



MEMORANDUM

Willie D. Freehling

TO: Timothy J. Baroody, City Manager
FROM: Bill Freehling, Director of Economic Development and Tourism
SUBJECT: Riverfront Park Grant
DATE: August 4, 2022 (for August 9, 2022, Council Meeting)

ISSUE

Shall City Council adopt the attached ordinance to fulfill the conditions of the \$1.2 million federal grant for the Riverfront Park stage and restrooms?

RECOMMENDATION

Staff recommends that City Council adopt the attached ordinance. It is necessary for Council to do so on first and second readings to meet the timeline of the grant.

BACKGROUND

The City of Fredericksburg on July 12 received notice that it has been awarded a \$1.2 million federal grant from the U.S. Economic Development Administration (USEDA) to help build a new performance stage and restrooms at Riverfront Park. These features have long been planned at Riverfront Park, and the plumbing and electrical connections are already in place where the installations will occur.

By August 12, the City Manager needs to sign the attached Financial Assistance Award formally approving the grant and committing the local \$300,000 match, which has been appropriated in the FY2023 budget.

One of the requirements of the grant is that the City must record a first priority mortgage lien in favor of the USED A that prevents the improvements funded by the grant from being disposed of for at least 20 years (see Pages 10-11 of the attached Award Conditions). City Council must approve this lien, so before signing the Financial Assistance Award staff is seeking Council's formal approval via the attached ordinance. A copy of the USED A's standard mortgage template is attached.

The City would have no intent to remove either the stage or the restrooms from Riverfront Park for at least 20 years, and hence staff sees no issue with recording this lien.

FISCAL IMPACT

The grant requires a \$300,000 local match to leverage \$1.2 million in federal resources. The stage and restrooms are likely to increase activity at Riverfront Park, which will generate revenue from meals, sales and lodging taxes.

Attachments: Ordinance

Award Conditions

Financial Assistance Award

Mortgage Template



August 9, 2022
Regular Meeting
Ordinance No. 22-__

MOTION:

SECOND:

RE: Granting a “Federal Interest” in the Riverfront Park, as a Condition to Accepting the Department of Commerce’s Economic Development Administration \$1.2 Million Grant for Park Improvements and Stage Construction

ACTION: APPROVED: Ayes: 0; Nays: 0

FIRST READ: _____ SECOND READ: _____

Sec. I. Introduction.

The United States Department of Commerce, Economic Development Administration (Federal EDA) has notified the City Manager of the award of a \$1.2 million investment for Riverfront Park improvements and stage construction (“Project”). The total project cost is estimated to be \$1.5 million.

The Standard Terms and Conditions of the grant require the City to execute and furnish to the Federal EDA a lien, covenant, or other statement of its interest in the Riverfront Park for the “estimated useful life of the Project,” defined in the Specific Award Conditions as a period of twenty years.

The construction and opening of the Riverfront Park is the culmination of decades of sustained community efforts and public funding. The vision for the Riverfront Park includes the construction of the stage and restrooms which the federal grant will fund. The Riverfront Park will be a focal point for the community long into the future, and the acceptance of the Federal EDA grant will advance this objective.

Virginia Code §15.2-1800(B) authorizes the City to mortgage its real property after holding a public hearing. City Council held a duly-noticed public hearing on this proposal on August 9, 2022.

Sec. II. Award acceptance authorized; condition accepted.

The City Council finds that the acceptance of the \$1.2 million award from the Department of Commerce, Economic Development Administration; and that approval of the award conditions are in the public interest. The City Manager is authorized to accept the award on behalf of the City of Fredericksburg. The City Manager is further authorized to execute and record a first priority mortgage lien in favor of the Federal EDA, as required as a condition to the award, subject to review and approval as to form by the City Attorney.

Sec. III. Effective date.

This ordinance shall be effective immediately.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 22-__ duly adopted at a meeting of the City Council meeting held August 9, 2022 at which a quorum was present and voted.

