990 ("Protection of Wetlands").**

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

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

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

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

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

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

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

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

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

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

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

**12. The Endangered Species Act (16 U.S.C. § 1531 *et seq.*).**

The Recipient must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions with Federal financial assistance and to conduct the required reviews under the Endangered Species Act, as applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **O. MISCELLANEOUS REQUIREMENTS.**

### **1. Criminal and Prohibited Activities.**

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

### **2. Foreign Travel.**

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

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

- d. If a foreign air carrier is anticipated to be used for any portion of travel under this Award, the Recipient must receive prior approval from the Grants Officer. When requesting such approval, the Recipient must provide a justification in accordance with the guidance provided by 41 CFR § 301-10.142, which requires the Recipient to provide the Grants Officer with the following: (i) his or her name; (ii) dates of travel; (iii) the origin and destination of travel; (iv) a detailed itinerary of travel; (v) the name of the air carrier and flight number for each leg of the trip; and (vi) a statement explaining why the Recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in disallowance of any transportation costs for which any Recipient improperly used a foreign air carrier.

### 3. American-Made Equipment and Products.

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.

### 4. Intellectual Property Rights.

- a. **General.** The rights to any work produced or purchased under this Award are determined by 2 CFR § 200.315 (“Intangible property”). The Recipient owns any work produced or purchased under a Federal award subject to the DOC’s royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes. In accordance with 2 CFR § 200.315(d), the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award and authorize others to receive, reproduce, publish or otherwise use such data for Federal purposes.
- b. **Inventions.** Unless otherwise provided by law, the rights to any invention made by a Recipient under this Award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified at 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail at 37 CFR part 401 and, in particular, in the standard patent rights clause at 37 CFR § 401.14, which is hereby incorporated by reference into this Award.
  - i. **Ownership.**
    - (1) *Recipient.* The Recipient has the right to elect to retain title to any invention it makes (conceived or first actually reduced to practice) or that is made by its employees. A Recipient that is a nonprofit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an

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

- (2) *Department*. If the Recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty-free, nonexclusive, revocable license for the Recipient. DOC owns any invention made solely by its employees, but may license to the Recipient in accordance with the procedures in 37 CFR part 404.
  - (3) *Inventor/Employee*. If neither the Recipient nor DOC is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the DOC, may allow the inventor/employee to retain ownership of the invention subject to certain restrictions as described at 37 CFR § 401.9.
  - (4) *Joint Inventions*. Inventions made jointly by a Recipient and a DOC employee will be owned jointly by the Recipient and DOC. However, DOC may transfer or license its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the Recipient is willing to patent and license the invention, usually in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Recipient inventor and one DOC employee inventor). The agreement will be prepared by DOC and may include other provisions, such as a royalty-free license to the Government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the Recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.
- ii. *Responsibilities – iEdison*. The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are described below. The Recipient is expected to comply with all requirements of the standard patent rights clause and 37 CFR part 401 and is required to submit its disclosures, elections, and requests for waivers from any requirement for substantial U.S. manufacture electronically using the Interagency Edison extramural invention reporting system (iEdison) at [www.iedison.gov](http://www.iedison.gov). The Recipient may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.
- c. **Patent Notification Procedures**. Pursuant to Executive Order 12889 (58 *Fed. Reg.* 69681, 1993), DOC is required to notify the owner of any valid patent covering technology whenever DOC or a Recipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer. This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the Award.
  - d. **Copyright**. A Recipient may copyright any work produced under this Award subject to DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish or

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

#### **5. Increasing Seat Belt Use in the United States.**

Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

#### **6. Research Involving Human Subjects.**

- a. All proposed research involving human subjects must be conducted in accordance with 15 CFR part 27 (“Protection of Human Subjects”). No research involving human subjects is permitted under this Award unless expressly authorized by special award condition or otherwise authorized in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. DOC regulations at 15 CFR part 27 require that the Recipient maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this Project, the Recipient shall submit appropriate documentation to the Project Officer for approval. This documentation may include:
  - i. Documentation establishing approval of the Project by an institutional review board (“IRB”) approved for Federal-wide use under Department of Health and Human Services guidelines (*see* 15 CFR § 27.103);
  - ii. Documentation to support an exemption for the Project under 15 CFR § 27.101(b); or
  - iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 CFR § 27.118, if research involving human subjects is proposed after an award is made, the Recipient must contact the Grants Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the Project for protocol or instrument development related to human subjects research.

## **7. Federal Employee Expenses.**

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

## **8. Minority Serving Institutions Initiative.**

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

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

## **9. Research Misconduct.**

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

## **10. Publications, Videos, and Acknowledgment of Sponsorship.**

- a. Publication of results or findings in appropriate professional journals and production of video or other media are encouraged as important methods of recording and reporting results of Federally funded projects, such as scientific research, and expanding access to Federally funded projects.
- b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to their EDA Project Officer.
- c. When releasing information related to a funded Project, Recipients must include a statement that the Project or effort undertaken was or is sponsored by DOC.
- d. Recipients are responsible for ensuring that every publication of material based on, developed under, or produced under this Award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer:

*This [report/video] was prepared by [Recipient name] using Federal funds under award [number] from the Economic Development Administration, U.S. Department of Commerce.*

*The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the Economic Development Administration or the U.S. Department of Commerce.*

## **11. Care and Use of Live Vertebrate Animals.**

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

## **12. Homeland Security Presidential Directive 12.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. **Searchable Website Requirements.** The Federal Funding Accountability and Transparency Act of 2006 (“FFATA” or “Transparency Act”) requires that information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at [www.USASpending.gov](http://www.USASpending.gov). To meet these requirements, Recipients and subrecipients must include the following data elements in their Application:
  - i. Name of entity receiving Award;
  - ii. Award amount;
  - iii. Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive Award title;
  - iv. Location of entity and primary location of performance (city, State, Congressional District, and country); and
  - v. Unique identifier of entity.

