

**Field, Lisa**

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**From:** Sagsveen, murray  
**Sent:** Monday, April 21, 2014 11:00 AM  
**To:** Larson, Brady A.  
**Cc:** Brekke, Alice  
**Subject:** REAC Building - EDA Grant  
**Attachments:** 1205\_001.pdf

Brady,  
FYI. (I edited the email string to show only the question and the response.)  
MGS

**Murray G. Sagsveen, J.D.**

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Chief of Staff/Ethics Officer/Director of Legal Services

N O R T H D A K O T A

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[murray.sagsveen@ndus.edu](mailto:murray.sagsveen@ndus.edu)

**From:** <Brekke>, Alice <[alice.brekke@email.und.edu](mailto:alice.brekke@email.und.edu)>  
**Date:** Monday, April 21, 2014 6:38 AM  
**To:** Murray Sagsveen <[murray.sagsveen@ndus.edu](mailto:murray.sagsveen@ndus.edu)>  
**Subject:** FW: Award Number 05-79-04419

Information from EDA below...references from CFR attached. This is for the meeting on Wednesday.

**From:** Sutton, Mari [<mailto:MSutton@eda.gov>]  
**Sent:** Tuesday, April 01, 2014 10:19 AM  
**To:** Brekke, Alice  
**Cc:** Gamble, Rachael  
**Subject:** RE: Award Number 05-79-04419

Alice,

Thank you for your email requesting information on whether the Leasable Space Limitation Special Award Condition could be removed from the Financial Assistance Award cited above. The Special Award Condition states, "The Grant Recipient agrees to limit the amount of leasable space in the Research Enterprise and Commercialization building that is occupied by the University of North Dakota staff for office use to a maximum of twenty (20) per cent of the leasable space."

EDA regulations at 13 CFR § 314.2 state, "Property that is acquired or improved, in whole or in part, with Investment Assistance shall be held in trust by the Recipient for the benefit of the Project for the Estimated Useful Life of the Project, during which period EDA retains an undivided equitable reversionary interest in the Property (the "Federal Interest"). The Federal Interest secures compliance with matters such as the purpose, scope and use of a Project..."

The purpose of the project, as stated in Paragraph III.1 of the Special Award Conditions, is, "The grant is for the construction of infrastructure for the development of a technology research park." Therefore, changing the leasable space to a greater percentage than 20 percent for use by University of North Dakota staff for office use is not in compliance with the Special Award Conditions.

The estimated useful life of the project is 25 years. The U. S. Department of Commerce Grants Officer approved the Financial Assistance Award on June 20, 2007; therefore, the Federal Interest in the property will expire on June 20, 2032. 13 CFR §314.3(f) states, "With EDA's prior written approval, a Recipient may undertake an incidental use of Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made..." EDA has determined 20% to constitute "incidental use" and increasing that percentage, or removing it in its entirety, will interfere with the scope of the Project and purpose for which the Investment was made.

Should UND wish the Federal Government to extinguish its Federal Interest in the property prior to the expiration of the useful life, UND must fully compensate the Federal government for its Federal Share, as more fully explained in 13 CFR § 314.5.

Please let me know if you have additional questions or need clarification.

Mari

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**From:** Brekke, Alice [<mailto:alice.brekke@email.und.edu>]  
**Sent:** Wednesday, March 12, 2014 10:47 AM  
**To:** Gamble, Rachael  
**Subject:** Award Number 05-79-04419

Rachael,

An amendment to the above referenced award was recently executed which transferred the award to the University of North Dakota. A question has been posed to me by a ND Legislative Committee asking what options exist to remove the federal restrictions [leasable space limitation]. Is this a question that you could answer? Feel free to give me a call to discuss.

Alice C. Brekke  
Vice President for Finance & Operations  
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Grand Forks, ND 58202-8378  
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[alice.brekke@und.edu](mailto:alice.brekke@und.edu)

Economic Development Administration, Commerce

§ 314.2

**PART 314—PROPERTY**

**Subpart A—General**

- Sec.  
314.1 Definitions.  
314.2 Federal Interest.  
314.3 Authorized use of Property.  
314.4 Unauthorized Use of Property.  
314.5 Federal Share.  
314.6 Encumbrances.