***Tonya B. Lacey, MMC
Clerk of Council***

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

Construction Projects: Public Works and Economic Adjustment Assistance Programs under Sections 201 and 209 of the Public Works and Economic Development Act, as amended, 42 U.S.C. §§ 3141 and 3149

Project Title: Park Improvements and Stage Construction	
Recipient Name: City of Fredericksburg	Project Number: 01-79-15225

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 must be consistent with the *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 construction of a restroom building and a performance stage with a trapezoidal shape, cantilevered tensile canopy at the recently opened Riverfront Park in Fredericksburg. The restroom will be ADA accessible and provide both men's and women's toilet facilities. The building will measure approximately 15'8" x 26'4" and be constructed of pre-cast concrete. The stage and canopy will sit in the center of the park with an existing performance lawn area in place. The stage would measure approximately 62'4" x 34' 2" x 3'6". It will be made of concrete and include seps on the front and right side of the stage.

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

Tim Baroody, City Manager Phone: 540-372-1010 Email: tjbaroody@fredericksburg.gov	City of Fredericksburg 715 Princess Anne Street Fredericksburg, VA 22401-5916
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2. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

Linda Cruz-Carnall Regional Director Phone: (215) 597-4603 Fax: (215) 597-1063 Email: lcruz-carnall@eda.gov	Economic Development Administration Philadelphia Regional Office Robert N.C. Nix Federal Building 900 Market Street, Room 602 Philadelphia, PA 19107
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3. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Christopher Christian Area Director Phone: (215) 597-8795 Fax: (215) 597-1063 Email: CChristian1@eda.gov	Economic Development Administration Philadelphia Regional Office Robert Nix Federal Building 900 Market Street, Room 602 Philadelphia, PA 19107
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4. 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:

Megan Coll Civil Engineer/Environmental Officer Phone: (215) 597-8760 Email: mcoll@eda.gov	Economic Development Administration Philadelphia Regional Office Robert Nix Federal Building 900 Market Street, Room 602 Philadelphia, PA 19107
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5. **ADDITIONAL INCLUDED DOCUMENTS:** In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award (Form CD-450), the following additional documents are hereby incorporated by reference into this Award:

- i. EDA Standard Terms and Conditions for Construction Projects (March 22, 2021); and
- ii. The Recipient’s application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation.

Should there be a discrepancy among these documents, the Specific Award Conditions (this document), including any attachments, shall control.

6. **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	5 Months from the Date of Award
Construction Completed	12 Months from the Date of Award
Authorized Award End Date.....	12 Months from the Date of Award
Submission of Final Project Progress Report.....	No later than 120 calendar days from the Award End Date
Submission of Final Financial Documents (SF-425).....	No later than 120 calendar days from the Award End Date

Project Closeout – All project closeout documents, including final financial reports (Form SF-425 or any successor form) and any required program reports, shall be submitted to EDA not more than 120 calendar days after the date the Recipient accepts the completed project from the

contractor(s) unless an extension is granted in writing by the project officer, but in no event later than 120 days after the Award End Date.

The Recipient shall diligently pursue the development of the project so as to ensure completion within this time schedule and 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 taking action to terminate the Award in accordance with the regulations set forth at 2 C.F.R. §§ 200.338–200.342, as applicable.

7. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:

A. AWARD DISBURSEMENTS: Reimbursement basis only. EDA will make disbursements under this Award on a reimbursement basis only, based on actual costs incurred, after all preconditions set forth in these Specific Award Conditions have been met.

The “Request for Reimbursement” (Form SF-271 or any successor form) is used to request a disbursement, which must be approved in writing by the Project Officer.

Please note that prior to the initial disbursement, the Recipient must complete the attached Form SF-3881 (or any successor form) “ACH Vendor/Miscellaneous Payment Enrollment Form” and submit it to NOAA’s Accounting Office by FAX at (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:

Project Progress Reports: The Recipient shall submit project progress reports to the Project Officer on a quarterly basis for the periods ending March 31, June 30, September 30, and December 31, or any portion thereof, until the final disbursement 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.

Financial Reports: 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, for the entire project period. Form SF-425 and instructions for completing this form are available at: <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>.

A final Form SF-425 must be submitted no more than 120 calendar days after the expiration date of the Award (i.e., the Award End Date specified on the Form CD-450 or a subsequently executed Form CD-451). Final Financial Reports should follow the guidance outlined in the 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 funds

and program income (if applicable) are fully reported. Determination of the final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.

- 8. ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Financial Assistance Award (Form CD-450), including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200.