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

- b. **Subaward and Executive Compensation Data Reporting Requirements.** A Recipient awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (“Recovery Act”), are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The Recipient is required to file a FFATA subaward report by the end of the month following the month in which the Recipient awards any subgrant greater than or equal to \$25,000. *See* Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (*see* 31 U.S.C. § 6101 note). The reporting requirements are located in Appendix A of 2 CFR part 170 and are available at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part170.pdf>.
  - i. Reporting of first-tier subawards.
    - (1) Applicability. Unless exempt as provided in paragraph b.iv of this Award term, the Recipient must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the

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

(2) Where and when to report.

(a) The Recipient must report each obligating action described in paragraph b.i(1) of this Award term to <http://www.fsrs.gov>.

(b) For subaward information, the Recipient must report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2015, the obligation must be reported by no later than December 31, 2015.)

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

ii. Reporting total compensation of Recipient executives.

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

(a) The total Federal funding authorized to date under this Award is \$25,000 or more;

(b) In the preceding fiscal year, the Recipient received:

(i) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and

(ii) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and

(c) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the U.S. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

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

(a) As part of its registration profile at <http://www.ccr.gov>.

(b) By the end of the month following the month in which this Award is made, and annually thereafter.

iii. Reporting total compensation of subrecipient executives.

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

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

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

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

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

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

iii. Definitions for purposes of this Award term:

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

(5) "Subrecipient" means an entity that:

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

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

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

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

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

## APPENDIX

The following reference materials and forms are available online:

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

### Governmentwide and DOC-Specific Forms:

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

Commerce Department ("CD") forms:

[http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic\\_Forms/index.htm](http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic_Forms/index.htm)

Governmentwide Standard Forms ("SF"): [https://www.whitehouse.gov/omb/grants\\_forms](https://www.whitehouse.gov/omb/grants_forms)

**STATE OF OREGON LOTTERY REVENUE BONDS  
GRANT AGREEMENT**

(Governmental Entity – lump-sum disbursement)

Grantee: City of Tigard  
Project Name: Hunziker Infrastructure Project  
Lottery Bonds Series Number: 2017 Series A

This Grant Agreement (“Agreement”), is made by the State of Oregon, acting by and through its Department of Administrative Services (“DAS”), and City of Tigard (“Grantee”) for financing of the project referred to above and described in Exhibit A (the “Project”). This Agreement becomes effective only when fully signed and approved as required by applicable law, and shall expire on the date of the last disbursement of the funds provided under this Agreement or the third anniversary date of the sale of the bonds funding this Agreement, whichever is later. This Agreement includes the following exhibits, incorporated into and made a part of this Agreement:

- Exhibit A: Project Description
- Exhibit B: Project Budget
- Exhibit C: Disbursement Request Form

**SECTION 1 – DEFINITIONS OF KEY TERMS**

The following capitalized terms have the meanings assigned below.

“Act” means Article XV, Section 4 of the Oregon Constitution; ORS 286A.560 to 286A.585 and 2015 Oregon Laws, chapter [ ], all as amended from time to time, inclusive.

“Bond Counsel” means a law firm that serves as bond counsel to the State because it has knowledge and expertise in the field of municipal law and issues opinions that are generally accepted by purchasers of municipal bonds.

“Bonds” means the State of Oregon Lottery Revenue Bonds 2017 Series A issued pursuant to the Act, a portion of the sale proceeds of which are funding the Grant.

“Code” means the Internal Revenue Code of 1986, as amended, including any implementing regulations and any administrative or judicial interpretations.

“Date of Issuance” means the date the Bonds are issued, which is expected to be spring 2017.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Grant Amount” means an amount of proceeds from the sale of the Bonds, not to exceed \$1,500,000

“Preliminary Expenditures” means costs such as architectural, engineering, surveying, soil testing, and similar costs that, in the aggregate, are not in excess of 20% of the Grant Amount. Costs of land acquisition, site preparation and similar costs incident to commencement of construction are NOT preliminary expenditures.

“Project” means the project described in Exhibit A.

“Project Budget” means the budget for the Project described in Exhibit B.

“Project Completion Date” means the date on which Grantee completes the Project.

“Project Closeout Deadline” means 90 days after the Project Completion Date.

“Project Costs” means Grantee’s actual Project Costs to the extent those costs are (a) reasonable, necessary and directly used for the Project, (b) costs permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project, (c) capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Code, and (d) eligible or permitted uses of the Grant under the Act and this Agreement. Project Costs do NOT include internal costs charged to the Project by Grantee or payments made to Related Parties, do NOT include loans or grants to be made to third parties, and may only include the payment of principal due on interim financing for the Project with the prior written consent of the State.

“Related Parties” means, in reference to governmental units or 501(c)(3) organizations, members of the same controlled group within the meaning of Section 1.150-1(e) of the Code, and in reference to any person that is not a governmental unit or a 501(c)(3) organization, a related person as defined in Section 144(a)(3) of the Code.

“State” means the State of Oregon, acting by and through its agencies including but not limited to DAS, the Office of the State Treasurer and any other agency authorized to administer proceeds and payment of the Bonds.

## **SECTION 2 – FINANCIAL ASSISTANCE**

DAS shall provide Grantee, and Grantee shall accept from DAS, a grant (the “Grant”) in an aggregate amount not to exceed the Grant Amount. This Grant is made from the sale proceeds of the Bonds.

