

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 02-3235A
METRO'S PRESENT AND FUTURE)
PARTICIPATION IN THE NORTH AMERICAN) Introduced by Jim Morgan
WETLAND CONSERVATION ACT (NAWCA))
GRANT PROGRAM WITH DUCKS UNLIMITED)
AND THE U.S. FISH AND WILDLIFE SERVICE)

WHEREAS, a stated goals of the Metro Greenspaces Master Plan is to protect and manage significant natural areas through partnerships with governments, non-profit organizations, and others; and

WHEREAS, Metro's Regional Parks and Greenspaces Department has developed restoration plans for two Open Spaces Bond Measure sites - (1) the Steele Foundation Property, a part of Coffee Lake in the Tonquin Geologic Target Area, and (2) Gotter Bottom in the Tualatin River Access Target Area, and restoration of these floodplain properties will provide improvements in wildlife habitat quality while allowing for passive recreational and educational opportunities; and.

WHEREAS, Metro and Ducks Unlimited (DU) applied to receive wetlands acquisition and restoration grant funds appropriated by the federal North American Wetland Conservation Act (NAWCA) available through the U.S. Fish and Wildlife Service (USFWS); and

WHEREAS, Metro has been determined to be eligible to receive \$ 141,000 in NAWCA acquisition funds for the Steele Foundation Property, \$45,000 in NAWCA wetland restoration and enhancement funds to perform Gotter Bottom restoration projects, and \$163,000 in NAWCA funds to perform wetland restoration on the Steele Foundation Property upon entry into a Site Specific Agreement with DU and the USFWS; and

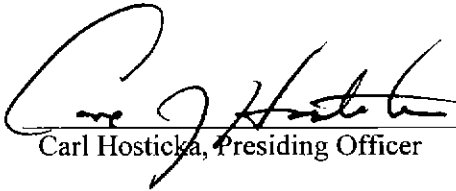
WHEREAS, the terms of the Site Specific Agreement (Exhibit A) required by DU and the USFWS for acquisition grant funds constitute an "Unusual Circumstance," and requires Metro Council approval; and

WHEREAS, Metro's entry into the Site Specific Agreements (Exhibits B and C) required by DU and the USFWS for said wetlands restoration and enhancement projects requires Metro Council approval; and

WHEREAS other opportunities to participate upon the same terms and conditions with DU to receive NAWCA grant funds for acquisition, restoration and enhancement of wetlands upon Metro Open Space Bond Measure sites are likely to become available in the future; now therefore,


BE IT RESOLVED that the Metro Council approves Metro's entry into the attached Site Specific Wetlands Acquisition, Restoration and Enhancement Agreements with Ducks Unlimited and the U.S. Fish and Wildlife Service for Metro's Steele Foundation and Gotter Bottom Properties, and authorizes Metro to enter into future North American Wetland Conservation Act grant agreements with Ducks Unlimited upon substantially similar terms subject to review and approval by Metro Council.

ADOPTED by the Metro Council this 24th day of October 2002



Carl Hosticka, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

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EXHIBIT A

RESOLUTION NO. 02-3235



DUCKS UNLIMITED, INC.

METROPOLITAN SERVICE
DISTRICT OF OREGON

SITE SPECIFIC AGREEMENT

**PROJECT NAME: COFFEE LAKE ACQUISITION
NO.: US-OR-95-1**

ACQUISITION

This Agreement is effective this ____ day of _____, ____ between Ducks Unlimited, Inc. (hereinafter "DU") and the Metropolitan Service District of Oregon (hereinafter "Metro")

I. PURPOSE

DU and Metro have entered into this Agreement to help facilitate Metro's acquisition of a portion of the Steele Foundation Tract (hereinafter "Site") as described in the Project Proposal attached as Exhibit A (hereinafter "project"). This project is funded pursuant to North American Wetlands Conservation Act Grant Agreement No. 98210-1-G812 (hereinafter "Grant") between DU and the U. S. Fish and Wildlife Service (hereinafter "USFWS"). The purpose of the Grant is to protect, restore, and enhance important wetland ecosystems in the Willamette Valley Ecoregion. This Grant is incorporated into this Agreement by this reference attached as Exhibit B.

II. SCOPE OF THE AGREEMENT

In consideration of the above premises and other terms and conditions listed herein, DU and Metro agree to undertake the Project on the Site as follows:

A. DU AGREES:

1. Subject to receipt of such funds from USFWS pursuant to the Grant and receipt of proper documentation, as provided in this Agreement, from Metro requesting payment, to provide funds to Metro up to One Hundred Fifty Thousand Dollars (\$150,000) for a reimbursement of the direct costs paid to third parties by Metro (other than any appraisal fees) that are incurred by Metro in the acquisition of the Site of the Grant and that are allowable expenses, as defined in the Grant. Of this total amount One Hundred Forty One Thousand Dollars (\$141,000) will be cash and Nine Thousand Dollars (\$9,000) will be in-kind services for negotiation and project administration.

2. To serve as the grantee of the Grant, make application for reimbursement under the Grant and receive Grant funds in the amount of One Hundred Fifty Thousand Dollars (\$150,000) for this Acquisition Project. DU represents these funds are currently available under the Grant for use for this Acquisition Project subject to the terms and conditions of the Grant.

B. METRO AGREES:

1. To provide Grant match funding in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) through Metro's acquisition of the Boeckman, Keys, and Steele Foundation properties as set forth in Exhibit A.
2. Upon acquisition of the Site to perform the Site management and maintenance activities that are identified within Exhibit A for the duration of this Agreement.
3. That should any payments or parts thereof made by DU under Section II.A. of this Agreement be disallowed by USFWS as non-qualifying under the Grant, to immediately, upon written notice from DU, return the amount of such disallowed payment to DU.
4. That other than payments made by DU pursuant to Section II.A. of this Agreement, and DU's in-kind services, that Metro shall be responsible for all costs associated with the Acquisition Project that they incur.
5. To submit the following performance reports to the DU Project Officer:

<u>Report</u>	<u>Period Covered</u>	<u>Due Date</u>
Final	August 1, 2002 through the end of the grant's extended Period of Performance, if any	To be determined

The performance report must include:

- a) A copy of the summary and signature pages from an approved appraisal as explained in Section II.B.19.a.
- b) A copy of an appraisal review as explained in Section II.B.19.b.
- c) A copy of the Summary Statement of Just Compensation given to each seller of the Property as explained in Section II.20c. This requirement is excepted and waived pursuant to 49 CFR 24.101(a)(1) and set further in Section II.B.19. below.
- d) A copy of any document from a landowner that donates the difference between: (i) the selling price and the offer of just compensation; or (ii) the selling price and what Metro or subrecipient communicated to the landowner as the amount it believed to be the fair market value of the Property as explained in Section II.B.19.d. This requirement is not applicable.

- e) Confirmation that Metro or subrecipient has complied with relocation assistance obligations (if any) as may be required in Section II.19.e. This requirement is excepted and waived pursuant to 49 CFR 24.101(a)(1) and as set further in Section II.B.19. below.
 - f) A copy of the closing statement for each Property purchased with funds under the Agreement. (Section II.B.19.f.)
 - g) A copy of deeds or other instruments conveying title to all Properties acquired with funds under this Agreement or received as a matching in-kind donation. (Section II.B.19.g.)
 - h) A copy of a statute or other legal instrument that guarantees the long-term conservation of the wetlands, migratory birds, and other fish and wildlife of a Federal, State, or Tribal land-management system if Metro or subrecipient places a Property in that system as explained in Section II.B.19.h. OR a copy of a recorded Notice of Grant Agreement for each Property purchased with funds under this Agreement or received as an in-kind matching donation. (Section II.B.19.h.)
6. To provide all reasonable and necessary services to ensure the timely acquisition of the Site.
 7. Report any program income earned during the Period of Performance of the Grant to DU. DU will not deduct it from the total Project allowable cost and will treat it as additional funds committed under this Agreement for the purpose of the development of the Site.

Program Income: Program income is gross income earned by Metro between the effective date of this Agreement and the end of the Grant's Period of Performance that is directly generated as a result of funds provided under this Agreement. Program income included, but is not limited to, income from fees for services performed, the use, rental, or sale of real or personal property acquired under this Agreement and the sale of commodities or items fabricated under this Agreement.

8. That Metro's or subrecipient's financial management systems must adhere to the standards established in 43 CFR 12.60 for state, local, and tribal governments or 43 CFR 12.921 for institutions of higher education, other non-profit organizations, and commercial organizations (<http://www.access.gpo.gov/nara/cfr/index.html>). These systems must be capable of reporting receipts and expenditures (or use) of: (a) NAWCF dollars, (b) matching dollars, and (c) in-kind matching donations with reference to dollar values. Metro or any subrecipients must report these expenditures, receipts, and values as required in this Agreement and upon demand if special audits are required.
9. Determine allowable costs in accordance with applicable OMB Cost Principles or regulations as listed below. If an institution of higher education, other non-profit organization or commercial organization, maintain written procedures to determine reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal costs principles and the terms and conditions of the Agreement [43 CFR 12.921 (b)(6)]. In absence of these

procedures and to satisfy this requirement, Metro must comply with the following procedures:

Any of Metro's staff, agents, or subrecipients (if any), who have the authority to administer or manage this Project or obligate funds for it, will review the terms of this Agreement and the provisions of the applicable Office of Management and Budget (OMB) Cost Principles before making a decision that will directly or indirectly result in expenditure of funds for the Project.

The following documents at the listed websites establish principles for determining which costs are allowable.

- Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organizations," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-21, "Cost Principles for Educational Institutions," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- 48 CFR 32.2, "Contracts with Commercial Organizations" (<http://www.access.gpo.gov/nara/cfr/index.html>)

These Costs Principles apply to the use of funds under this Agreement and in-kind matching contributions. The applicability of circular or regulation depends on the type of organization incurring the costs. Thus, in some cases, Metro may be subject to a different circular or regulation than its subrecipients. In addition to restrictions in applicable OMB Costs Principles or regulation, Metro must not use funds under this Agreement for research studies, non-Project-specific communications products, travel for Federal employees; the costs of existing residences, structures, or buildings unnecessary for wetlands conservation purposes; or the costs of constructing, removing, or repairing residences, structures or buildings.

Metro must agree to include the above provision in any subaward to any subrecipient.

10. Submit to DU with any request for reimbursement: (1) a completed Standard Form 270 (Request for Advance for Reimbursement), which is available at: (<http://www.whitehouse.gov/OMB/Grants/index.html>) or (2) its computer generated equivalent. Metro must prepare the Standard Form 270 or its computer-generated equivalent on a cash basis for either an advance payment or a reimbursement as explained on the back of the form. Metro must enter the period covered by the request on the Standard Form 270 or its computer-generated equivalent. To receive advance payments, Metro must maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by Metro [43 CFR § 61 © § 921 (b)(5)] as applicable. To comply with this requirement, Metro must agree to ensure that the DU Project Officer will receive a completed Standard Form 270 its computer generated equivalent [15-30] days before the date on which Metro must disburse funds.

11. That publication of any reports or parts thereof relating to the Project by Metro's personnel is subject to DU review and comment. Authorship does not incur any privileges of copyright nor restriction on distribution.