Except as otherwise expressly provided for within these Specific Award Conditions, the Federal share of the allowable costs shall be based on the Investment Rate for the Award, as established on the Form CD-450 or any subsequent amendment (Form CD-451). In the event of an underrun in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate. The Federal share of total allowable costs shall not exceed the dollar amount specified on the original Award or any subsequent amendments.

Line-Item Budget:

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

Federal Share (EDA Amount)	\$1,200,000
Non-Federal Matching Share	\$300,000
Total Project Cost	\$1,500,000

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

COST CLASSIFICATION	Approved
Administrative and legal expenses	\$0.00
Land, structures, rights-of-way, etc.	\$0.00
Relocation expenses and payments	\$0.00
Architectural and engineering fees	\$0.00
Other architectural and engineering fees	\$0.00
Project inspection fees	\$0.00
Site work	\$0.00
Demolition and removal	\$0.00
Construction	\$1,290,000
Equipment	\$210,000
Miscellaneous	\$0.00
Contingencies	\$0
Total Project Cost	\$1,500,000

- 9. 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 (see 13 C.F.R. § 300.3). By accepting the Award, the Recipient also certifies that the Matching Share of the project costs is committed to the project, is not encumbered in any way that would prevent its use for the project and will be available as needed for the project.

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

- A. The first is the [pay.gov](https://www.pay.gov) website. 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.
- B. The second is paper check conversion. All checks must include on their face the name of the DOC agency funding the Award, the Award number, and a description of no more than two words identifying the reason for the 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, which 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 into an encrypted file and transfer the file 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.

11. CONSTRUCTION COMPLETION: In keeping with prudent grants management policy, EDA construction projects must be completed within five years of the date the Form CD-450 is signed by the Recipient accepting the Award. If construction is not completed by that date and the Grants Officer determines, after consultation with the Recipient, that construction completion cannot

reasonably be expected to be completed 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 out in paragraph 7, above.

12. **USEFUL LIFE:** The useful life of this project is hereby determined to be 20 years from the date of award.
13. **GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth at 41 C.F.R. part 60-4 establish goals and timetables for the participation of minorities and women in the construction industry. Those regulations apply to all federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with those regulations and shall obtain compliance with 41 C.F.R. part 60-4 from contractors and subcontractors employed on the project by including such notices, clauses, and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. part 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 Specific Award Conditions.

Goals for minority participation shall be as prescribed by Appendix B-80 of the Federal Register notice published October 3, 1980, at 45 Fed. Reg. 65984–65991, or any subsequently published amendments. 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. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. §§ 200.317–200.326.
15. **EVIDENCE OF GOOD TITLE:** Prior to advertising for construction bids, the Recipient shall provide an opinion of counsel, satisfactory to EDA, that the Recipient has acquired good and marketable title to land, free of all encumbrances, to all real property necessary for completion of the project, as well as any necessary rights-of-way, easements, State or local government permits, or long-term lease interests necessary for the completion of the project in accordance with 13 C.F.R. part 314.
16. **NONRELOCATION:** By accepting 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 (see 13 C.F.R. § 300.3). In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements,

termination of the Award for convenience or cause, and disallowance of any costs attributable, directly, or indirectly, to the relocation.

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. EDA considers an employer to be a “primary beneficiary” if 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. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more permanent jobs so identified.

- 17. 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 at three, six, and nine years after an EDA investment. The Recipient must retain sufficient documentation so that they can submit these required reports. Failure to submit these reports may 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 the Recipient in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. The Recipient must ensure adequate and sufficient records are kept to support the methodology for computing initial job creation/retention and private investment estimates and all subsequent actual performance data, and must make this information available at EDA’s request, including in the event of an audit or performance site visit.

- 18. REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient’s application for this Award may have been submitted to the Government and signed by Recipient, or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, the Recipient hereby reaffirms and states that:

- i. All data in the application and documents submitted with the application are true and correct as of the date the application was submitted and remain true and correct as of the date of this Award;
- ii. 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

- iii. 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 term “application” includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of the initial application.