## **SECTION 3 – DISBURSEMENTS**

- A. Disbursement Requests. Grantee must request disbursement of some or all of the Grant Amount using the Disbursement Request form attached to this Agreement as Exhibit C, containing the information and certifications shown in Exhibit C.

- B. Conditions to Disbursement. DAS has no obligation to disburse any of the Grant unless all of the following conditions are met on the date of disbursement:
- (1) There is no Default or Event of Default.
  - (2) The representations and warranties made by Grantee in this Agreement are true and correct as if made on such date.
  - (3) The Bonds have been issued and the State, in the reasonable exercise of its administrative discretion, has sufficient funding, appropriations, limitations, allotments, allocation and other expenditure authority to authorize the disbursement.
  - (4) DAS is satisfied that all items listed in the Disbursement Request are for Project Costs that have been or are expected to be incurred by Grantee.
  - (5) DAS has received the following items in form and substance satisfactory to DAS:
    - (i) This Agreement duly signed by an authorized officer of Grantee.
    - (ii) If requested by DAS, an opinion of counsel to Grantee, subject to appropriate assumptions, qualifications, certifications and representations acceptable to Bond Counsel and the State, to the effect that this Agreement has been duly executed and delivered by, and constitutes a valid and binding obligation of, Grantee, enforceable against Grantee in accordance with its terms and that Grantee has taken all actions necessary to and has full authority and power to incur and perform its obligations under this Agreement and to receive financing for and carry out the Project.
    - (iii) Such other certificates, documents, opinions and information as the State may reasonably require.
- C. Disbursement by DAS. Upon receipt of a Disbursement Request, satisfaction of the conditions set forth in Sections 3.B, and DAS's review and approval of the Project Costs set forth in the Disbursement Request, DAS shall disburse or cause to be disbursed the Grant Amount to Grantee.

#### **SECTION 4 – USE OF GRANT FUNDS**

- A. Use of Proceeds. Grantee shall use disbursements of the Grant only to reimburse itself, or pay, for Project Costs in compliance with Grantee's certifications in its Disbursement Request.
- B. Project Costs paid by Grantee before the Bonds are Issued. Except for certain Preliminary Expenditures for costs that can be capitalized to the Project, the Grant cannot be used for Project Costs that were paid more than 60 days before the earlier of

the following two dates: (i) the Date of Issuance of the Bonds; and (ii) the date on which a Declaration of Official Intent to Reimburse Project Costs with Lottery Revenue Bonds is executed.

- C. Costs Paid for by Others. Grantee may not use any of the Grant to pay internal costs charged to the Project by Grantee or by Related Parties or to repay the interest owed for any interim financing for the Project. Grantee may not use any of the Grant to repay the principal owed on interim financing for the Project without the prior written consent of the State.
- D. Earnings on Bond Proceeds. Any earnings on proceeds of the Bonds prior to disbursement will be retained by the State.
- E. Unexpended Proceeds. Grantee shall complete the Project by the Project Completion Date. Grantee shall immediately repay to DAS, unless DAS otherwise directs, any portion of the Grant disbursed to Grantee, and any interest earned by Grantee on the Grant disbursement, that are not used for Project Costs or that remain after the earliest of (a) the Project Completion Deadline, (b) this date that this Agreement has expired or is terminated; or (c) the third anniversary of the sale date of the Bonds, which is expected to be in [.....].

**SECTION 5 – REPRESENTATIONS AND WARRANTIES OF GRANTEE**

Grantee represents and warrants to the State:

- A. Organization and Authority.
  - (1) Grantee is a [insert type of governmental entity] validly created and existing under the laws of the State of Oregon.
  - (2) Grantee has all necessary right, power and authority under its applicable enabling statutes, code, ordinances or other Oregon law to (a) execute and deliver this Agreement, (b) incur and perform its obligations under this Agreement, and (c) receive financing for and carry out the Project.
  - (3) This Agreement has been duly authorized by a vote, resolution or other act of the governing body or officer of Grantee, is executed by an authorized representative of Grantee, and when executed by DAS, is legal, valid and binding, and enforceable in accordance with its terms.
- B. Full Disclosure. Grantee has disclosed in writing to DAS all facts that may materially adversely affect the Project, or the ability of Grantee to perform all obligations required by this Agreement. Grantee has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Agreement. The information contained in this Agreement is true and accurate in all respects.

- C. Pending Litigation. Grantee has disclosed in writing to DAS all proceedings, environmental or otherwise, pending (or to the knowledge of Grantee, threatened) against or affecting Grantee, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Grantee to perform all obligations required by this Agreement.
- D. No Defaults.
- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Agreement.
  - (2) Grantee has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Grantee to perform all obligations required by this Agreement.
- E. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Agreement will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Grantee is a party or by which the Project or any of Grantee's property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, ordinances or other Oregon law pursuant to which Grantee was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Grantee, the Project or Grantee's properties or operations.
- F. Governmental Consent. Grantee has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Agreement and undertaking and completion of the Project, including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located. "Land use approvals and development permits" includes, but is not limited to, any necessary "land use decision" or "limited land use decision" as those terms are defined by ORS 197.015(10) and (12).

## SECTION 6 – COVENANTS OF GRANTEE

Grantee covenants as follows for so long as the Bonds and any obligations issued to refund the Bonds are outstanding:

- A. Compliance with Laws. Grantee shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Agreement and the Project. These laws, rules, regulations and orders are incorporated by reference in this Agreement to the extent required by law.