Metro must send two copies of any publication produced under this Agreement to DU with a transmittal that identifies the sender and the publication. News releases or other information on the Project published or released for publication by Metro or any subrecipient must acknowledge that funding was made possible through the North American Wetlands Conservation Act. Metro and any subrecipients agree to include the above provision in any subaward.

12. That DU and the Federal Government may publish, reproduce, and use all technical data developed as a result of this Agreement in any manner and for any purpose without limitation and may authorize others to do the same.

13. That pursuant to Section 307 of the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, 110 Stat. 3009, that Metro is advised of the following:

In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

14. Comply with Section XI.G. of the Grant in managing and disposing of any equipment (tangible personal property), supplies, and other expendable property acquired in whole or in part under this Agreement.
15. That the general provisions applicable to this Agreement are included in 43 CFR 12, entitled, Administrative and Audit Requirements and Cost Principles for Assistance Programs, which are hereby incorporated by reference in this Agreement and that Metro shall comply with such provisions. These regulations are available at <http://www.nara.gov/fedreg>.
16. Ensure that any lands and waters on which habitat is restored, enhanced and/or created in this Project are managed and maintained for the purpose for which they were intended in the Grant. Metro shall provide routine inspection and all operation, rehabilitation and maintenance necessary to maintain the continuing viability and function of the Project as intended in the Grant throughout the term of this Agreement. If DU finds that Cooperator has failed to comply with the management and maintenance requirements set forth herein above, DU shall provide Cooperator with notice of same and 30 days to comply or provide proof acceptable to DU of Cooperator's intent to comply.

If upon notice by DU and opportunity to cure as set forth above Metro and any subrecipient does not ensure that such habitat is managed for the Project purpose in whole or in part, Metro or any subrecipient agrees to compensate DU for the percentage of the current fair market value of the original habitat restoration, enhancement or creation attributable to DU's participation in the

Project. Metro or subrecipient must determine the current fair market value by obtaining at Metro's or subrecipient's expense an appraisal completed according to nationally recognized appraisal standards and subject to DU's review and approval. Metro must repay DU on terms and conditions satisfactory to DU.

17. To work with DU to develop a cooperative site-inspection schedule for DU's and USFWS's inspection of the Site. The purpose of Site inspections is to ensure that such habitat is managed for the purpose intended in this Agreement and the Grant. During Site inspections, DU and USFWS may also assess the impact of habitat management practices on the immediate watershed of such Site.
18. Indemnify DU for any costs DU is obligated to repay under the Grant because of Metro's failure to comply with the terms and obligations of this Agreement.
19. The following terms and conditions apply to all properties purchased with funds under this Agreement or received as in-kind contributions:
 - a) Notice to Owner and Appraisals: As soon as feasible Metro must notify the owner of its interest in acquiring the property. Metro must also notify the owner of the basic protections provided to the owner by law including Metro's obligation to secure an appraisal.

Metro must secure appraisals for property purchased with NAWCF or matching dollars received as matching in-kind donations. Metro must pay for the appraisal unless the landowner releases Metro from such obligation. Appraisals of interests in property purchased or committed to the Project after the USFWS Contracting Officer signs the Agreement must comply with the most recent version of the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). The period between the date of value and an appraisal and the date of issuance or reissuance of any Summary Statement of Just Compensation must not exceed one year. The period between the date of value of any appraisal and the date that an owner commits to the Project as a matching in-kind donation also must not exceed one year.

Metro must ensure that the DU Project Officer receives a copy of each appraisal's summary page(s) and signature page. The summary page(s) must include the appraised fair market value. The DU Project Officer must receive these copies when Metro requests payment for purchase from DU or as soon as feasible during the Project period for the property purchased with matching funds or received as a matching in-kind donation.

- b) Appraisal Reviews: Metro must obtain an appraisal review for all appraisals of property purchased with NAWCF or matching dollars or matching in-kind donations. Metro must request the appraisal review from DU.

Metro must obtain an appraisal review by sending any appraisal to the DU Project Officer with enough lead-time for the reviewing appraiser to review it and resolve any problems. This will generally be three months before the anticipated date of purchase or three months

before the anticipated date of requesting payment from DU for acquisition costs, whichever comes first.

Metro or subrecipients must not use NAWCF or matching dollars to pay landowners any more than the valuation of a property as determined in an approved appraisal. Also, they must not propose or accept as match any valuation of an in-kind donation of property that is above the approved appraisal.

Metro must send copy of appraisal review to the DU Project Officer when they request payment for purchase from DU or as soon as feasible during the Project period for the property purchased with matching funds or received as a matching in-kind donation.

- c) Summary Statement of Just Compensation: Metro must give landowners a Summary Statement of Just Compensation for all property to be purchased with NAWCF or matching dollars. They must establish an amount that it believes to be just compensation. Metro must do this before delivery of the initial written offer to the owner or the owner's representative to purchase a Property for the acquisition Project. The amount must equal the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. Promptly thereafter, Metro must make a written offer to the owner to acquire the property for the full amount believed to be the just compensation.

Along with the initial written purchase offer, the owner must be given a written statement of the basis for the offer of just compensation, which must include:

- The amount offered as just compensation.
- Description and location identification of the property to be acquired.
- Identifications of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) that are considered to be part of the property for which the offer of just compensation is made; and
- The statement must identify any separately held ownership interest in the property, e.g. A tenant owned improvement, and indicate that such interest is not covered by the offer.

Metro must have the appraisal updated or obtain a new appraisal:

- if the information presented by the owner indicates a need,
- if a material change in character or condition of the property indicates a need, or
- if more than one year has elapsed since the date of value of the appraisal and the date of issuance for the Summary Statement of Just Compensation.

Metro must send copy of the Summary Statement of Just Compensation to the DU Project Officer when they request payment for purchase from DU or as soon as feasible during the Project period for the property purchased with matching funds or received as a matching in-kind donation.

- d) **Exceptions and Waivers:** Metro and its subrecipients may qualify for an exception to the requirements for appraisals, appraisal reviews, expenses incidental to transfer of title, just compensation, and relocation assistance to a landowner if the transaction is voluntary and under certain conditions. The following two conditions are required of all recipients and subrecipients seeking an exception:
- 1) Metro must clearly advise the owner in writing prior to making the offer for the property that it is unable to acquire the property if negotiations fail to result in an amicable agreement.
 - 2) Metro must clearly advise the owner in writing of what it believes to be the fair market value of the property supported by (i) a recent sale price of specified identified comparable properties, (ii) the assessed value with documentation of how the assessed value is determined, or (iii) other similar factual data. Such evidence in support of fair market value should not be more than one year old unless Metro provides an exception

The following additional conditions are required if Metro or a subrecipient has eminent domain authority and that is seeking an exemption.

- 1) No specific site or property needs to be acquired, although Metro or a subrecipient may limit its search for alternative sites to a general geographic area. All owners will be treated similarly where Metro wishes to purchase.
- 2) The Property to be acquired is not part of an intended, planned, or designated Project area where all or substantially all of the property within the area is to be acquired within specific time limits.

Metro or a subrecipient wishing to qualify for an exemption must provide DU Project Officer with: (i) a copy of written communications that demonstrate compliance with the first two conditions listed above, (ii) documentation that supports the value of the interest in property that Metro or a subrecipient communicated to the landowner as the fair market value of the property, and (iii) a copy of any document from a landowner which confirms that the owner is donating a specific amount of the properties fair market value.

Metro may request that the DU Project Officer grant a waiver from the requirement on appraisals, appraisal reviews, expenses incident to transfer of title, offers of just compensation, and relocation assistance. To qualify for a waiver, Metro or a subrecipient must provide a signed statement from the landowner (or tenant) whose property is being acquired. This statement must demonstrate that: (i) the landowner or tenant understands the assistance or protections provided under 49 CFR, part 24, that pertains to the waiver request. For waiver requests relating to relocation benefits, the written statement must also confirm that Realty Specialist explained to landowner or tenant the relocation payments and other assistance that they may be eligible for, the eligibility requirements, and the procedures for obtaining such assistance, and (ii) the requested waiver would not reduce any assistance or protection provided to the landowner or any tenant in 49 CFR, part 24.

- e) A landowner and/or tenant may be eligible for relocation assistance when Metro or a subrecipient acquires the property with NAWCF or matching dollars or an in-kind donation. Some of the potentially eligible expenses may include, but are not limited to: transportation of personal property (including livestock), storage of personal property for up to 12 months, direct loss of tangible personal property as a result of discontinuing a farm operation, searching for a replacement location, and purchase of substitute personal property. This must be provided to landowners or tenants unless exempt as indicated above.

If Metro anticipates that a landowner or tenant may be eligible for relocation assistance, they must notify the DU Project Officer. If the DU Project Officer determines that the acquisition of a property will result in unanticipated relocation expenses, the DU Project Officer will consider any request by Metro to redirect funds under this Agreement to cover those expenses.

Metro must provide written confirmation to the DU Project Officer that they have complied with relocation assistance obligations when they request payment for purchase from DU or as soon as feasible during the Project period for the property purchased with matching funds or received as a matching in-kind donation.

- f) Closing Statement: A closing statement is a written breakdown of the costs involved in the purchase of the property. It is usually prepared by a broker, escrow officer, lender, or attorney, showing all cash received, all charges and credit made, and all cash paid out. Unless exempt, Metro must send the DU Project Officer the closing statement:
- When it requests reimbursement for the purchase of the property,
 - No later than 90 days after closing if Metro requested an advance of funds for the purchase of the property or used only matching funds or other funds that are not reimbursable from NAWCF.
- g) Title: Metro must insure that title of each Property purchased or donated for the Project is recorded in fee simple, free and clear of all easements, reservations, exceptions, restrictions, and encumbrances unless:
- The Proposal indicates that an easement or lease will be acquired instead of fee title,
 - The Proposal indicates that the title to the property is, or will be, subject to easements, reservations, exceptions, restrictions, and encumbrances and these are specified in the proposal, or
 - The DU Project Officer determine that any existing or newly recorded easements, reservations, exceptions, restrictions, and encumbrances do not jeopardize the purposes for which the land was purchased or donated for the Project (letter to Metro attached as Exhibit C).

Metro must send the DU Project Officer as soon as feasible to do so during the project period:

- A copy of the recorded deed or other instruments conveying title to all interests in the property purchased with NAWCF or matching dollars or matching in-kind donations,
- Copies of any Notice of Grant Agreement recorded pursuant to Section II.19.h.

h) Long-term Conservation: Metro must ensure that the property purchased or contributed as matching in-kind donation for the Project is managed:

- To achieve the purpose(s) of the Project as stated in the Proposal and the Grant Agreement
- Consistent with any management plan, objectives, goals or descriptions of desired habitat stated in Proposal, and
- For the long-term conservation and management of the affected wetland ecosystem and the fish and wildlife dependent thereon. Notwithstanding the above, Metro may construct a pedestrian and bicycle recreation trail ("trail") at a mutually acceptable location on the Site.