- 19. **PROOF OF PERMITTING:** Prior to advertising for construction bids, the Recipient shall provide satisfactory evidence to EDA that all permits required for the project have been received.
- 20. **SIMPLIFIED ACQUISITION THRESHOLD:** In accordance with OMB Memorandum M-18-18 (June 20, 2018), the Simplified Acquisition Threshold (see 2 C.F.R. § 200.88) and Micro-purchase Threshold (see 2 C.F.R. § 200.67) applicable to this Award are \$250,000 and \$10,000, respectively. The Recipient may utilize Small Purchase Procedures or Procurement by Micro-purchases, as applicable, for purchases below these thresholds (see 2 C.F.R. § 200.320).
- 21. **BUY AMERICAN POLICY:** Consistent with Executive Order 13858, “Strengthening Buy-American Preferences for Infrastructure Projects,” the Recipient is encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable under this Award.
- 22. **WASTE, FRAUD AND ABUSE:** Consistent with 2 CFR part 200, Recipient’s key personnel will take a training on preventing waste, fraud and abuse as provided with this Award Package. Key personnel include those responsible for managing the Recipient’s finances and overseeing any contractors, sub-contractors, or sub-grantees (for financial matters and/or general oversight related to this Project). Within sixty (60) calendar days of accepting the EDA Financial Assistance Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all Recipients whether or not designated in this Award as the Lead Recipient.

Further, Recipient will monitor award activities for common fraud schemes (hereinafter “Fraud Schemes”), such as but not limited to:

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

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

- 23. PUBLIC COMMENTS:** Based on the application materials, EDA has made a Finding of No Significant Impact for this Project under the National Environmental Policy Act (NEPA). In accordance with NEPA and EDA policy, the Recipient has provided public notice of the Project and solicited comments from the public, but the comment period has only recently closed. EDA will consider all comments received during the required comment period, and reserves the right, in its sole discretion, to revise the Finding of No Significant Impact or to require additional environmental mitigation measures. Recipient agrees to comply with all conditions and to implement all mitigation measures that EDA may impose in response to public comments or to terminate the Award for convenience.
- 24. GRANT ADMINISTRATION PLAN:** Within sixty days of accepting the EDA Financial Assistance Award, the Recipient shall provide to the Project Officer a Grant Administration Plan that outlines how the Recipient will administer the EDA Award. The plan must include the following information:
1. The names, addresses, phone numbers, facsimile numbers, and email addresses of all personnel responsible for activities pertaining to the EDA Award, including compliance with grant conditions, processing payment requests to EDA, engineering and design activities, and inspection and legal services.
 2. A proposed detailed project implementation schedule. The schedule shall contain at a minimum, the following milestones:
 - a. Completion of final plans and specifications
 - b. Date all permits will be obtained
 - c. Advertisement for bids
 - d. Bid opening
 - e. Construction contract award
 - f. Pre-construction conference
 - g. Issuance of Notice-to-Proceed
 - h. Substantial completion date
 - i. Final completion date/acceptance by Owner
 3. A Project Financial Plan addressing how expenses will be paid prior to the disbursement of funds by EDA. The plan must also identify the person responsible for preparing payment requests to EDA. EDA funds will not be disbursed until all prerequisites set forth in these Special Award Conditions are satisfied and all necessary contracts are awarded
- 25. EQUIPMENT:** Acquisition of equipment is an authorized activity under this Award, as stated in the Scope of Work. The Recipient must maintain and submit to EDA a list of all equipment purchased (“Equipment List”), providing for each piece of equipment (i) the brand name and model number, (ii) the unit’s unique serial number, (iii) the location where the equipment will be housed, and (iv) the estimated Useful Life. The Recipient must update the Equipment List following each equipment purchase and provide an updated Equipment List with each Request for Reimbursement (Form SF-270). In the event that a piece of equipment does not bear a unique serial number, Recipient agrees to indelibly mark the equipment for future identification and to update the list with a description of the marking. The manner of marking the equipment

shall be subject to EDA approval, which shall not be unreasonably withheld. The Recipient agrees to provide adequate and appropriate facilities to house and safeguard the equipment at the locations specified on the Equipment List and to provide insurance coverage for the equipment comparable to coverage maintained by the Recipient for equipment purchased without federal assistance. The Recipient further agrees that the equipment will not be moved from the location on the Equipment List without EDA's prior written consent.

Throughout the Useful Life established in the Equipment List, the Recipient agrees [to manage the equipment in accordance with the requirements at 2 C.F.R. § 200.313(c)–(e)] [to use, manage and dispose of equipment acquired in accordance with state laws and procedures] [state law version to be used with state government recipients only] and to comply with all applicable provisions and requirements of 13 C.F.R. part 314.