B. Project Reporting Obligations.

- (1) Beginning with the first full calendar quarter after the disbursement of some or all of the Grant Amount, Grantee shall submit reports to the State on the status of the Project including descriptions of the expenditure of the Grant Amount and other funds on the Project compared to the Project Budget and descriptions of the Project milestones or deadlines met, or not met, in accordance with the Project schedule. Each quarterly report shall be due to the State on or before the date that is thirty (30) days after the end of the preceding calendar quarter.
- (2) Promptly after completion of the Project and in no event later than the Project Closeout Deadline, Grantee shall furnish the State with a final report on Grantee's expenditure of the Grant; and
- (3) Grantee shall provide such additional reports as the State may reasonably request from time to time, including information or documentation that the State determines is necessary to comply with arbitrage and private use restrictions that may apply to the Bonds.

C. Real Property. Legal title to all real property financed with the Grant shall be owned in fee simple by Grantee, free and clear of all encumbrances other than minor encumbrances. Grantee shall maintain a standard form of title insurance policy for the value of the purchase price of the property, and where appropriate will purchase endorsements to that policy in amounts to cover improvements. Where Grantee suffers a loss that is covered by title insurance, insurance proceeds will be paid to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance).

D. Operation and Maintenance of the Project. Grantee agrees to construct the Project in accordance with the Project plans, specifications and budget and to contract with competent, properly licensed and bonded contractors and professionals in accordance with the Oregon Public Contracting Code and all other applicable federal, state and local laws regulating construction of the Project. Grantee agrees to have plans and specifications for the Project prepared by a licensed architect or licensed engineer and to require that the Project meets applicable standards of survival in good condition. Prior to commencement of any Project construction, Grantee shall require the general contractor for the Project to procure and maintain in full force and effect throughout the entire time of construction and until one year after the Project Completion Date, a performance and payment bond for the faithful performance and payment of all of the contractor's obligations for the total cost of the Project. The Grantee shall be named as the obligee on the bond. Grantee shall operate and maintain the Project in good repair and operating condition so as to preserve the public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements.

E. Insurance, Damage. Grantee shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is

customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), unless Grantee has informed the State in writing that the insurance proceeds will be used to rebuild the Project.

- F. Sales, Leases and Encumbrances. Grantee shall not sell, transfer, encumber, lease or otherwise dispose of any property paid for with disbursements of the Grant, unless the State has granted prior, written consent. In the case of sale, lease, exchange, transfer or other disposition of any substantial portion of or interest in the Project, Grantee shall, within 30 days of receipt of any proceeds from such disposition, pay such proceeds to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), for the defeasance or prepayment of debt service on such Bonds, unless the State agrees otherwise in writing.
- G. Condemnation Proceeds. If the Project or any portion is condemned, within 30 days of receipt of any condemnation proceeds, Grantee shall pay such proceeds to the State, not to exceed the amount necessary to call or defease the portion of the Bonds relating to the Project (including all allocable costs of issuance), unless Grantee has, after consultation with the State and Bond Counsel, informed the State in writing that the condemnation proceeds will be used to rebuild the Project. The State shall consult with Bond Counsel and Grantee regarding the use of any proceeds paid to the State.
- H. Financial Records. Grantee shall keep accurate books and records for the use of the Grant and the Matching Amount, and maintain them according to generally accepted accounting principles established by the Governmental Accounting Standards Board in effect at the time.
- I. Inspections; Information. Grantee shall permit the State and any party designated by the State: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Grantee's records regarding receipts, disbursements, contracts, investments and any other related matters. Grantee shall supply any reports and information related to the Project as the State may reasonably require.
- J. Records Maintenance. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Project, or the Grant until the date that is three years following the later of the final maturity or earlier retirement of all of the Bonds (including the final maturity or redemption date of any obligations issued to refund the Bonds) or such longer period as may be required by other provisions of this Agreement or applicable law.
- K. Notice of Default. Grantee shall give the State prompt written notice of any Default as soon as any senior administrative or financial officer of Grantee becomes aware of its existence or reasonably believes a Default is likely.

- L. Prevailing Wage. The prevailing wage rate requirements are set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder (“Prevailing Wage Rate Law” or “PWR”), or, if applicable, 40 U.S.C. 3141 et seq. (“Davis-Bacon Act”). If Grantee believes a construction or renovation project is not subject to prevailing wage requirements, Grantee must obtain and provide DAS with a copy of a coverage determination letter from BOLI that confirms a project is not subject to prevailing wage rate requirements before proceeding. Grantee shall require its contractors and subcontractors to pay the applicable prevailing wage rate and to comply with all other Oregon Bureau of Labor and Industries (“BOLI”) requirements pursuant to the Prevailing Wage Rate Law, including on all contracts and subcontracts and in filing separate works bonds with the Construction Contractors Board, unless exempt under ORS 279C.836 and OAR 839-025-0015. If the Project is subject to the Davis-Bacon Act, Grantee shall comply with and require its contractors and subcontractors to comply with the Davis-Bacon Act and any applicable provisions of Oregon PWR. If the Project is or becomes subject to both PWR and the Davis-Bacon Act, all subject workers must be paid the higher of applicable state or federal prevailing wage rate. The applicable rates are those in effect on the Effective Date of this Agreement. PWR and Davis-Bacon Act prevailing wage rates may be accessed via: [http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx) and <http://www.wdol.gov>. Grantee represents and warrants that it is not on the BOLI current [List of Contractors Ineligible to Receive Public Works Contracts](#) and that it will not contract with any contractor on this list.
- M. Indemnity; Release. To the extent allowed by law, Grantee shall defend, indemnify, save and hold harmless and release the State, its officers and employees from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and reasonable attorneys’ fees and expenses at trial, on appeal and in connection with any petition for review, arising out of or relating to Grantee, its officers, employees, contractors, or agents in connection with this Agreement, the Project or the tax-exempt status of the Bonds, including without limitation, any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by BOLI, the Internal Revenue Service, the Securities and Exchange Commission, Municipal Securities Rulemaking Board and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction over the Bonds, arising from the Project or the actions or omissions of Grantee.
- N. Representations and Covenants Regarding the Tax-Exempt Status of the Bonds.
- (1) Grantee acknowledges that the Bonds have been or are expected to be issued with the interest paid on the Bonds excludable from gross income for federal income tax purposes and that the uses of the Grant proceeds and the Project by Grantee during the term of the Bonds may impact the tax-exempt status of the Bonds. Grantee agrees to comply with all applicable provisions of the Code necessary to protect the exclusion of interest on the Bonds from federal income taxation.