**Subpart B—Real Property**

- 314.7 Title.  
314.8 Recorded statement.

**Subpart C—Personal Property**

- 314.9 Recorded statement—title.

**Subpart D—Release of EDA's Property Interest**

- 314.10 Procedures for release of EDA's Property interest.

AUTHORITY: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

**Subpart A—General**

**§ 314.1 Definitions.**

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms shall have the following meanings:

*Adequate Consideration* means the fair market value at the time of sale or lease of any Property, as adjusted, in EDA's sole discretion, by any services, property exchanges, contractual commitments, acts of forbearance or other considerations that are in furtherance of the authorized purposes of the Investment Assistance, which are received by the Recipient or Owner in exchange for such Property.

*Disposition* or *Dispose* means the sale, lease, abandonment or other disposition of any Property and also includes the Unauthorized Use of such Property.

*Estimated Useful Life*, as used in this part, means the period of years that constitutes the expected useful lifespan of a Project, as determined by EDA, during which EDA anticipates obtaining the economic development benefits of its Investment.

*Federal Interest* has the definition ascribed to it in § 314.2(a).

*Federal Share* has the definition ascribed to it in § 314.5.

*Owner* means a fee owner, transferee, lessee or optionee of any Property. The term Owner also includes the holder of other interests in a Property where the interests are such that the holder effectively controls the use of such Property.

*Personal Property* means all tangible and intangible property other than Real Property.

*Property* means Real Property, Personal Property and mixed property.

*Real Property* means any land, whether raw or improved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment. Real Property includes land that is improved by the construction of Project infrastructure such as, but not limited to, roads, sewers and water lines that are not situated on or under the land, where the infrastructure contributes to the value of such land as a specific purpose of the Project.

*Successor Recipient* means an EDA-approved transferee of Property pursuant to § 314.3(d). A Successor Recipient must be an Eligible Recipient of Investment Assistance.

*Unauthorized Use* means any use of Property acquired or improved in whole or in part for purposes not authorized by EDA Investment Assistance, PWEDA or this chapter, as set forth in § 314.4.

**§ 314.2 Federal Interest.**

(a) Property that is acquired or improved, in whole or in part, with Investment Assistance shall be held in trust by the Recipient for the benefit of the Project for the Estimated Useful Life of the Project, during which period EDA retains an undivided equitable reversionary interest in the Property (the "Federal Interest"). The Federal Interest secures compliance with matters such as the purpose, scope and use of a Project and is often reflected by a recorded lien, statement or other recordable instrument setting forth EDA's Property interest in a Project (e.g., a mortgage, covenant, or other statement of EDA's Real Property interest in the case of a Project involving

### §314.3

### 13 CFR Ch. III (1-1-14 Edition)

the acquisition, construction or improvement of a building. See §314.8.)

(b) When the Federal government is fully compensated for the Federal Share of Property acquired or improved, in whole or in part, with Investment Assistance, the Federal Interest is extinguished and the Federal government has no further interest in the Property.

#### §314.3 Authorized Use of Property.

(a) The Recipient or Owner must use any Property acquired or improved in whole or in part with Investment Assistance only for the authorized purpose of the Project and such Property must not be Disposed of or encumbered without EDA's prior written authorization.

(b) Where EDA and the Recipient determine that Property acquired or improved in whole or in part with Investment Assistance is no longer needed for the original purpose of the Investment Assistance, EDA, in its sole discretion, may approve the use of such Property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and by this chapter.

(c) Where EDA determines that the authorized purpose of the Investment Assistance is to develop Real Property to be leased or sold, such sale or lease is permitted provided it is for Adequate Consideration and the sale is consistent with the authorized purpose of the Investment Assistance and with all applicable Investment Assistance requirements including but not limited to nondiscrimination and environmental compliance.

(d) EDA, in its sole discretion, may approve the transfer of any Property from a Recipient to a Successor Recipient (or from one Successor Recipient to another Successor Recipient). The Recipient will remain responsible for complying with the rules of this part and the terms and conditions of the Investment Assistance for the period in which it is the Recipient. Thereafter, the Successor Recipient must comply with the rules of this part and with the same terms and conditions as were applicable to the Recipient (unless such terms and conditions are otherwise amended by EDA). The same rules

apply to EDA-approved transfers of Property between Successor Recipients.