- 26. RECORDED MORTGAGE OR COVENANT:** To better memorialize and protect the Federal Interest in real property improved, in whole or in part, with the funds made available under this Award, Recipient shall, prior to the initial disbursement of grant funds, execute and cause to be recorded a first priority mortgage lien or Covenant of Purpose, Use, and Ownership or Notice of Federal Interest in favor of EDA. The choice of a mortgage or covenant or Notice of Federal Interest will be in the sole discretion of EDA, and the document shall be satisfactory to EDA in form and substance. Upon request by EDA, Recipient shall furnish an opinion of counsel for the Recipient that the mortgage or covenant or Notice of Federal Interest is a valid and enforceable agreement according to its terms and that it has been duly recorded in the appropriate office where mortgages are recorded for the applicable jurisdiction.

The Recipient further agrees that:

1. Except as provided in 13 C.F.R. § 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the Government must be compensated by Recipient for the Federal Share of the value of the property.
2. If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal Share of the value of the property for the Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal Share, plus costs and interest.
3. The Federal Share of the value of the property is that percentage of the current fair market value of the property attributable to EDA's participation in the project after deducting actual and reasonable fix-up and marketing expenses, as more fully defined at 13 C.F.R. § 314.5. The Federal Share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs.

4. The mortgage or covenant must remain in effect throughout the useful life of the Project.

27. ARCHITECT/ENGINEER AGREEMENT: Prior to incurring costs for architectural or engineering services, the Recipient shall submit to EDA for approval an Architect/Engineer Agreement that meets the requirements of EDA's Summary of EDA Construction Standards, as well as the competitive procurement requirements set out at 2 C.F.R. §§ 200.317—200.326, as applicable. 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.

28. PROJECT INSPECTION AGREEMENT: Prior to advertising for construction bids, the Recipient shall submit to EDA for approval a Project Inspection Agreement that meets the requirements of EDA's *Summary of EDA Construction Standards*, as well as the competitive procurement requirements set out at 2 C.F.R. §§ 200.317—200.326, as applicable. The agreement must provide for all construction inspection services required by the Recipient for the project.

The foregoing represents the true and correct version of Special/Specific Award Conditions for this EDA Grant Award.

FINANCIAL ASSISTANCE AWARD

FEDERAL AWARD ID NUMBER

RECIPIENT NAME

PERIOD OF PERFORMANCE

STREET ADDRESS

FEDERAL SHARE OF COST

\$

CITY, STATE, ZIP CODE

RECIPIENT SHARE OF COST

\$

AUTHORITY

TOTAL ESTIMATED COST

\$

CFDA NO. AND NAME

PROJECT TITLE

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 (31 March 2017)

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): _____

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

DATE

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

DATE

(Large top margin left to accommodate recording information, as necessary)

[[[Insert the “instrument prepared by” clause and contact information as required by local law]]]

AGREEMENT AND MORTGAGE

WHEREAS, the [] (hereinafter called Mortgagor) has applied to, received, and accepted from the United States Department of Commerce, Economic Development Administration (EDA) [*include agency addresses as necessary and appropriate*] a grant under the Public Works and Economic Development Act of 1965 (41 U.S.C. § 3121 *et seq.*) (PWEDA) in the amount of [\$] Dollars (EDA Grant Amount) pursuant to a Financial Assistance Award dated [], and bearing EDA Award No. [] (Award);

WHEREAS, pursuant to the application submitted by Mortgagor requesting said Award, which includes all forms, documentation, and any information submitted to EDA as part and in furtherance of the request for the Award, including any information submitted after the initial application (Grant Application) and pursuant to the Award, the Grant Amount is to be used for the purpose of acquiring or making improvements to the real property described in Exhibit A, attached hereto and made a part hereof (Project Property), consisting of

[

_____] (Project);

WHEREAS, [] years from the [trigger date (e.g., date of award, construction end date, etc.)], as determined by EDA, is the Estimated Useful Life, as defined in 13 C.F.R. § 314.1, of the improvements made to the Project Property pursuant to the Project;