(2) Grantee shall not, without prior written consent of DAS, permit more than five percent (5%) of the Project to be used in a "private use" by a "private person" (as defined in the Code) if such private use could result in the State of Oregon, receiving direct or indirect payments or revenues from the portion of the Project to be privately used.

## SECTION 7 – DEFAULTS

Any of the following constitutes an “Event of Default” of Grantee:

- A. Any false or misleading representation is made by or on behalf of Grantee, in this Agreement or in any document provided by Grantee to DAS related to this Grant or the Project.
- B. Grantee fails to perform any obligation required under this Agreement, other than those referred to in subsection A of this Section 8, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Grantee by DAS, or such longer period as DAS may agree to in writing, if DAS determines Grantee has instituted and is diligently pursuing corrective action.
- C. If and to the extent allowed by law, Grantee: (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing.
- D. If and to the extent allowed by law, a proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

## SECTION 8 – REMEDIES

- A. Remedies. Upon any Event of Default, DAS may pursue any or all remedies in this Agreement, and any other remedies available at law or in equity (including specific performance) to collect amounts due or to become due or to enforce the performance of any obligation of Grantee. Remedies may include, but are not limited to:
- (1) Terminating DAS' commitment and obligation to make any further disbursements of the Grant under this Agreement.
  - (2) While any of the Grant remains undisbursed, withholding amounts otherwise due to Grantee and applying such amounts to the payment of amounts due under this Agreement.
  - (3) Requiring repayment of the Grant (including any costs of defeasing the portion of the Bonds relating to the Project (including all allocable costs of issuance), if necessary) and the State of Oregon's costs of exercising its remedies under this Agreement, including reasonable attorney's fees and costs.

If, as a result of an Event of Default, DAS demands return of the portion of the Grant moneys related to the Event of Default, such amount shall be due and payable upon demand, and DAS may charge and demand payment of interest on all or any portion of the Grant moneys required to be returned.

- B. Application of Moneys. Any moneys collected by DAS pursuant to Section 8.A will be applied first, to pay any reasonable attorneys' fees and other fees and expenses incurred by the State of Oregon; then, to repay any Grant proceeds owed; and last, to pay any other amounts due and payable under this Agreement.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to DAS is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Agreement will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. DAS is not required to provide any notice in order to exercise any right or remedy, except as set forth in Section 7.B.

## SECTION 9 – MISCELLANEOUS

- A. Time is of the Essence. Grantee agrees that time is of the essence under this Agreement.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) Nothing in this Agreement gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.



Lake Oswego, OR 97035  
Attn : Tim Ramis  
Email: tim.ramis@jordanramis.com

- E. No Construction Against Drafter. This Agreement is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Agreement is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Survival. Except as specifically provided in Section 3.C, and notwithstanding any other provision of this Agreement, the covenants of Grantee related to the tax-exempt status of the Bonds and the obligations of the parties under this Agreement survive disbursement of the Grant Amount and payment of the Bonds and do not terminate.
- H. Amendments, Waivers. This Agreement may not be amended without the prior written consent of DAS (and when required, counsel or review by Bond Counsel) and Grantee. This Agreement may not be amended in a manner that is not in compliance with the Act or the provisions of the Code applicable to obligations bearing interest that is excludable from gross income. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.
- K. False Claims. Grantee will refer to the Agency Agreement Administrator any credible evidence that a principal, employee, agent, sub-grantee contractor, contractor or other person has submitted a false claim under the False Claims Act, ORS180.750 to 180.785, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving funds provided under this Grant Agreement.
- M. Execution in Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

Grantee, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**STATE OF OREGON**  
 acting by and through the  
 Department of Administrative Services

**[GOVERNEMENTAL ENTITY]**

By: \_\_\_\_\_  
 George Naughton, Chief Financial Officer

By: \_\_\_\_\_  
 Name:  
 Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

\_\_\_\_\_  
 [ ], Assistant Attorney General

## EXHIBIT A – PROJECT DESCRIPTION

Tigard estimates \$7.2 million investment in public infrastructure will catalyze an *immediate* private sector investment of more than \$22 million, in new industrial development, and space for 150 - 300 new jobs in the Hunziker Industrial Core. New public infrastructure will set the foundation for the Hunziker Industrial Core’s evolution into a mixed use employment center that supports a wider range of businesses and higher levels of employment.

### *Wall Street Improvements*

Wall Street will be constructed from Hunziker Road to the existing Portland & Western Railroad “heavy tracks” to the southeast totaling 2,040 linear feet of new public road including a road segment at the current end of Tech Center Drive. The paved width of the new road will be 46 feet with curb and gutter, 5 foot sidewalks on each side, bike lanes and storm water planter areas for water quality treatment within a 70 foot right-of-way. Within the new road alignment, an 8” sewer, 12” waterline and a 15” storm line will be placed to serve the adjacent properties. Project alignment included as exhibit in this report.