Metro qualifies for an exception and waiver to the requirements set forth in Section II.B.19 (a-c) and (e) of this Agreement, as provided for in the Grant and 49 CRF 24.101(a)(1), and as further set forth in Exhibit D attached hereto.

20. To enter into and be bound by those certifications and Assurances applicable to Federal Grants and Cooperative Agreement required for funding this Agreement (Exhibit E).

C. DU AND METRO AGREE:

1. To promptly inform the other party if, for any reason, problems arise during the course of the Project that may slow or stop progress of the Project including but not limited to the availability of funds and personnel changes.
2. To acknowledge the contribution of each party as well as the USFWS in any oral or written communications related to the Site, including signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared by either party referencing this Project. Metro will place DU signs if so provided, and will erect and maintain these signs along roads, entrances, and/or convenient viewing locations on each Property and/or in close proximity to each Property. Said DU signs shall comply with Metro's sign regulations.
3. To recognize outside contributors who might provide significant funding to help underwrite costs of the Acquisition Project or who otherwise are mutually deemed to deserve special recognition. This recognition can include signs, plaques, and/or cairns on a Property. The principal costs of such recognition shall be borne by the party initiating the recognition.

4. a. DU appoints Chris Bonsignore as its Project Officer.
- b. Metro appoints Fritz Paulus as its Project Officer.

The parties may change their respective Project Officer at any time by providing the other party with their new Project Officer name.

5. It is agreed and acknowledged that DU's obligation under this Agreement are contingent upon DU receiving funding specifically for this Project from the Grant. Should such funding not be available or should the Grant be terminated, Metro and DU agree that the Coffee Lake Acquisition cannot be accomplished and neither party shall have any obligations for the Project pursuant to this Agreement and this Agreement shall automatically terminate.
6. To cooperate with DU in an inspection of the Site prior to DU's reimbursement to determine whether Metro has satisfactorily acquired the Site as it is identified and described in Exhibit A. In the event the parties hereto are unable to agree that Metro has fulfilled this Project commitment, they shall select a mutually acceptable third party whose decision shall be binding.
7. DU and the Grantee agree to freely exchange Project information and to periodically review, study, and consider modifications to the Project Proposal for the Site's management and maintenance pursuant to the terms of this Agreement.

III. MODIFICATIONS AND TERMINATION

This Agreement shall become effective on the first date listed above and shall terminate thirty (30) years thence, upon the satisfaction, expiration or termination of the obligations of Section XIV. and XV. of the Grant. Further, whichever comes first. Further, this Agreement may be modified only by the mutual prior written agreement of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Site Specific Agreement No. US-OR-95-1 as of the date and year first written above.

**METROPOLITIAN SERVICE
DISTRICT OF OREGON**

DUCKS UNLIMITED, INC.

BY: _____
Signature
Mike Burton
Executive Officer

By: _____
Signature
Ronald A. Stromstad
Director of Operations

DATE: _____

DATE: _____

Address: 600 NE Grand Avenue
Portland, OR 97232
PH: 503-797-1700



Ducks Unlimited, Inc.

EXHIBIT A PROPOSED PROJECT

PROJECT NUMBER: OR-95-1
PROJECT NAME: Coffee Lake Acquisition

TAX LOT NAME & NUMBER: Steele Foundation -- Tax Lot 1300 & 1400
Keys/Taylor Trust -- Tax Lot 2700
Boeckman Properties -- Tax Lot 1100 & 1200

A tract of land in the South one-half of the Southwest one-quarter of Section 11, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, Clackamas County, Oregon, being the northerly 30-acres of that tract of land conveyed to Metro, a municipal corporation and political subdivision of the state of Oregon, by Statutory Warranty Deed recorded as Fee No. 2002-007186 on January 23, 2002, more particularly described as follows:

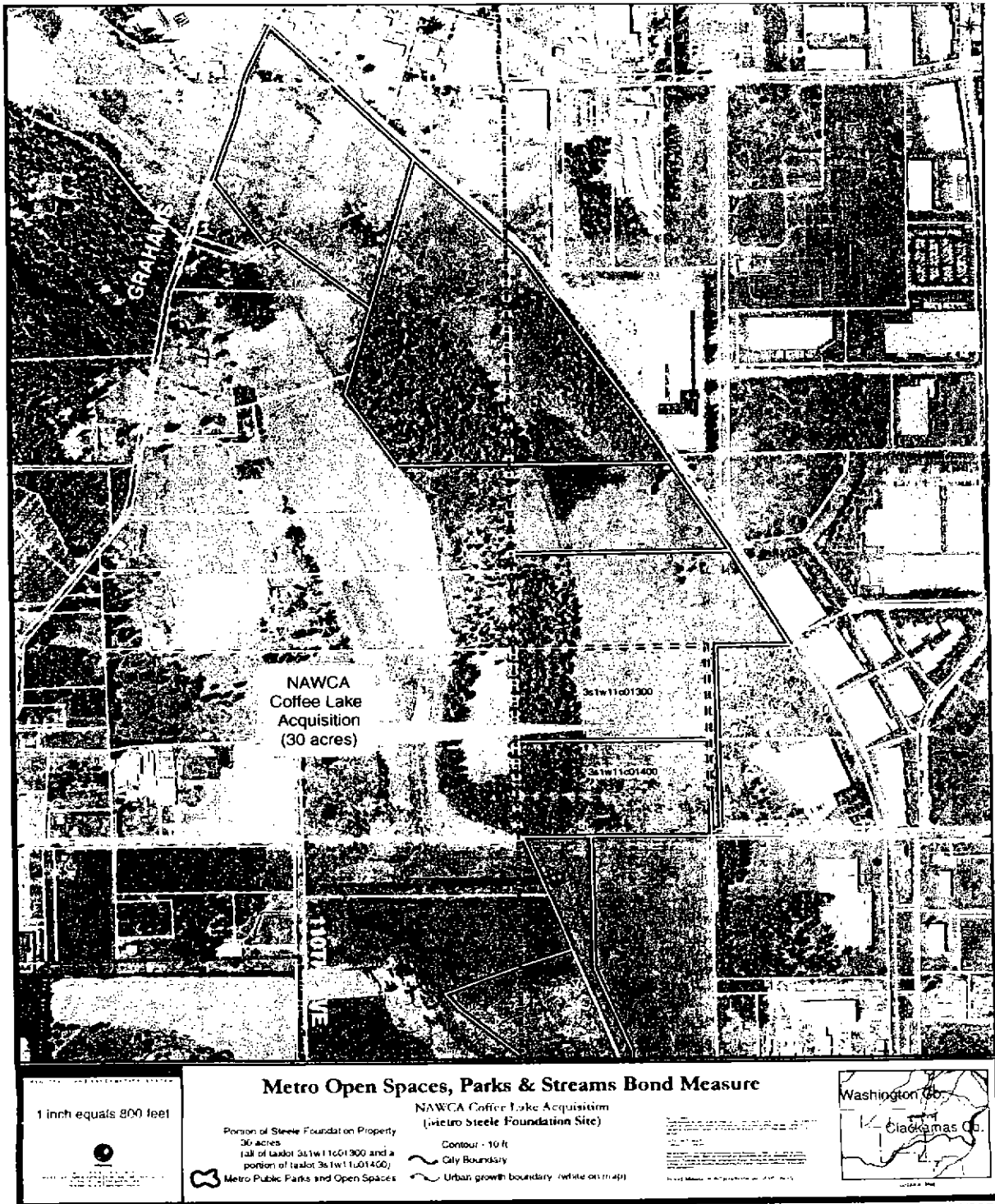
Beginning at the northwest corner of that tract of land conveyed to Metro, thence North 89°28'53" East, a distance of 1,314.73 feet, thence South 00°27'28" East, a distance of 988.97 feet, thence South 89°34'52" West, a distance of 1,327.70 feet, thence North 00°11'59" East, a distance of 989.76 feet to the point of beginning.

RESTORATION PLAN: The tract purchased under this agreement will be restored as part of a larger restoration effort on Metro lands within the Tonquin Geologic Area. The restoration is being completed under a separate cooperative agreement for project number OR-85-1, Coffee Lake Restoration.

LONG-TERM MANAGEMENT PLAN: The site will be managed for wetlands and wildlife habitat values that will include areas of palustrine emergent, scrub-shrub and forested wetlands and associated forest and prairie upland habitat. Water levels within the wetlands will be manipulated as necessary to encourage the continued existence of productive native wetland plant communities. Noxious weed control will be a regular part of site management.

FUNDING PARTNER	\$ AMOUNT	TYPE OF CONTRIBUTION
Metro	\$1,500,000	Contributed Matching funds for Willamette Valley Ecoregion Restoration Project (NAWCA).
U.S. Fish and Wildlife Service – North American Wetlands Conservation Act (NAWCA) grant.	\$141,000	Cash reimbursement to DU
Ducks Unlimited Inc	\$9,000	In-kind services (Cash reimbursement to DU)
TOTAL	\$1,650,000	

Exhibit A – Page 2



Published: July 26, 2007 3:30 PM (map) 023212 Location map (023212) 01/03/07

EXHIBIT B
GRANT AGREEMENT NO. 98210-1-G812

GRANT AGREEMENT
BETWEEN
U. S. FISH AND WILDLIFE SERVICE
AND
DUCKS UNLIMITED, INC.

This award has been
OBLIGATED in FFS
electronically via IDEAS-FFS interface

CGS initials nas date 5-16-01

I. RECIPIENT

Ducks Unlimited, Inc.
1101 SE Tech Center Drive, Suite 115
Vancouver, Washington 98683

Project Officer: Chris Bonsignore, Project Biologist
Phone: 360-885-2011 ext 14 FAX: 360-885-2088
E-mail: cbonsignore @ducks.org

II. FINANCIAL DATA

Agreement Number: 98210-1-G812

Accounting Data: 2001- 91100-411G-9676-0108

Tax Identification Number: 13-5643799

DUNS Number: 001377055

Amount Obligated from North American Wetlands Conservation Fund (NAWCF): \$999,124

Partners' Matching Commitments: Recipient, \$812,809; Metropolitan Service District of Oregon (Metro), \$1,500,000; Marion County, Oregon, \$100,000; Oregon Watershed Enhancement Board, \$145,000; Oregon Department of Fish and Wildlife, \$29,500; The Nature Conservancy, \$263,140; The Wetlands Conservancy, \$113,000; Private Landowners, \$28,000; Natural Resources Conservation Service, \$786,760; and U. S. Fish and Wildlife Service, \$581,335. Total = \$4,359,544.

Catalog of Federal Domestic Assistance Number: 15.623 (North American Wetlands Conservation Fund)

III. AUTHORITY The U.S. Fish and Wildlife Service (USFWS) and Ducks Unlimited, Inc. (Recipient) enter into this Agreement under the authority of Public Law 101-233, the North American Wetlands Conservation Act (NAWCA), as amended (16 USC 4401 *et seq.*). This Agreement supports the Willamette Valley Ecoregion Restoration Project, (Project) in Oregon. The North American Wetlands Conservation Council (NAWCC) recommended the Project on July 14, 2000, and the Migratory Bird Conservation Commission approved it on September 13, 2000.