(e) When acquiring replacement Personal Property of equal or greater value than Personal Property originally acquired with Investment Assistance, the Recipient may, with EDA's approval, trade in such Personal Property originally acquired or sell the original Personal Property and use the proceeds for the acquisition of the replacement Personal Property; provided that the replacement Personal Property is for use in the Project. The replacement Personal Property is subject to the same requirements as the original Personal Property. In extraordinary and compelling circumstances, the Assistant Secretary may approve the replacement of Real Property used in a Project.

(f) With EDA's prior written approval, a Recipient may undertake an incidental use of Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made; provided that the Recipient is in compliance with applicable law and the terms and conditions of the Investment Assistance, and the incidental use of the Property will not violate the terms and conditions of the Investment Assistance or otherwise adversely affect the economic useful life of the Property. Eligible Applicants and Recipients should contact the appropriate regional office (whose contact information is available via the Internet at <http://www.eda.gov>) for guidelines on obtaining approval for incidental use of Property under this section.

#### §314.4 Unauthorized Use of Property.

(a) Except as provided in §§314.3 (regarding the authorized use of Property) or 314.10 (regarding the release of EDA's interest in certain Property), or as otherwise authorized by EDA, the Federal government must be compensated by the Recipient for the Federal Share whenever, during the Estimated Useful Life of the Project, any Property acquired or improved in whole or in part with Investment Assistance is Disposed of, encumbered, or no longer used for the purpose of the Project; provided that for equipment

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CFR parts 14 and 24, including any supplements or amendments thereto, shall apply.

(b) Additionally, prior to the release of EDA's interest, Real Property or tangible Personal Property acquired or improved with EDA Investment Assistance may not be used:

(1) In violation of the nondiscrimination requirements of §302.20 of this chapter or in violation of the terms and conditions of the Investment Assistance; or

(2) For any purpose prohibited by applicable law.

(c) Where the Disposition, Encumbrance or use of any Property violates paragraphs (a) or (b) of this section, EDA may assert its interest in the Property to recover the Federal Share for the Federal government and may take such actions as authorized by PWEDA and this chapter, including but not limited to the actions provided in §§302.3 and 307.21 of this chapter. EDA may pursue its rights under both paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest.

#### §314.5 Federal Share.

For purposes of this part, "Federal Share" means that portion of the current fair market value of any Property (after deducting actual and reasonable selling and repair expenses, if any, incurred to put the Property into marketable condition) attributable to EDA's participation in the Project. The Federal Share excludes that portion of the current fair market value of the Property attributable to acquisition or improvements before or after EDA's participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are \$100, consisting of \$50 of Investment Assistance and \$50 of Matching Share, the Federal Share is fifty (50) percent. If the Property is disposed of when its current fair market is \$250, the Federal Share is \$125 (*i.e.*, fifty (50) percent of \$250). If \$10 is spent to put the Property into salable condition, the Federal Share is \$120 (*i.e.*, fifty (50) percent of (\$250-\$10)).

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#### §314.6 Encumbrances.

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Recipient-owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way collateralized or otherwise encumbered (collectively, an "Encumbrance" or to "Encumber"). An Encumbrance includes but is not limited to easements, rights-of-way or other restrictions on the use of any Property.

(b) *Exceptions.* Subject to EDA's approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply to:

(1) The use of Recipient-owned Property to secure a grant or loan made by a federal or State agency or other public body participating in the same Project;

(2) Recipient-owned Property that is subject to an Encumbrance at the time EDA approves the Project, where EDA determines that the requirements of §314.7(b) are met;

(3) Encumbrances arising solely from the requirements of a pre-existing water or sewer facility or other utility Encumbrances, which by their terms extend to additional Property connected to such facilities; and

(4) Encumbrances in cases where all of the following are met:

(i) EDA, in its sole discretion, determines that there is good cause for a waiver of paragraph (a) of this section;

(ii) All proceeds secured by the Encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies or for related activities of which the Project is an essential part;

(iii) A grantor/lender will not provide funds without the security of a lien on the Property; and

(iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations.