### **Proposed Project Schedule**

Planning and Predesign	September, 2015
RFP – Consultant Design Services	November, 2015
Hire Consultants for 30% Design	December, 2015
30% Design	May, 2016
ROW Acquisition	September – December 2016
RFP – Consultant for Final design services	November, 2016
60% Design	February, 2017
90% Design	March, 2017
Final Design	April, 2017
Permits (PFI, CWS, DSL, Corps)	September, 2017
Request for Proposal – Construction Services	April, 2017
Bid and Award	May, 2017
Begin Construction	June, 2017
End Construction and Project Closeout	November, 2017

**EXHIBIT B – PROJECT BUDGET**

Grant Amount:<sup>1</sup>               \$ 1,500,000  
Matching Amount:       \$ 1,600,000 Trammell Crow - developer's contribution  
                                      \$ 2,080,000 U.S. Department of Commerce Grant  
                                      \$ 1,851,000 METRO RFFA funding under consideration

Other Amounts:           \$

Total Project Budget:    \$7,200,000 Per Engineering Budget Estimate

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<sup>1</sup> Includes amounts allocable to costs of issuance of the Bonds.

**EXHIBIT C – DISBURSEMENT REQUEST**

DATED: [insert date of request]

Project Name: [ Hunziker Infrastructure Project ]

Bonds: Lottery Revenue Bonds: 2017 Series A

Date of Grant Agreement: [ ]

Name of Grantee: [ City of Tigard ]

On behalf of [ ] (the “Grantee”) I hereby request a total disbursement of \$\_\_\_\_\_ under the Grant Agreement listed above (the “Grant Agreement”).

I hereby make the following certifications in connection with this Disbursement Request:

1. As of the date of this Disbursement Request, Grantee has spent a portion of the Grant Amount in the amount of \$[\_\_\_\_\_] as detailed on the attached list and documentation.
2. All of the disbursement requested by this Disbursement Request (the “Disbursement”) will be used to reimburse Grantee for payments that Grantee has made for Project Costs.
3. Grantee is eligible to receive the Disbursement under the terms of the Grant Agreement, and has satisfied all conditions that the Grant Agreement requires be satisfied for DAS to make the Disbursement.
4. The invoices or other documents provided to DAS in connection with this Disbursement Request evidence that the Project Costs to be paid from the Disbursement have been paid or are currently payable by Grantee.
5. All the Disbursement will be used to pay for Project Costs that have not been previously paid from disbursements under the Grant.
6. All representations of Grantee in the Grant Agreement are true and correct on the date of this Disbursement Request and all warranties by Grantee in the Grant Agreement continue to be in effect.

The certifications in this Disbursement Request are true and accurate to the best of my knowledge and belief, after reasonable investigation.

Capitalized terms that are used but are not defined in this Disbursement Request have the meanings defined for those terms in the Grant Agreement.