WHEREAS, under government-wide regulations set out at 2 CFR part 200 and EDA’s regulations governing the Award at 13 CFR Chapter III, any transfer or conveyance of Project Property or any portion thereof must have the prior written approval of EDA;

WHEREAS, in accordance with PWEDA, EDA is not authorized to permit transfer or conveyance of Project Property to parties that are not eligible to receive EDA grants unless EDA is repaid the Federal Share as defined at 13 CFR § 314.5 (“Federal Share”) or unless the authorized purpose of the Award is to develop land in order to lease or sell it for a specific use, in which case EDA may authorize a lease or sale of the Project Property or a portion thereof if certain conditions are met;

WHEREAS, the aforesaid Award from EDA provides the purposes for which the Grant Amount may be used and provides, *inter alia*, that Mortgagor will not sell, lease, mortgage, or otherwise use or alienate any right to, or interest in the Project Property, or use the Project Property for purposes other than or different from those purposes set forth in the Award and the Grant Application made by Mortgagor therefor, such alienation or use being prohibited by 13 CFR part 314 and 2 CFR part 200; and

WHEREAS, Mortgagor and EDA desire to establish an obligation for and first priority lien [*or other priority position, as approved by EDA*] on Project Property in favor of EDA in the event that the Project Property is used, transferred, or alienated in violation of the Award, 13 CFR Chapter III, or 2 CFR part 200;

NOW THEREFORE, Mortgagor does hereby grant and convey unto EDA, its successors and assigns, a mortgage and a lien on said Project Property to secure Mortgagor’s obligation (i) to comply with the terms and conditions of the Award and the regulations set forth in 13 CFR Chapter III and 2 CFR part 200, and (ii) to use Project Property only for the purposes set forth therein for the Estimated Useful Life of Project Property. Mortgagor agrees that a debt, with interest thereon at the rate set forth in 31 U.S.C. § 3717, in the amount of the Federal Share, which amount shall be determined at the sole discretion of EDA in accordance with its authorities and regulations, such amount being either EDA’s pro-rata share of the fair market value of the Project Property, as further set forth at 13 CFR § 314.5, as that provision may be amended from time to time, the Grant Amount, or the amount actually disbursed under the Award (Indebtedness), shall be due and payable by Mortgagor to EDA upon the termination of the Award, or any attempt to use, transfer, or alienate any interest in Project Property in violation of the Award or of the regulations set forth in 13 CFR Chapter III or 2 CFR part 200 and does, moreover, agree that such Indebtedness shall be extinguished only through the full payment thereof to the Federal Government.

Mortgagor further covenants and agrees as follows:

1. Lease of Project Property:

If the Grant Application provides for and the Award authorizes Mortgagor to lease Project Property, each lease arrangement shall be subject to the prior written approval of EDA.

EDA must determine that the applicable lease arrangement is consistent with the Grant Application and authorized general and special purpose(s) of the Award; will provide adequate employment and economic benefits for the area in which Project Property is located; is consistent with EDA policies concerning, but not limited to, non-discrimination, non-relocation, and environmental requirements; and that the proposed lessee is providing adequate compensation, as defined in 13 CFR § 314.1, to Mortgagor for said lease. Any lease agreement entered into by Mortgagor of the Project Property shall be subordinate, junior, and inferior to this Agreement and Mortgage, and, at EDA's request, be expressly subordinated in writing and the written subordination recorded in the same manner as this Agreement and Mortgage [*Note that if a Recipient objects to this provision because there's no record notice of the lease, the last sentence of this provision can be modified.*]

2. Charges; Liens:

Mortgagor shall protect the title and possession of all Project Property; pay when due all taxes, assessments, mechanic and/or materialmen liens, and other charges, fines, and impositions now existing or hereafter levied or assessed upon Project Property; and preserve and maintain the priority of the lien hereby created on Project Property, including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon Project Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements but in no event less than the full replacement value of the improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of any damaged Project Property, provided such restoration or repair is economically feasible and the security of this Agreement and Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Agreement and Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its Federal Interest. EDA's Federal Interest, as defined at 13 C.F.R. § 314.2 ("Federal Interest") shall be satisfied when amount received is equal to the Federal Share as that term is defined at 13 CFR § 314.5 ("Federal Share").