IV. PURPOSE This Project will protect, restore, and enhance important wetland ecosystems in the Willamette Valley Ecoregion. This phase of the project will protect an estimated 563 acres of vital wetlands and associated uplands through fee title acquisition (69 acres), fee donated (29 acres), and purchase of conservation easements (465 acres) in the project area. In addition, an estimated 1,489 acres of wetlands and associated uplands will be restored (1,369 acres) and enhanced (120 acres) on public and private lands..

V. SCOPE OF WORK This Agreement incorporates by reference the Recipient's Willamette Valley Ecoregion Restoration Project Proposal (Proposal) dated March 30, 2000, as revised and/or clarified in a letter dated May 1, 2000, to David A. Smith and an e-mailed message with attachments dated January 10, 2001, to David Weaver. The Proposal includes all letters from or on behalf of Project partners and all correspondence between USFWS and the Recipient. (See Section XIV before deviating from the Proposal.)

VI. PROJECT PERIOD The Project period starts on the date that the USFWS Contracting Officer signs this Agreement and ends two years later.

VII. MEASURABLE OUTCOMES The Recipient must be able to demonstrate on-site accomplishment of all the Project's milestones, goals, and objectives as presented in the Proposal including the acres in the responses to Technical Assessment Questions 4 and 5.

VIII. REPORTS & OTHER REQUIRED DOCUMENTATION The Recipient must send to the USFWS Program Officer:

<u>Performance Report</u>	<u>Period Covered</u>	<u>Due Date</u>
Annual	1 st year after USFWS signs Agreement	90 days after 1 st period covered
Final	Entire Project period	90 days after end of Project period

Both annual and final performance reports must include or be accompanied by:

- a comparison of actual accomplishments with milestones and other objectives for the period including acres in the same categories as in the responses to Technical Assessment Questions 4 and 5 of the Proposal and explanation of any differences;
- the information requested on the Financial Status Report (Standard Form 269) on a "cash" basis as explained on the form (available at <http://www.whitehouse.gov/OMB/grants/index.html>). *{On the Standard Form 269 do not report: any cash expenditures or in-kind contributions by the Recipient, subrecipients, partners, or other third parties unless such expenditures or in-kind contributions were committed as match as acknowledged in Sections II. and IX.B. (A subrecipient is a legal entity that*

receives NAWCF or matching funds from a Recipient or another subrecipient.))

The final performance report must also include or be accompanied by:

- a comparison of each partner's matching commitments in the Proposal with the amounts actually contributed;
- map(s) [U.S. Geological Survey 7½ minute topographic] with the boundaries of all interests in real property that the recipient or a subrecipient has purchased, restored, enhanced, or created with NAWCF or matching dollars or accepted as in-kind matching donations;
- (as an alternative to the maps described above for habitat restoration, enhancement, or creation sites smaller than 247 acres[100 hectares]) the coordinates of the center of each contiguous parcel in the UTM (Universal Transverse Mercator) coordinate system with the "North American Datum" (1927 or 1983) of the map from which coordinates were taken (or the North American Datum from the Ground Positioning System receiver that determined the coordinates) with each pair of coordinates referenced to the habitat modification; and
- an article of 500 words or less about the Project for the magazine Birdscapes to include the Project's name, location, partners, total NAWCF and partners' dollars, benefits to wildlife and people, unusual aspects, and a 35 mm slide(s) or photograph(s) with the photographer's name, organization, and a caption. [Contact the Director of Communications of the USFWS Division of Bird Habitat Conservation at (703) 358-1884 or dee_buller@fws.gov for more information and a copy of Birdscapes.]

The Recipient must send to the USFWS Program Officer items (a) through (i) below for interests in real property purchased with NAWCF or matching dollars or committed to the Project as matching in-kind donations unless the acquisition is exempt from the requirement as indicated in the referenced provisions of Section XIII.:

- (a) the acreage, boundaries, and map location of any parcel or interest in real property (or any habitat to be restored, enhanced, or created) that was not identified in the original proposal or that is proposed as a modification of the Proposal as explained in Section XIV.;
- (b) a copy of the summary and signature pages from an approved appraisal as explained in Section XIII.A.1.; OR documentation other than an appraisal demonstrating that the value of the interest in real property is the fair market value if the acquisition is exempt from the appraisal requirement as indicated in Section XIII.A.1.;
- (c) a copy of an appraisal review as explained in Section XIII.A.2., OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.2.;
- (d) a copy of the Summary Statement of Just Compensation given to each seller of real property interest as explained in Section XIII.A.3., OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.3.;
- (e) a copy of any document from a landowner that donates the difference between: (i) the selling price and the offer of just compensation; or (ii) the selling price and what the Recipient or subrecipient communicated to the landowner as the amount it believed to be the fair market value of the interest in real property as explained in Section XIII.A.6.;
- (f) confirmation that the Recipient or subrecipient has complied with relocation assistance obligations (if any) as may be required in Section XIII.A.4. (confirmation may be included in a performance report); OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.4.;
- (g) a copy of the closing statement for each interest in real property purchased with NAWCF or matching dollars as may be required in Section XIII.A.7.; OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.7.;
- (h) a copy of deeds or other instruments conveying title to the interests in real property acquired with NAWCF or matching dollars or received as a matching in-kind donation as explained in Section XIII.A.8.; AND
- (vii) a copy of a statute or other legal instrument that guarantees the long-term conservation of the wetlands, migratory birds, and other fish and wildlife of a Federal, State, or Tribal land-management system if the Recipient or subrecipient places interests in real property in that system as explained in Section XIII.B.1., AND a recorded Notice of Grant (or Cooperative) Agreement for all other interests in real property acquired for the Project during the Project period or in the pre-award period as explained in Section XIII.B.2.

IX. FINANCIAL ADMINISTRATION

- A. NAWCF Funding: The NAWCF provides funding for this Project through USFWS not-to-exceed the "Amount Obligated ..." in Section II. The Recipient must spend these funds in accordance with the Proposal unless modified under Section XIV. The USFWS cannot reimburse the Recipient, in excess of the "Amount Obligated." NAWCF funding may not exceed 50 percent of the total cost of the Project.
- B. Matching Donations: The partners listed in Section II. of this Agreement under "Partners' Commitments" must provide the commitments as specified in the Proposal. At the end of the Project period, if the total amount of "Partner Commitments" does not equal the amount committed in the Proposal, the amount of NAWCF funding will be disallowed by an equal proportion. When such a disallowance occurs, the Recipient must return to USFWS any NAWCF funds received in excess of

the newly established allowable amount.

- C. Pre-Award Costs: USFWS authorizes pre-award costs not to exceed the "Amount Obligated from NAWCF" and the "Partners Matching Commitments" in Section II of this Agreement. The Recipient or subrecipient must not have incurred pre-award costs more than two years before the due date for submission of Project Proposals. All pre-award costs are incurred at the Recipient's or subrecipient's risk. The USFWS is under no obligation to reimburse such costs if for any reason the Recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award. This Section of the Agreement constitutes prior written approval for any pre-award costs consistent with the provisions of this Agreement and applicable laws, regulations, Federal Cost Principles, and NAWCA Grants Program policies.

A Recipient or subrecipient would incur the cost of a purchase on the date that the following actions occur for which payment would be required immediately or during a future period:

- place an order or sign a contract;
- receive a service;
- take title to an interest in real property;
- exercise an option or enter into a purchase agreement (*also called a contract of sale, sales contract, deposit receipt, offer and acceptance, agreement of sale, offer to lease or purchase, or sale agreement*) when such action commits the Recipient or subrecipient to buy an interest in real property UNLESS the Recipient or subrecipient withdraws from the purchase during a subsequent period of "due diligence" because the Recipient or subrecipient finds objectionable conditions, such as a cloud on title, or because the Recipient or subrecipient is unable to satisfy terms and conditions stipulated in the purchase agreement.

A Recipient or subrecipient would not incur any portion of the purchase price of an interest in real property by doing any of the following:

- purchase (or enter into) an option to buy an interest in real property;
- purchase (or enter into) an option to buy an interest in real property where the option consideration (option price, option money) will be applied to the purchase price of the interest in real property if the option is exercised.

- D. Program Income: Program income is gross income earned by the Recipient during the Project period that is directly generated as a result of this Agreement or earned by the Recipient as a result of the Agreement. Program income includes, but is not limited to, income from fees for services performed and the use or rental of personal or real property acquired under this Agreement. (See Section XIII.C. for proceeds from the sale of real property.)

The Recipient must report any program income earned during the Project period to the USFWS Program Officer on the Financial Status Report (Standard Form 269) and the Request for Advance or Reimbursement (Standard Form 270). In accordance with Title 43 of the Code of Federal Regulations (CFR), sections 12.65 or 12.924 as appropriate (<http://www.access.gpo.gov/nara/cfr/index.html>), the USFWS authorizes the Recipient to use program income and to treat it as additional funds committed under this Agreement. The Recipient must use the program income for the purposes and under the terms and conditions of this Agreement. USFWS will not deduct it from the amount of the grant and will treat it as additional funds committed under this Agreement for the purposes of the Project.

- E. Financial Management System: The Recipient's and subrecipient's financial management systems must adhere to the standards established in 43 CFR 12.60 for State, local, and Tribal governments or 43 CFR 12.921 for institutions of higher education, other nonprofit organizations, and commercial organizations (<http://www.access.gpo.gov/nara/cfr/index.html>). These systems must be capable of reporting receipts and expenditures (or use) of: (a) NAWCF dollars, (b) matching dollars, and (c) in-kind matching donations with reference to dollar values. The Recipient and any subrecipients must report these expenditures, receipts, and values as required in this Agreement and upon demand if special audits are required.
- F. Allowable Costs: The documents listed below establish principles for determining which costs are allowable or eligible based on the type of organization. Three of these documents are Cost Principles that apply to the use of both NAWCF and matching dollars and in-kind matching donations unless otherwise indicated. Note that a recipient nonprofit organization uses one set of Cost Principles and a subrecipient State agency uses another. Recipients and subrecipients must not use NAWCF or matching dollars for: research studies; non-Project-specific communications products; travel for Federal employees; the cost of existing residences, structures, or buildings unnecessary for wetlands conservation purposes; or the cost of constructing, removing, or repairing residences, structures, or buildings.

- Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organizations," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-21, "Cost Principles for Educational Institutions," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- 48 CFR 31.2, "Contracts with Commercial Organizations," (<http://www.access.gpo.gov/nara/cfr/index.html>)
- North American Wetlands Conservation Act, U.S. Standard Grant Application Instructions [for the year applicant submits the Proposal], "Grant Funds -Eligible Activities and Costs," "Match Funds - Eligible Activities and Costs," (<http://northamerican.fws.gov/nawca/elig8.html>)

Recipients and subrecipients that are institutions of higher education, other non-profit organizations, or commercial organizations must maintain written procedures to determine reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of this Agreement [43 CFR 12.921(b)(6)]. In the absence of these procedures and to satisfy this requirement, such a recipient or subrecipient must comply with the following procedure:

Any of the Recipient's staff, agents, or subrecipients (if any), who have the authority to administer or manage this Project or obligate funds for it, will review the terms of this Agreement and the provisions of the applicable Office of Management and Budget (OMB) Cost Principles or Federal regulations before making a decision that will directly or indirectly result in expenditure of funds for the Project.