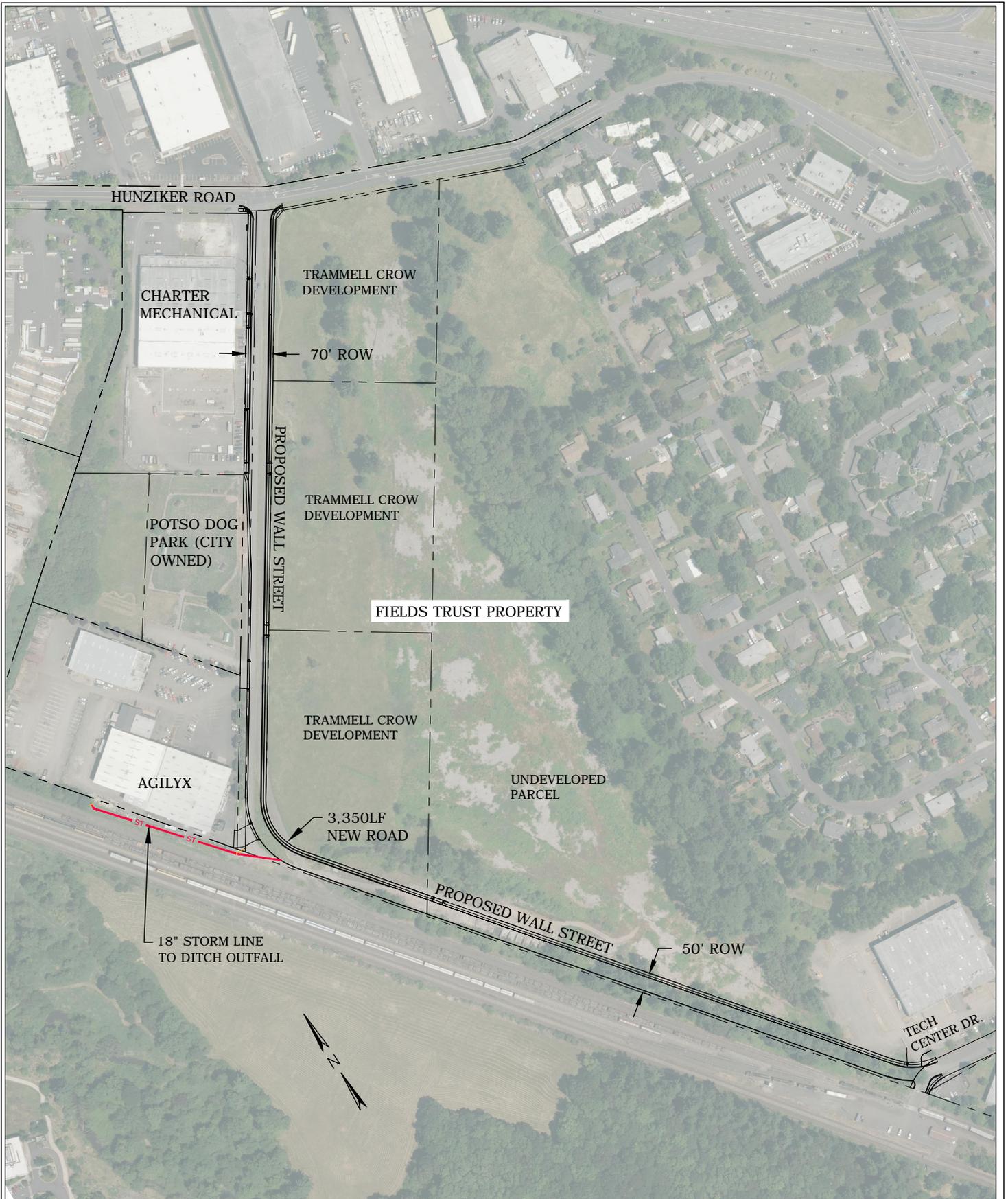
**[insert name]**

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_



**ENGINEERING DIVISION  
PUBLIC WORKS DEPARTMENT**  
13125 S.W. HALL BLVD.  
TIGARD, OREGON 97223  
VOICE: 503-639-4171  
FAX: 503-624-0752  
WWW.TIGARD-OR.GOV

**HUNZIKER INFRASTRUCTURE  
WALL STREET  
EXHIBIT A - 9/29/16**

**FIGURE  
EX A**  
**FILE NO  
95047**

<i>CONSTRUCTION COSTS</i>					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
<i>TEMPORARY FEATURES AND APPURTENANCES</i>					
0210-0100000A	MOBILIZATION	1	LS	\$ 356,000	\$ 356,000
0225-0101000A	TEMPORARY WORK ZONE TRAFFIC CONTROL, COMPLETE	1	LS	\$ 30,000	\$ 30,000
0280-0100000A	EROSION CONTROL	1	LS	\$ 38,000	\$ 38,000
0290-0100000A	POLLUTION CONTROL PLAN	1	LS	\$ 500	\$ 500
0290-0200000A	TURBIDITY MONITORING	1	LS	\$ 500	\$ 500
<i>ROADWORK</i>					
0305-0100000A	CONSTRUCTION SURVEY WORK	1	LS	\$ 35,500	\$ 35,500
0310-0106000A	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	1	LS	\$ 25,000	\$ 25,000
0320-0100000A	CLEARING AND GRUBBING	1	LS	\$ 33,000	\$ 33,000
0330-0105000K	GENERAL EXCAVATION	22,495	CUYD	\$ 17	\$ 382,415
0330-0130000K	EXTRA FOR SELECTED EMBANKMENT MATERIAL	10,125	CUYD	\$ 10	\$ 101,250
0350-0105000J	SUBGRADE GEOTEXTILE	13,164	SQYD	\$ 1.50	\$ 19,746
<i>DRAINAGE AND SEWERS</i>					
0415-9Z90000A	STORMWATER DETENTION	1	LS	\$ 120,400	\$ 120,400
0430-0100060F	6 INCH DRAIN PIPE	200	FOOT	\$ 35	\$ 7,000
0445-010012AF	12 INCH CULVERT PIPE, 5 FT DEPTH	55	FOOT	\$ 50	\$ 2,750
0445-030008BF	8 INCH SANITARY SEWER PIPE, 10 FT DEPTH	2,731	FOOT	\$ 60	\$ 163,860
0445-035010BF	10 INCH STORM SEWER PIPE, 10 FT DEPTH	1,463	FOOT	\$ 65	\$ 95,095
0445-035012BF	12 INCH STORM SEWER PIPE, 10 FT DEPTH	1,141	FOOT	\$ 75	\$ 85,575
0445-035015BF	15 INCH STORM SEWER PIPE, 10 FT DEPTH	542	FOOT	\$ 80	\$ 43,360
0445-035018BF	18 INCH STORM SEWER PIPE, 10 FT DEPTH	971	FOOT	\$ 85	\$ 82,535
0445-0700120E	SLOPED END SECTIONS	4	EACH	\$ 250	\$ 1,000
0470-0100000E	CONCRETE SANITARY SEWER MANHOLES	9	EACH	\$ 3,750	\$ 33,750
0470-0101000E	CONCRETE STORM SEWER MANHOLES	19	EACH	\$ 3,750	\$ 71,250
0470-9Z90000A	CONCRETE INLETS, TYPE BEEHIVE	12	EACH	\$ 1,100	\$ 13,200
0470-9Z90000A	CONCRETE INLETS, TYPE METAL	79	EACH	\$ 650	\$ 51,350
0490-0100000E	ADJUSTING BOXES	12	EACH	\$ 475	\$ 5,700
0490-0104000E	CONNECTION TO EXISTING STRUCTURES	5	EACH	\$ 1,250	\$ 6,250
0490-0120000E	MINOR ADJUSTMENT OF MANHOLES	2	EACH	\$ 650	\$ 1,300
0495-0100000J	TRENCH RESURFACING	40	SQYD	\$ 37	\$ 1,480