4. Preservation and Maintenance of the Project Property:

Mortgagor shall keep Project Property in good condition and repair during the Estimated Useful Life and shall not permit or commit any waste, impairment, or deterioration of Project Property, but shall give notice written thereof to EDA without delay.

5. Indemnification

To the extent permitted by law, Recipient agrees to indemnify and hold the Federal Government harmless from and against all liabilities that the Federal Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of the Project Property or construction, renovation, or repair of any facility on the Project Property, to the extent that such liabilities are incurred because of toxic or hazardous contamination of groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Federal Government or its agents) on the Project Property. *See also* 13 C.F.R. § 302.19 (“Indemnification”).

6. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of Project Property by EDA or an authorized representative of EDA.

7. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of Project Property, or any part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for EDA’s Federal Share. EDA’s Federal Share of said condemnation proceeds shall be equal to that percentage which the Grant Amount bore to the total project costs under the Award for which the condemned property was acquired or improved. *See also* 13 CFR § 314.5 (“Federal Share”).

8. Recording of Agreement and Mortgage – Mortgagor’s Copy:

Mortgagor shall record this Agreement and Mortgage in accordance with the laws and rules of the County where Project Property is located, and shall ensure that the lien hereby granted is a first and prior lien on Project Property senior to all other interests save those which may arise by operation of law [*or other priority position as approved by EDA*]. EDA shall be furnished with the original, recorded Agreement and Mortgage as executed.

9. Notice:

Any notice from EDA to Mortgagor provided for in this Agreement and Mortgage shall be sent by certified mail to Mortgagor’s last known address or at such address as Mortgagor may designate to EDA, except for any notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage. Likewise, any notice from Mortgagor to EDA shall be sent by certified mail to EDA’s address.

10. Remedies:

Upon Mortgagor's breach of any term or condition of the Award or any provision of this Agreement and Mortgage, then EDA, its designees, successors, or assigns may declare the Indebtedness immediately due and payable, and may enforce any and all remedies available including but not limited to foreclosure by an action brought either in a United States District Court or in any State Court having jurisdiction, but such action shall not be deemed to be a release or waiver of any other right or remedy to recover repayment thereof.

After any breach on the part of Mortgagor, EDA shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Agreement and Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues, and profits of Project Property, with power to lease and control such Property, and with such other powers as may be deemed necessary.

11. Remedies Cumulative:

All remedies provided in this Agreement and Mortgage are distinct and cumulative to any other right or remedy under this Agreement and Mortgage, the Award, or related documents, or afforded by law or equity, and may be exercised concurrently, independently or successively.

12. Forbearance Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by EDA shall not be a waiver of EDA's rights under this Agreement and Mortgage.

13. Release:

EDA and the Mortgagor agree that, so long as the possession and use of Project Property by Mortgagor has been only for the purposes set forth in the Award and Grant Application, then after the Estimated Useful Life of the improvements to Project Property, Mortgagor may request a release of the Federal Interest in accordance with 13 CFR part 314, which will not be withheld except for good cause, as determined in EDA's sole discretion; provided, however, that in accordance with 13 CFR part 314, restrictions upon the religious use or discriminatory practices in connection with the use of Project Property shall survive this Agreement and Mortgage and any release thereof, which shall be evidenced by a separate recorded covenant.

14. Governing Law; Severability:

This Agreement and Mortgage shall be governed by applicable federal law, if any, and if

there is no applicable federal law by state law, and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors, or assigns are entitled to under applicable federal or state law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

15. Authority to Execute Agreement and Mortgage:

Recipient represents and warrants to and covenants with EDA that Recipient has been duly authorized by Recipient’s governing body by all necessary action and has received all necessary third party consents to enter into this Agreement and Mortgage.

[**Optional:** 16. If EDA approves and enters into an Intercreditor Agreement with one or more Creditor under which EDA shares a first priority lien position with said creditors, a default in the shared mortgage shall constitute a default under this Agreement and Mortgage.]

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on this the ____ day of _____, 20__.

ATTEST:

Mortgagor

By: _____

By: _____

Title: _____

Its: _____

Approved: _____

Attorney for Mortgagor

[**Optional depending on RO:**

“This approval by Mortgagor’s counsel shall be in addition to and in no way a restriction or limitation of said Attorney’s separate written legal opinion regarding this Agreement and Mortgage.]

this space for acknowledgment

EXHIBIT A
Property Description