- G. **Advance Payments and Reimbursements:** The Recipient's financial institution must be able to receive NAWCF funds through the electronic funds transfer process. To receive an advance or reimbursement of funds, the Recipient must submit all information requested on the Request for Advance or Reimbursement (Standard Form 270), which is available at <http://www.whitehouse.gov/OMB/Grants/index.html>. The Recipient must prepare this information on a cash basis as explained on the back of the form. As part of the information requested, the Recipient must:
- enter in block 4 the "Agreement Number" listed in Section II;
 - enter in block 8 the period covered by the request;
 - enter in column 11a the amounts used directly for the acquisition of real property interest and label it "Fee/Easement Acquired;"
 - enter in column 11b the amounts used for all costs other than the amounts used directly for acquisition of real property and label it "All Other Costs;" and
 - complete the TOTAL column.

To receive advance payments, the Recipient must maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Recipient. To comply with this requirement, the Recipient agrees: (a) to ensure that the USFWS Program Officer will receive the information requested on the Request for Advance or Reimbursement (Standard Form 270) 15-30 days before the date on which the Recipient or any subrecipient must disburse the funds; and (b) immediately notify the USFWS Program Officer if the Recipient or subrecipient becomes aware that the funds cannot be disbursed on the intended date. In signing this Agreement, a Recipient institution of higher learning, other non-profit organization, or commercial organization certifies that, if it requests an advance of funds, its financial management systems will meet the standards for fund control and accountability in 43 CFR 12.921 (<http://www.access.gpo.gov/nara/cfr/index.html>).

USFWS must withhold payments to the Recipient if the Recipient or its subrecipients have failed to comply with the Project objectives, the terms and conditions of this Agreement, or the Federal reporting requirements. When USFWS has withheld payments for these reasons, but has not suspended the grant, it must release such payments to the Recipient when the Recipient complies with the Project objectives, the terms and conditions of this Agreement, or the Federal reporting requirements.

X. USFWS PROGRAM AND CONTRACTING OFFICERS

USFWS Program Officer:

U.S. Fish and Wildlife Service
 Attn: David K. Weaver
 Division of Bird Habitat Conservation
 4401 N. Fairfax Drive, Suite 110
 Arlington, Virginia 22203
 Phone: (703) 358-1883 FAX: (703)358-2282
 E-mail: david_k_weaver@fws.gov

USFWS Contracting Officer:

U.S. Fish and Wildlife Service
 Attn: Nedra A. Stallone
 Contracting and General Services
 4401 N. Fairfax Drive, Suite 212
 Arlington, Virginia 22203
 Phone: (703) 358-1728 FAX: (703)358-1875
 E-mail: nedra_stallone@fws.gov

The USFWS Program Officer is responsible for administering performance under this Agreement. However, no understanding, agreement, modification, change order, or other matter deviating from the terms of this Agreement is effective or binding upon the Government unless supported by documentation executed by the USFWS Contracting Officer unless otherwise indicated in Section XIV. The Recipient must inform the Contracting Officer of any actions or inactions by either party to this Agreement that will change the required completion times stated in the Agreement.

XI. SPECIAL PROVISIONS APPLICABLE TO ALL PROPOSALS

- G. Equipment: In managing and disposing of equipment acquired in whole or in part under this Agreement, Recipients and subrecipients that are State, local, and Tribal governments must comply with 43 CFR 12.72 and institutions of higher learning, other nonprofit organizations, and commercial organizations must comply with 43 CFR 12.934. Key provisions on the use and disposal of equipment are presented below.

Equipment means tangible personal property (including all pumps and their power units) having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Title to all equipment acquired for the Project will vest in the Recipient or subrecipient. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other recipients and subrecipients will follow the provisions of Section XI.A. for the use, management, and disposal of equipment purchased with NAWCF or matching dollars or received as a matching in-kind donation.

The Recipient or subrecipient must use the equipment acquired for the Project as long as needed, whether or not the Project continues to be supported by Federal funds. While the equipment is used for the Project, the Recipient or subrecipient must make it available for use on other projects or programs if such other use will not interfere with the work on the project for which the equipment was originally acquired. The Recipient or subrecipient must give first preference for such other use to other projects or programs sponsored by the Department of the Interior and second preference to projects and programs sponsored by other Federal agencies.

The Recipient must make a physical inventory of equipment at least once every two years and reconcile the results with the equipment records. The Recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment. The Recipient must ensure that adequate maintenance procedures are implemented to keep the equipment in good condition.

When acquiring replacement equipment, the Recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to USFWS's approval. In some cases, a Recipient may no longer need, for the purposes of the Project, any original or replacement equipment acquired with NAWCF or matching funds or received as a matching in-kind donation. The Recipient must request disposition instructions from the USFWS Program Officer, who will determine whether the equipment can be used to meet the requirements of a Project or program authorized for support by the United States Department of the Interior. If no such requirement exists, the USFWS Program Officer will report the availability of the equipment to the General Services Administration, which will determine whether a requirement for the equipment exists in other Federal agencies. If a Federal agency does not need the equipment and it has a current per-unit fair market value of less than \$5,000, the Recipient may retain, sell, or otherwise dispose of it with no further obligation to USFWS. If such equipment has a current per-unit fair market value of more than \$5,000, the USFWS Program Officer will issue instructions to the Recipient no later than 120 calendar days after the Recipients's request. These instructions may include:

- ship or otherwise transfer the equipment to the Federal government or to an eligible third party;
(USFWS must reimburse the Recipient or subrecipient by an amount which is computed by applying the percentage of the Recipient's participation in the cost of the original project to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.)
- sell the equipment providing for competition to the extent practicable with the highest possible return;
(If USFWS instructs the Recipient or subrecipient to sell the equipment or if USFWS does not issue disposition instructions within 120 calendar days after the request, the Recipient or subrecipient must sell the equipment and reimburse the USFWS an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project. However the Recipient or subrecipient will be permitted to deduct and retain from the Federal share \$500 or 10 percent of the proceeds, whichever is less, for the Recipient's selling and handling expenses.)
- otherwise dispose of the equipment.
(USFWS will reimburse the Recipient for any cost incurred in disposition.)

- H. Supplies and Other Expendable Property: The provisions of this section will apply to all supplies and other expendable property purchased with NAWCF or matching dollars or received as a matching in-kind donation. Title to such supplies and other expendable property will vest in the recipient or subrecipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the Project and the supplies are not needed for any other federally sponsored project or program, the recipient will retain the supplies for use on non-federally sponsored activities or sell them, but must, in either case, compensate the Federal government for its share. The amount of compensation must be computed in the same manner as presented in Section XI.A. for equipment
- C. Information Releases: News releases or other information on the Project published or released for publication by the Recipient or subrecipients must acknowledge that funding was made possible through NAWCA. The Recipient must send two copies of any publication on the Project, its accomplishments, or data obtained on the Project to the Natural Resources Library with a transmittal that identifies the sender and the publication. The address is:
 U.S. Department of the Interior, Natural Resources Library
 Div. of Information & Library, Services, Gifts & Exchanges Section
 1849 C Street, NW, Washington, DC 20240
 The Recipient agrees to include the above provision of Section XI.C. in any subaward.
- D. Government Right to Publish and Use Data: Unless waived by USFWS, the Federal Government has the right to:
 (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
 (2) Authorize others to receive, reproduce, publish, or otherwise use the data for Federal purposes.
- E. Buy American: 43 CFR part 12, requires USFWS to provide the following notice to each recipient:
 Pursuant to sec. 307 of the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, 110 Stat. 3009, as adopted in subsequent Appropriations Acts, please be advised of the following: In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

XII. SPECIAL PROVISIONS APPLICABLE TO HABITAT RESTORATION & ENHANCEMENT

- A. Management for Project Purpose: The Recipient must ensure that any habitat restored, enhanced, and/or created in this Project is managed for the purposes for which it was intended in the Project. If the Recipient or subrecipient does not ensure that such habitat is managed for the Project purpose in whole or in part, it agrees to pay USFWS for that percentage of the current fair market value of the original habitat restoration, enhancement, or creation attributable to the Federal participation in the Project. A Recipient or subrecipient must determine the current fair market value by obtaining at the Recipient's or subrecipient's expense an appraisal completed according to nationally recognized appraisal standards and subject to USFWS's review and approval.
- B. Inspection: The Recipient must ensure that the owner of any habitat restored, enhanced, or created in the Project (including such work completed with matching funds or as a matching in-kind contribution) must be willing to work with the USFWS Program Officer to develop a cooperative site-inspection schedule to ensure that such habitat is managed for the purposes for which it was intended in the Project. Section XII. of this Agreement will be in force for 25 years from the end of the Project period unless limited by easements, leases, other legal instruments, or special considerations described in the Proposal or approved by the USFWS Program Officer.

XIII. SPECIAL PROVISIONS APPLICABLE TO REAL PROPERTY ACQUISITION

- A. Acquisition of Interest in Real Property: This section applies to interests in real property purchased or leased with NAWCF or matching dollars or committed to the Project as matching in-kind donations unless otherwise indicated.
1. Notice to Owner and Appraisals: As soon as feasible, a Recipient or subrecipient intending to acquire an interest in real property must notify the owner of its interest in acquiring the interest in real property. The Recipient or subrecipient must also notify the owner of the basic protections provided to the owner by law including the Recipient's or subrecipient's obligation to secure an appraisal. However, if the acquisition qualifies for an exception or waiver under Section XIII.A.6., such notices are not required.

The Recipient or subrecipient must secure appraisals for all interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations unless exempt from such requirement as indicated below. The Recipient or subrecipient must pay for the appraisal unless the landowner releases the Recipient or subrecipient from such obligation. Appraisals of interests in real property purchased or committed to the Project after the USFWS Contracting Officer signs the Agreement must comply with the most recent version of the Uniform Appraisal Standards for Federal Land Acquisition

(UASFLA) (Interagency Land Acquisition Conference, Washington, D.C., 1992, as subsequently revised or clarified). The period between the date of value of an appraisal and the date of issuance or reissuance of any Summary Statement of Just Compensation must not exceed one year. (See Section XIII.A.3.) The period between the date of value of any appraisal and the date that an owner commits the land to the Project as a matching in-kind donation also must not exceed one year.

The Recipient must ensure that the USFWS Program Officer receives a copy of each appraisal's summary page(s) and signature page or documentation that it is exempt from this requirement. The summary page(s) must include the appraised fair market value. The USFWS Program Officer must receive these copies:

- when the Recipient requests payment for the purchase from NAWCF; and
- as soon as feasible during the Project period for real property purchased with matching funds or committed as a matching in-kind donation.