(c) Encumbering Recipient-owned Property, other than as permitted in this section, is an Unauthorized Use of the Property under §314.4.

University of North Dakota  
4/16/2014  
Operating Leases (space) in the Grand Forks Area

Lessor	Lessee Department	Agreement Name	Purpose	Square Feet	Lease Cost	Description
UND Foundation Leaseholds, LLC	VP Finance & Operations	Lease Agreement (Gorecki Alumni Center)	office and meeting rooms	7,005 sq. ft. of office space	\$34,666 a year along with an annual analysis review of actual operating costs; \$56,030 a year for meetings rooms with an analysis of usage; \$169,472 over 5 years for leasehold improvements	Admissions Office space and meeting rooms
DPI/UND Vision Serv/School for the Blind	Parking Services	Land Lease	other	46,826 sq.ft. of land	\$2,900 a year	Parking Lot
Adams, Ron	Purchasing	Agreement	instruction	75 feet long	\$3,000 a year plus snow removal services	land lease for helicopter landing
Moreland, James and Tami	Flight Operations	Operating Lease	instruction	Landing strip, owner mows and removes snow	\$3,333.33 a year	land lease for helicopter landing by Manvel
Alerus Center	Athletics	Alerus Center Usage Agreement	athletics	Use of center for football games	\$25,000 per football game + CPI increase + \$100,000 per year for turf less revenue/expense sharing for novelties, etc.	Football field
Gibbs Warehousing, INC.	EERC	Lease Agreement (1811A Dyke Ave)	research	2,500 sq. ft.	\$2,100 a month	mercury sampling kit assembly; biomass storage
U.S. Air Force	Flight Operations	Lease Agreement	office and instruction - UAS simulator	4,660 sq. ft. - secure space	\$34,950 a year plus \$460,000 upfront costs for construction (Center for Excellence funds) - UND is currently not paying the \$34,950 because of the renovation	GFAB
Grand Forks International Airport	Flight Operations	Building & Ground Site Lease & Agreement	instruction - UAS undergrad	3962 sq. ft. - secure space	Original lease \$40,333.16 per year for exclusive space and \$7,024.20 for shared space with annual CPI increase. Original total monthly for both \$3,946.45. Current monthly rate \$3,631.57 for exclusive space, \$632.45 for shared space.	Airways Facilities Service Station Building
Grand Forks International Airport	Flight Operations	Consolidated Lease and Agreement	instruction, offices, aircraft storage and maintenance in the buildings on this land	191,550 sq. ft. land	Ground lease, pay rent to the Regional Airport Authority for the land under our UND owned Flight operations facilities, parking lots, and ramp tie downs for aircraft. Original lease \$52,293.15 annually, \$4357.76 monthly for land rent, plus \$49.58 per tie down per month. Increases in January each year by annual CPI increase. Current monthly rate for ground lease \$4,654.67, tie downs - \$7,484.82.	
UND Center for Innovation Foundation	Small Business Development	Lease Agreement 201	office	Room #201 in Ina Mae Rude Center	\$325 a month	NDSBA
UND Center for Innovation Foundation	Small Business Development	Lease Agreement 205	office	Room #205 in Ina Mae Rude Center	\$400 a month	NDSBA
52nd Avenue Investments, LLC	UND School of Medicine	Lease Certificate-Unit G Pathology Bld	public service	7,157 sq. ft.	\$7,877.96 a month, adjusted based upon CPI	Forensics - Aurora Medical Park Unit G Pathology Building
Burlington Northern Railroad Company	VP Finance & Operations	Lease Agreement NO. 375,224	other	1,417 feet of track	\$5,665 a year	Railroad Lease by steam plant - enclosure for unloading coal
City of Grand Forks	VP Finance & Operations	Farm Lease	research	4 acres	\$1,800.50 to \$2,096.65 a year	Maize Research - used for only raising corn
Empire Arts Center	VP Finance & Operations	Agreement - Display UND Art Collection	other	wall display space in west portion of gallery	\$450 a month	Gallery space for rotating art collection
University Point, LLC	VP Finance & Operations	Lease Agreement - Apartments	student apartments	2nd floor - 6 apartments (16 bedrooms) and 22 parking spaces	\$51,000 annually less ground rent owed to UND	Bronson Property - Apartments