<i>CONSTRUCTION COSTS</i>					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
<i>BRIDGES</i>					
0596-9Z90000A	MODULAR RETAINING WALL	3,862	SQFT	\$ 37	\$ 142,894
<i>BASES</i>					
0620-010400J	COLD PLANE PAVEMENT REMOVAL, 0-2 INCHES DEEP	1,000	SQYD	\$ 3	\$ 3,000
0641-0112000M	3/4 INCH - 0 AGGREGATE BASE	9,689	TON	\$ 23	\$ 222,847
<i>WEARING SURFACES</i>					
0730-0100000M	EMULSIFIED ASPHALT FOR TACK COAT	12	TON	350	\$ 4,200
0744-0302000M	LEVEL 3, 1/2 INCH ACP MIXTURE	4,445	TON	75	\$ 333,375
0759-0110000F	CONCRETE CURBS, STANDARD CURB	1,497	FOOT	16	\$ 23,952
0759-0102000F	CONCRETE CURBS, MODIFIED	3,387	FOOT	28	\$ 94,836
0759-0103000F	CONCRETE CURBS, CURB AND GUTTER	501	FOOT	18	\$ 9,018
0759-0105000F	CONCRETE CURBS, CURB AND GUTTER, MODIFIED	3,934	FOOT	30	\$ 118,020
0759-0127000J	CONCRETE DRIVEWAYS, REINFORCED	5,342	SQFT	8	\$ 42,736
0759-0128000J	CONCRETE WALKS	27,647	SQFT	6	\$ 165,882
<i>PERMANENT TRAFFIC SAFETY AND GUIDANCE DEVICES</i>					
0860-0200000F	THERMOPLASTIC, SPRAYED, SURFACE, NON-PROFILED	11,259	FOOT	\$ 2	\$ 22,518
0867-0102000E	PAVEMENT LEGEND, TYPE A: ARROWS	10	EACH	\$ 275	\$ 2,750
0867-0131000E	PAVEMENT LEGEND, TYPE B-HS: BICYCLE LANE STENCIL	4	EACH	\$ 275	\$ 1,100
<i>PERMANENT TRAFFIC CONTROL AND ILLUMINATION SYSTEMS</i>					
0905-0101000A	REMOVE AND REINSTALL EXISTING SIGNS	1	LS	\$ 3,000	\$ 3,000
0930-9Z90000A	TRAFFIC SIGNING	1	LS	\$ 5,000	\$ 5,000
0970-9Z90000A	UTILITY VAULTS AND CONDUIT	1	LS	\$ 248,950	\$ 248,950
0970-9Z90000A	STREET LIGHTING	1	LS	\$ 167,500	\$ 167,500
<i>RIGHT OF WAY DEVELOPMENT AND CONTROL</i>					
1030-0103000R	TEMPORARY SEEDING	1	LS	\$ 8,800	\$ 8,800
1030-010800R	PERMANENT SEEDING	1	LS	\$ 8,800	\$ 8,800
1040-010100K	TOPSOIL	1,124	CUYD	\$ 40	\$ 44,960
1040-0000000Z	LANDSCAPING & ESTABLISHMENT	1	LS	\$ 229,140	\$ 229,140
1050-0135000F	6' CHAINLINK FENCE	1,240	FOOT	\$ 25	\$ 31,000

<i>CONSTRUCTION COSTS</i>					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
<i>WATER SUPPLY SYSTEMS</i>					
1140-0145000H	12 INCH POTABLE WATER PIPE, FITTINGS AND COUPLINGS WITH RESTRAINED JOINTS AND CLASS A BACKFILL	3,475	FOOT	\$ 125	\$ 434,375
1150-0400000E	BACKFLOW ASSEMBLY	2	EACH	\$ 2,000	\$ 4,000
1140-0300000E	12 INCH CONNECTION TO 12 INCH EXISTING MAIN	3	EACH	\$ 1,600	\$ 4,800
1140-0195000E	BLOWOFF ASSEMBLY, 4 INCH	1	EACH	\$ 1,875	\$ 1,875
1140-0400000A	DUCTILE IRON PIPE TEES	13	EACH	\$ 1,500	\$ 19,500
1140-0400000B	DUCTILE IRON PIPE BEND	5	EACH	\$ 875	\$ 4,375
1140-0400000C	DUCTILE IRON PIPE LONG SLEEVE	4	EACH	\$ 625	\$ 2,500
1150-0100000E	12 INCH GATE VALVE	5	EACH	\$ 3,125	\$ 15,625
1160-0100000E	HYDRANT ASSEMBLIES	7	EACH	\$ 6,250	\$ 43,750
1170-9Z90000A	4 INCH DI WATER SERVICE LINE	95	FOOT	\$ 45	\$ 4,275

*TOTALS*

Construction Subtotal \$ 4,277,119  
 30% Contingency \$ 1,283,136  
**Construction Total \$ 5,560,255**

<i>ARCHITECTURAL AND ENGINEERING FEES</i>	
DESCRIPTION	TOTAL
GEOTECHNICAL FEES	\$ 25,000
WETLAND BIOLOGIST FEES	\$ 29,000
CULTURAL/ARCHAEOLOGICAL FEES	\$ 8,000
LANDSCAPE DESIGN FEES	\$ 28,000
PRIVATE UTILITY LOCATIONS	\$ 7,000
SURVEY FEES	\$ 40,000
CIVIL ENGINEERING FEES	\$ 486,000

Total \$ **623,000**

<i>CONSTRUCTION COSTS</i>					
ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
<i>PROJECT INSPECTION FEES</i>					
	DESCRIPTION				TOTAL
	INSPECTION FEES				\$ 250,000
Total					<b>\$ 250,000</b>

<i>MISCELLANEOUS FEES</i>			
	DESCRIPTION		TOTAL
	CITY PROJECT MANAGEMENT FEES		\$ 275,000
Total			<b>\$ 275,000</b>

<i>RIGHT-OF-WAY EXPENSES</i>			
	DESCRIPTION		TOTAL
	ROW PURCHASE FEES		\$ 500,000
Total			<b>\$ 500,000</b>

TOTAL PROJECT COSTS      **\$ 7,208,255**