The following acquisitions are exempt from the requirement for an appraisal:

- less-than-permanent easements;
- leases for 50 years or less including option(s) for extension;
- uncomplicated valuation problems where the fair market value is estimated at \$2,500 or less, based on a review of available data;
- a purchase of an interest in real property with NAWCF or matching funds for which all or part of the purchase price was incurred before the USFWS Contracting Officer signed the grant agreement; *[In such cases, the Recipient must provide the USFWS Program Officer with other documentation supporting the fair market value donation.]*
- a matching in-kind donation of an interest in real property that is committed to a Project before the USFWS Contracting Officer signs the grant agreement if a State, local, or Tribal government will hold title to the interest; *[In such cases, the State, local, or Tribal government Recipient must provide the USFWS Program Officer with other documentation supporting the fair market value of the matching in-kind donation]*
- an acquisition that qualifies for an exception or waiver under Section XIII.A.6. *[However, if a matching in-kind donation of an interest in real property is committed to a Project and an institution of higher education, other nonprofit organization, or a commercial organization will hold title to the interest, it will require an appraisal of the fair market value at the time of donation regardless of the exception or waiver and regardless of when the commitment was made or accepted.]*

2. Appraisal Reviews: The Recipient must obtain an appraisal review for all appraisals of interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations unless exempt as indicated below. The Recipient must request the appraisal review from a USFWS reviewing appraiser unless the Regional USFWS Realty Office delegates the responsibility to another Federal agency or to a State or Tribal agency or approves the use of a private reviewing appraiser. Such approvals must be obtained through the Joint Venture Coordinator responsible for the Project Area, or his or her designee. *[Alaska Recipients for projects outside all Joint Ventures' areas of responsibility must obtain approvals directly from the Division of Realty in the Anchorage Regional Office.]* The USFWS Program Officer, at his or her option, may obtain an appraisal review directly from a USFWS reviewing appraiser of any appraisal that has not been reviewed by a USFWS reviewing appraiser. A USFWS review appraisal will take precedence over a private appraisal review for the purpose of determining an appraisal's acceptability.

To obtain reviews by USFWS reviewing appraisers, the Recipient must send the appraisal to the Joint Venture Coordinator responsible for the Project Area or his or her designee. *[Alaska Recipients for projects outside all Joint Ventures' areas of responsibility must send appraisals directly to the Division of Realty in the Anchorage Regional Office.]* The Recipient must indicate whether the appraisal is for an interest in real property: (a) purchased with NAWCF funds, (b) purchased with matching funds, or (c) received as a matching in-kind donation. The Joint Venture Coordinator, or his or her designee, will then deliver it to the USFWS Realty Office or its designee with enough lead time for the reviewing appraiser to review it and resolve any problems. This will generally be three months before the anticipated date of purchase or three months before the anticipated date of requesting payment from USFWS for acquisition costs, whichever comes first. The reviewing appraiser must approve or recommend approval of each appraisal required under Section XIII.A.1. as an adequate basis for an offer of just compensation. The reviewing appraiser may request the Recipient or subrecipient to obtain a second appraisal if the reviewing appraiser finds the first appraisal to be technically insufficient.

Recipients and subrecipients must not use NAWCF or matching dollars to pay landowners any more than the valuation of the interest in real property as determined in an approved appraisal. Recipients and subrecipients also must not propose or accept as match any valuation of an in-kind donation of real property that is above the approved appraisal.

The Recipient must send a copy of the appraisal review to the USFWS Program Officer or documentation that it is exempt

from this requirement:

- when the Recipient requests payment for the purchase from NAWCF;
- as soon as feasible during the Project period for real property purchased with matching funds or received as a matching in-kind donation.

The following acquisitions with NAWCF or matching dollars are exempt from the requirement for an appraisal review:

- an acquisition for which an appraisal is not required under Section XIII.A.1.;
- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

3. Summary Statement of Just Compensation: The Recipient must give landowners a Summary Statement of Just Compensation for all interests in real property to be purchased with NAWCF or matching dollars unless exempt as indicated below. The Recipient or subrecipient intending to acquire an interest in real property must establish an amount that it believes to be just compensation. The Recipient or subrecipient must do this before delivery of the initial written offer to the owner or the owner's representative to purchase an interest in real property for the Project with NAWCF or matching funds. The amount must equal the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The Recipient or subrecipient must promptly make a written offer to the owner to acquire the property for the full amount believed to be the just compensation.

The owner must be given a written statement of the basis for the offer of just compensation along with the initial written purchase offer. The statement must include:

- the amount offered as just compensation; *[For a partial acquisition, the compensation for the real property to be acquired and the compensation for any damages to the remaining real property must be separately stated.]*
- description and location identification of the real property and the interest in real property to be acquired;
- identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) that are considered to be part of the real property for which the offer of just compensation is made; and *[See Section IX.F.]*
- the statement must identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

The Recipient or subrecipient must have the appraisal(s) updated or obtain a new appraisal(s):

- if the information presented by the owner indicates a need for new appraisal information;
- if a material change in the character or condition of the property indicates a need for new appraisal information; or
- if more than one year has elapsed since the date of value of the appraisal and the date of issuance (or any reissuance) of the Summary Statement of Just Compensation except in rapidly changing real estate markets where the USFWS Program Officer may determine that a shorter interval is significant.

If the latest appraisal information indicates that a change in the purchase offer is warranted, the Recipient or subrecipient must promptly reestablish just compensation and offer that amount to the owner in writing.

The Recipient must provide the USFWS Program Officer with a copy of the Summary Statement of Just Compensation or documentation that it is exempt from this requirement:

- when the Recipient requests payment for the purchase from NAWCF; and
- as soon as feasible in the Project period for real property purchased with matching funds.

The following acquisitions with NAWCF or matching dollars are exempt from the requirement for a Summary Statement of Just Compensation:

- an acquisition for which an appraisal is not required under Section XIII.A.1.;
- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

4. Relocation Assistance: A landowner and/or a tenant may be eligible for relocation assistance when a Recipient or subrecipient acquires an interest in real property with NAWCF or matching dollars or receives an interest in real property as a matching in-kind donation. Some of the potentially eligible expenses under certain conditions may include, but are not limited to: transportation of personal property (including livestock), storage of personal property for up to 12 months, direct loss of tangible personal property as a result of discontinuing a farm operation, searching for a replacement location, and purchase of substitute personal property. The Recipient or subrecipients must provide eligible landowners or tenants with relocation assistance unless exempt as indicated below.

The Recipient must request the assistance of a USFWS Realty specialist if a landowner or tenant must move from the real property or move his or her personal property from the real property as a result of a Project. The Recipient should contact the Joint Venture Coordinator responsible for the Project area. The Joint Venture Coordinator will contact a Realty specialist in the appropriate USFWS administrative region for the Project. *[Recipients for Alaska projects outside all Joint Ventures' areas of responsibility must contact the Division of Realty in the Alaska Regional Office directly.]*

The Recipient must provide written confirmation to the USFWS Program Officer that it and its subrecipients have complied with relocation assistance obligations (if any) or documentation that it is exempt from this requirement:

- when the Recipient requests reimbursement from NAWCF for the purchase of an interest in real property; or
- as soon as feasible during the Project period after the Recipient acquires the interest in real property when the Recipient is requesting an advance of funds (instead of a reimbursement) for the purchase of the real property, or is using matching funds for the purchase, or where the relocation benefits cannot be determined or paid until after the purchase.

The following acquisitions with NAWCF or matching dollars are exempt from relocation assistance obligations:

- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement. *[The exceptions under Section XIII.A.6. are not possible for relocation assistance due a tenant.]*

5. Expenses Incidental to Transfer of Title: Unless exempt as indicated below, the Recipient or subrecipients must pay the owner of the real property for all reasonable expenses the owner necessarily incurred for:

- recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Recipient or subrecipient *(The Recipient or subrecipient is not required to pay costs solely required to perfect the owner's title to the real property.);*
- penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
- the pro rata portion of any prepaid real property taxes which are allocable to the period after the agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Recipient or subrecipient must pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Recipient or subrecipient.

The following acquisitions with NAWCF or matching dollars are exempt from the requirement that the Recipient or subrecipients pay expenses incidental to transfer of title:

- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

6. Exceptions and Waivers: Some recipients and subrecipients may qualify for an exception to the requirements for appraisals, appraisal reviews, expenses incidental to transfer of title, just compensation, and relocation assistance to a landowner (but not to a tenant) if the transaction is voluntary and under certain conditions. The following two conditions are required of all recipients and subrecipients seeking an exception:

- (a) The Recipient or subrecipient must clearly advise the owner in writing prior to making an offer for the property that it is unable to acquire the property if negotiations fail to result in an amicable agreement.
- (b) The Recipient or subrecipient must clearly inform the owner in writing of what it believes to be the fair market value of the property. This value must be adequately supported in the Recipient's or subrecipient's file and copies of the file documentation must be acceptable to the USFWS Program Officer. It may consist of: (i) recent sale prices of specific identified comparable properties, (ii) the assessed value with documentation of how the assessed value is determined including its relationship to the fair market value, (iii) or other similar factual data. Such evidence in support of the fair market value must not be more than one year old unless the Recipient or subrecipient provides a justification acceptable to the USFWS Program Officer. An appraisal is not required if the acquisition qualifies for an exception. However, if the Recipient or subrecipient obtains an appraisal (even though it is not required) it must be used as the determinant of fair market value unless the Recipient can conclusively demonstrate that it is not accurate. Once the Recipient or subrecipient informs the owner in writing of what it believes to be the fair market value of the property, the owner may donate all or any lesser portion of the property's value to the Recipient or subrecipient. The Recipient's or subrecipient's records must contain a written document from the donor which confirms that the owner is donating a specific amount of the real property's fair market value.

The following additional conditions are required for a recipient or subrecipient that has eminent domain authority and is seeking an exception:

- No specific site or property needs to be acquired, although the Recipient or subrecipient may limit its search for alternative sites to a general geographic area. All owners are to be treated similarly where a Recipient or subrecipient wishes to purchase more than one site within a geographic area on this basis.
- The property to be acquired is not part of an intended, planned, or designated Project area where all or substantially all of the property within the area is to be acquired within specific time limits.

A Recipient or subrecipient seeking to qualify for an exception must provide the USFWS Program Officer with:

- a copy of the written communications that demonstrate compliance with the first two conditions listed above;
- documentation that supports the value of the interest in real property that the Recipient or subrecipient communicated to the landowner(s) as the fair market value of the property; and
- a copy of any document from a landowner(s) which confirms that the owner is donating a specific amount of the real property's fair market value.

Recipients may request that the USFWS Program Officer grant a waiver from the requirements on appraisals, appraisal reviews, offers of just compensation, expenses incidental to transfer of title, and relocation assistance. To qualify for a waiver, the Recipient or subrecipient must provide a signed statement from the landowner (or tenant) whose property is being acquired. This written statement must confirm the following:

- (a) The landowner or tenant understands the assistance or protections provided under 49 CFR, part 24, that pertain to the subject of the waiver request. For waiver requests relating to relocation benefits, the written statement must also confirm that a USFWS Realty Specialist interviewed the landowner or tenant to explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.
- (b) The requested waiver would not reduce any assistance or protection provided to the landowner or any tenant in 49 CFR, part 24.

