

**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**

Excerpt:

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).
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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.

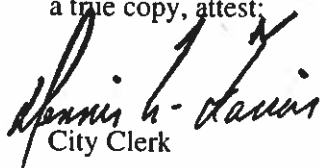
h. In accordance with 2 CFR § 200.329 ("Reporting on real property"), the Federal awarding agency or pass through entity must require a non-Federal entity to submit reports (using Form SF-429 "Real Property Status Report" or any successor form) at least annually on the status of real property in which 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.

IN CITY COUNCIL, August 19, 2021

Referred to the Committee on City Property.

Dennis W. Farias, City Clerk

a true copy, attest:


City Clerk