7. **Closing Statement:** A closing statement is a written breakdown of the costs involved in the purchase of an interest in real property. It is usually prepared by a broker, escrow officer, lender, or attorney, showing all cash received, all charges and credits made, and all cash paid out. It may also be called a "settlement statement" or "adjustment sheet." Unless exempt as indicated below, the Recipient must send the USFWS Program Officer the closing statement:

- when it requests reimbursement for the purchase of an interest in real property;
- no later than 90 days after closing if the Recipient requested an advance of funds for the purchase of an interest in real property or used only matching funds or other funds that are not reimbursable from the NAWCF.

The following acquisitions are exempt from the requirement that the Recipient or subrecipients submit a closing statement:

- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

8. **Title:** The Recipient must ensure that title to any interest in real property purchased or donated for the Project is recorded in fee simple, free and clear of all easements, reservations, exceptions, restrictions, and encumbrances unless:

- the Proposal indicates that an easement or lease will be acquired instead of fee title;
- the Proposal indicates that the title to the interest in real property is, or will be, subject to easements, reservations, exceptions, restrictions, and encumbrances and these are specified in the proposal; or
- the USFWS Program Officer determines that any existing or newly recorded easements, reservations, exceptions, restrictions, and encumbrances do not jeopardize the purposes for which the land was purchased or donated for the Project.

The Recipient must send the USFWS Program Officer the following as soon as it is feasible to do so during the project period:

- a copy of the recorded deeds or other instruments conveying title to all interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations; and
- copies of any Notice of Grant [or Cooperative] Agreement recorded pursuant to Section XIII.B.2.

B. **Long-term Conservation:** The Recipient must ensure that any interest in real property purchased or contributed as a matching in-kind donation for the Project is managed:

- to achieve the purpose(s) of the Project as stated in the Proposal and Section IV. of this Agreement;
- consistent with any management plan, objectives, goals, or descriptions of desired habitat stated in the Proposal; and
- for the long-term conservation and management of the affected wetland ecosystem and the fish and wildlife dependent thereon.

1. Federal, State, or Tribal Land Management Systems: In some projects, an interest in real property purchased or contributed for the project is included in a Federal, State, or Tribal system of lands managed for long-term conservation. In such projects, the Recipient must send the USFWS Program Officer copies of any statutes or other legal instruments that established and otherwise govern the system. The Recipient must send the USFWS Program Officer these items as soon as it is feasible to do so during the Project period. If, in the USFWS Program Officer's opinion, the applicable statutes or other instruments do not ensure that the interest in real property will be administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon, a recorded Notice of Grant [or Cooperative] Agreement as described in Section XIII.B.2. is required.

2. Notice of Grant [or Cooperative] Agreement: In some projects, an interest in real property acquired, in whole or in part, with grant or matching funds or as an in-kind matching donation will not be included in a Federal, State, or Tribal land management system managed for long-term conservation. This interest in real property may be either fee title, permanent easements, or leases where the lease term is 50 years or more including options for extension. For such interests in real property, Recipient or subrecipient titleholders must record a Notice of Grant [or Cooperative] Agreement in the local government office set up for that purpose, e.g., County Recorder or Registrar of Deeds. The Notice of Grant [or Cooperative] Agreement must:

- identify the interest in real property to which the Notice of Grant [or Cooperative] Agreement applies and attach a description;
- identify the name and address of the grant recipient or subrecipient;
- reference the grant agreement and the address where it is kept on file;
- state the purpose of the Project;
- state that the grant recipient or subrecipient titleholder confirms its obligation to manage the interest in real property pursuant to the grant agreement, its incorporated project proposal, and the purpose of the Project unless the USFWS relieves it of that responsibility; and
- state that the grant recipient or subrecipient titleholder will not convey or encumber the interest in real property, in whole or in part, to another party without USFWS's consent.

The Notice of Grant [or Cooperative] Agreement does not give any property rights to the USFWS. It merely provides a public record of the contractual obligations of the Recipient or subrecipient. These contractual obligations do not apply to any other individuals or entities that may own part of the property rights on the parcel of real property described in the Notice of Grant [or Cooperative] Agreement. In lieu of a Notice of Grant [or Cooperative] Agreement, the Recipient or subrecipient may include the required elements of a Notice of Grant [or Cooperative] Agreement in the terms of any recorded easement, deed, or lease in which the Recipient or subrecipient acquires an interest in real property for the purposes of the Project.

C. Real Property Disposal: Title to an interest in real property shall vest in the Recipient or subrecipient subject to the condition that the Recipient must use the interest in real property for the Project's authorized purpose as long as it is needed. The USFWS will be the final arbiter of when an interest in real property will be no longer needed for the Project's authorized purpose. The Recipient or subrecipient may not:

- encumber the interest in real property without the approval of USFWS or its successor;
- dispose of or cease administering the interest in real property for its authorized purpose without requesting the approval of USFWS or its successor or without requesting disposition instructions from USFWS or its successor as explained below.

1. Authorized Conveyance: In some cases, a Recipient or subrecipient will determine during or after the Project period that:

- it is no longer able or willing to retain title to or administer an interest in real property acquired in this Project for the Project's authorized purpose; or
- the interest in real property acquired in this Project is no longer needed for the Project's authorized purpose.

If such a Recipient or subrecipient is a State, local, or Tribal government, it must request disposition instructions from USFWS or its successor. USFWS will give (at its option) one or more of the following three instructions:

- (a) Retain title without further obligation to the Federal government after it compensates USFWS for that percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project.
- (b) Sell the interest in real property under guidelines provided by USFWS and pay USFWS for that percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project (after deducting actual and reasonable selling or fix-up expenses, if any, from the sales proceeds). When USFWS authorizes or requires the Recipient or subrecipient to sell the interest in real property, the Recipient or subrecipient must establish proper sales procedures that provide for competition to the extent practicable and result in the highest possible return.
- (c) Transfer title to the interest in real property to the Federal Government or to an eligible third party provided that,

in such cases, the Recipient or subrecipient shall be entitled to compensation for its attributable percentage of the current fair market value of the interest in real property. (USFWS or its successor will direct the Recipient or subrecipient to transfer the interest in real property to a specific Federal, State, or Tribal agency for long-term conservation if such transfer was specified in the Proposal. The Recipient or subrecipient, at its option, may waive its right to compensation on any transfer of an interest in real property that is directed by USFWS.)

If such a Recipient or subrecipient is an institution of higher education, other nonprofit organization, or a commercial organization, it must first obtain USFWS's written approval for the use of the interest in real property in other federally sponsored projects. Use in other projects shall be limited to those under federally sponsored projects that have purposes consistent with those authorized for support by the United States Department of the Interior. If use in other federally sponsored projects is not possible or appropriate, the Recipient or subrecipient institution of higher education, other nonprofit organization, or commercial organization it must request disposition instructions from USFWS or its successor. USFWS will give (at its option) one or more of instructions (a) through (c) as listed above.

2. Unauthorized Conveyance or Administration Inconsistent with Project Purpose: The Recipient agrees to be bound by the alternative for redress that USFWS chooses from those listed below if the Recipient or its subrecipient:
- sells, transfers, encumbers, pledges as security or collateral for a debt, or otherwise disposes of any interest in real property acquired in whole or in part with NAWCF or matching funds or as a matching in-kind donation without the permission of USFWS; or
 - ceases administering the interest in real property interest in whole or in part for the authorized purpose of this Project in the opinion of USFWS and without USFWS's approval.

The following are alternatives for redress for (i) an unauthorized conveyance of an interest in real property or (ii) administration of an interest in real property in a manner inconsistent with the Project Purpose:

- (a) USFWS may direct a Recipient or subrecipient to convey to the USFWS or its designee an interest in real property that has a value equal to the percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project and that will serve the same purpose of long-term conservation and management of the affected wetland ecosystem and the fish and wildlife dependent thereon.
- (b) USFWS may direct a Recipient or subrecipient to pay USFWS that percentage of the fair market value of the interest in real property attributable to the Federal participation in the Project.

In the case of alternatives (a) and (b) above, the USFWS, at its option, may require the Recipient or subrecipient to obtain at the Recipient's or subrecipient's expense an appraisal conforming to the most recent version of the Uniform Appraisal Standards of Federal Land Acquisition or their equivalent. A USFWS or other Federal reviewing appraiser must review and approve the appraisal before the amount of compensation is established.

3. Duration of Authorized and Unauthorized Conveyance Provisions: Sections XIII.C.1. & 2. of this Agreement will be in force in perpetuity for any interest in real property purchased with NAWCF or matching dollars or received as a matching in-kind donation unless limited to shorter periods by less-than-perpetual easements, leases, or other legal instruments. Any exception to the application of Section XIII.C. in perpetuity must be supported by the Proposal or the written permission of the USFWS Program Officer.

XIV. MODIFICATIONS The Recipient must request prior written approval of the USFWS Program Officer and, only where indicated parenthetically below, the prior approval of the USFWS Contracting Officer for any change of a provision of this Agreement and any of the following changes of the Proposal:

- changes in the scope and objective of the Project (regardless of whether there is an associated budget revision requiring prior approval) including but not necessarily limited to, changes in the Project Purpose (USFWS Contracting Officer), extension of the Project period except as provided below (USFWS Contracting Officer), changes in the Project area, a change in the proposed titleholder of any interests in real property purchased or donated for the Project, a cumulative decrease of any acreage category or subcategory in the responses to Technical Assessment Questions 4 and 5 of the Proposal (USFWS Contracting Officer), and changes in the matching contributions;
- a change of the Recipient's Project Officer;
- the transfer of amounts budgeted for the direct costs of Acquisition, Restoration, or Enhancement to indirect costs, administrative overhead, or its equivalent (USFWS Contracting Officer);
- the inclusion of costs that are not allowed in accordance with the Federal Cost Principles (USFWS Contracting Officer) or the policy of the NAWCA Grants Program;
- the inclusion of costs that require prior approval in accordance with the applicable Federal Cost Principles, including (i) changes in the specific parcels or interests in real property to be acquired, and (ii) identification of the specific parcels or interests in real property to be acquired for projects where such parcels or interests were not identified in the original proposal.

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The Recipient must send all requests for prior approval to the USFWS Program Officer at least 30 days in advance of the desired implementation. When the concurrence of the USFWS Contracting Officer is required, the USFWS Program Officer will make a recommendation to the Contracting Officer who will make the final determination and notify the Recipient in writing. The Recipient must include a narrative justification with any request for changes in the Agreement or Proposal. A request for prior approval of any budget revision must be accompanied by a revised budget table in the same format as in the original Proposal. Any proposal for changes in parcels of real property to be acquired will require a determination by the Secretary of the Interior that the interests in real property should not be included in the National Wildlife Refuge System as required by Section 6 of NAWCA. Neither the USFWS Contracting or Program Officer has the authority to increase the Federal funding awarded to this Project.

Recipients may initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the conditions listed below apply. For one-time extensions, the Recipient must notify the USFWS Project Officer in writing, with the supporting reasons and revised expiration date, at least 10 days before the expiration date, specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. The conditions that prevent issuance of a one-time extension are:

- the extension requires additional Federal funds; or
- the extension involves any change in the approved objectives, scope, or purpose of the Project.

Any extension after this one-time Recipient-initiated extension will require the USFWS Contracting Officer's prior written approval.

Except as required or authorized above, USFWS waives all other cost-related or administrative prior approvals authorized in 43 CFR 12.70 and 43 CFR 12.925. In addition to the above potential modifications of the grant agreement, the Recipient may request that the USFWS Program Officer and Contracting Officer grant, in unusual situations, an exception to any requirement of the grant agreement that is derived from the Federal grant regulations in 43 CFR, part 12. The need for such exceptions must be convincingly demonstrated in an accompanying narrative justification. The USFWS Program and Contracting Officers will only approve such exceptions on a case-by-case basis and when the request is supported by a persuasive justification. To ensure that consistent criteria are applied to all subsequent requests for exceptions and modifications, the USFWS Program Officer must develop decision criteria before approving or disapproving any request.

The USFWS requires written confirmation from USFWS Regional Offices that NAWCA projects are in compliance with the National Environmental Policy Act of 1969 (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) before the USFWS Contracting Officer signs the grant agreement. USFWS also requires that Regional Offices submit, before the USFWS Contracting Officer signs the grant agreement, documentation that a contaminants survey has been completed for any interest in real property acquired with NAWCF or matching dollars or donated as a matching in-kind donation if the USFWS will be the owner. After the USFWS Contracting Officer signs the grant agreement, the Recipient may: (a) propose a change in a parcel or interest in real property to be acquired; (b) propose a change in the location or boundaries of the habitat to be restored, enhanced, or created; or (c) identify a specific parcel or interest in real property to be acquired for projects where such parcels or interests were not identified in the original proposal. In response to such a proposal or identification, the USFWS Program Officer will review the previous Regional Office confirmation of compliance with NEPA or NHPA and its documentation of a contaminants survey. If indicated by this review, the USFWS Program Officer will request from the USFWS Regional Office a new or supplemental confirmation of compliance with NEPA or NHPA and, if applicable, documentation of a contaminants survey specific to the newly proposed or identified parcel or interest in real property or to the new location or boundaries of the habitat to be restored, enhanced or created. The Recipient may have to bear any costs associated with obtaining such new or supplemental confirmation or documentation from USFWS Regional Offices.

Pursuant to Section 6 of NAWCA and before the USFWS Contracting Officer signs the grant agreement, the USFWS requests confirmation from the USFWS Divisions of Refuges and Realty and the appropriate Regional Office that all interests in real property proposed for acquisition in a NAWCA proposal should not be included in the National Wildlife Refuge System. If the Recipient proposes a change in a parcel or interest in real property to be acquired, or if it identifies a specific parcel or interest in real property to be acquired for projects where such parcels or interests were not identified in the original proposal, the USFWS Program Officer will review the previous USFWS Regional Office confirmation. If indicated by this review, the USFWS Program Officer will request from the Regional Office a new or supplemental confirmation that the newly proposed or identified parcel or interest in real property should not be included in the National Wildlife Refuge System.

XV. TERMINATION USFWS may terminate this award in whole or in part if a Recipient materially fails to comply with the terms and conditions of an award. The USFWS may also terminate this award with the consent of the Recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Recipient may terminate the award upon sending to USFWS 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 USFWS determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety. Since encouraging partnerships is part of the purpose of NAWCA, USFWS may terminate the award in its entirety if a partial termination will reduce the ratio of Partners' matching commitments to NAWCF funds. In any termination of an award, USFWS must consider the Recipient's responsibilities for property management (if any) and to submit financial, performance, and other reports required by this Agreement.

XVI. AUDIT REQUIREMENTS Recipients that expend \$300,000 or more in a year in Federal awards must have a single or program-specific audit conducted for that year in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" (<http://www.whitehouse.gov/OMB/grants/index.html>).

XVII. GENERAL PROVISIONS General provisions applicable to this Agreement are in 43 CFR, part 12, entitled, "Administrative and Audit Requirements and Cost Principles for Assistance Programs." General provisions for acquisition of interests in real property and relocation assistance are in 49 CFR, part 24, entitled "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs." These regulations are available at <http://www.nara.gov/nara/cfr/index.html> and are incorporated by reference.

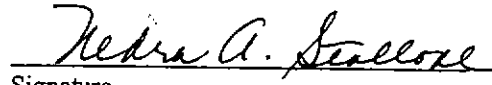
XVIII. CERTIFICATIONS AND ASSURANCES Certifications and Assurances applicable to Federal Grant and Cooperative Agreements executed by the Recipient are a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

DUCKS UNLIMITED, INC.

U.S. FISH & WILDLIFE SERVICE





Signature

Signature

JAMES L. WARE

Nedra A. Stallone

Typed or Printed Name

Typed or Printed Name

SENIOR GROUP MANAGER

Contracting Officer

Title

Title

4/19/01

5-4-01

Date

Date

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EXHIBIT C
Letter to Metro

September 25, 2002

Mr. Fritz Paulus
Metro Regional Parks and Greenspaces
600 Northeast Grand Avenue
Portland, OR 97232

Dear Fritz:

I have reviewed the preliminary title report for the Steele Foundation/Sherman property (tax lots 1300 & 1400) that you faxed me on September 23, 2002 and have determined that the existing recorded easements, reservations, exceptions, restrictions, and encumbrances do not jeopardize the purposes for which the land was purchased for the Willamette Valley Watershed Restoration Project (FWS Grant Agreement #98210-1-G812).

Sincerely,

Chris Bonsignore
Biologist

EXHIBIT D
Exception and Waiver Letter from USFWS

To: Chris Bonsignore, Project Officer, Willamette Valley Watershed Restoration Project

From Tom Barnes, NAWCA Program Officer *Tom Barnes 7/11/02*

Subject: Willamette Valley Watershed Restoration Project (98210-1-G812), ref.: Chris Bonsignore's letter to Tom Barnes dated 3/14/02

You requested permission to modify the project proposal to permit the purchase of 40 (actually 39.36) acres in fee title instead of 30 acres of easement. You may make this substitution provided that neither NAWCA grant nor match funds are used to pay any amount over the appraised value.

You also submitted documentation on the following acquisitions and expressed the opinion that you either qualified for the exception process as specified in the grant agreement or otherwise qualified for exemption from certain acquisition requirements:

- (a) *Conservation easements acquired with grant funds in Lake Labish (Lea and Leshner properties).* The documentation demonstrated that you qualified for the exception process. Both easements included language equivalent to the required provisions of a Notice of Grant Agreement. No further documentation is needed for these acquisitions for the purposes of this grant agreement.
- (b) *Fee title acquisition of the Steele Foundation Parcel in Coffee Lake using grant and Metro funds.* The documentation that you provided indicated that the owners were aware of the appraised value because they obtained the appraisal. Clint Sherman, the owners' representative, referred to the appraisal in his letter of 9/17/01. In Mr. Sherman's letter of 1/18/02, he also acknowledged that he was aware that the sale of his property was a voluntary transaction that he could walk away from if the terms did not meet his satisfaction. Although Metro should have informed Mr. Steele of this in writing, his acknowledgment indicates that he was aware that it was a willing-seller transaction. The protections he enjoys as a seller, therefore, were not reduced, thus we are hereby waiving the requirement that the notice be in writing as authorized in 49 CFR, section 24.7.

The documentation indicates that you addressed two conditions for the exception process, but two other criteria in Title 49, section 24.101(a)(1), of the Code of Federal Regulations must also be addressed because Metro has eminent domain authority: (i) "No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. Where an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly." (ii) "The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits." **Please confirm that the acquisition of the Steele Foundation parcel qualifies for the exception process under both of these criteria.**

Another issue on the Steele Foundation parcel as follows. The approved appraised value of this parcel is \$393,600, but the 11/16/01 letter from Metro's Fritz Paulus to the Steele

Foundation indicated that the agreed-upon sale price was \$450,000. In our recent telephone conversation, you indicated that the amount over the appraised value would be paid by Metro, but will not be reimbursed from grant funds and will not be claimed as match. This is permissible as long as it does not interfere with the accomplishment of the acreage objectives in the Project Proposal's responses to Technical Assessment Questions 4 and 5.

One final issue remains on the Steele Foundation parcel. The documentation that you provided indicates that part of the mission of Metro is to acquire lands for open space. This raises questions as to whether all the lands managed by Metro are "administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon." Unless land acquired under a NAWCA grant is placed in a system of land managed for long-term conservation, a Notice of Grant Agreement is required. **Please send us documentation that Metro's lands are, in fact, legally mandated to be "administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon." If Metro's lands are not so administered, please send us a Notice of Grant Agreement for the Steele Foundation parcel.**

- (c) *Fee title acquisitions by Metro in Coffee Lake (Boeckman and Keys properties).* You provided copies of the deeds to these two matching in-kind contributions of real property acquired in 1998 and 1999 before submission of the project proposal. Since these tracts were in-kind contributions of real property to a regional governmental body established under State law, you must provide some evidence that the selling price represented fair market value. If an appraisal was secured, you must use it as the primary determinant of value unless you have persuasive evidence that it is not correct. **As in the case of the Steele Foundation parcel, if Metro's lands are not legally mandated to be "administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon," please submit a Notice of Grant Agreement for both properties.**
- (d) *Fee title donation by The Wetlands Conservancy in Coffee Lake (Jean Young Trust).* The Wetlands Conservancy donated this match property to Metro in 1999 before submission of the project proposal. You submitted an appraiser's certification of the \$113,092 fair market value of the property. This certification is sufficient to document the \$113,000 claimed as the fair market value of this in-kind match. **As in the case of the Steele Foundation parcel, if Metro's lands are not legally mandated to be "administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon," please submit a Notice of Grant Agreement for this property.**
- (e) *Fee title acquisition by The Nature Conservancy at Willow Creek (Mahler property).* TNC purchased this property on December 31, 1998, 15 months before submission of the project proposal that included the value of the acquisition as match. No appraisal was conducted of the property. I have re-read Catherine McDonald's letter of matching commitment dated March 25, 2000, and Russ Pinto's letter of March 22, 2000. These letters from TNC commit or discuss the possibility of committing the Willow Creek/Mahler acquisition as match for DU's upcoming NAWCA application. Despite Catherine McDonald's specific

commitment of \$263,140, the land was acquired more than 14 months before the letters were written. I have to conclude, therefore, that TNC was donating land and not cash. A donation of land to a nonprofit recipient requires an appraisal. **Please provide an appraisal, deed, and a Notice of Grant Agreement for this property.**

EXHIBIT E
CERTIFICATIONS AND ASSURANCES

Cooperator agrees to enter into and be bound by the following Certifications and Assurances:

- A. **Nondiscrimination.**
The Cooperator agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq.; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.; Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq.

- B. **Debarment and Suspension.**
The Cooperator certifies to the best of its knowledge and belief that it is not presently debarred, suspended, or proposed for debarment or declared ineligible for the award of subawards, by any federal agency, in accordance with OMB guidelines.

- C. **Certification of Non-Delinquency on Federal Debt.**
The Cooperator certifies that it is in compliance with the Non-Delinquency on Federal Debt criteria, in accordance with OMB-129.

- D. **Certification of Drug-Free Workplace.**
The Cooperator certifies that it has implemented appropriate policy in accordance with Drug-Free Workplace Act of 1988, 45 C.F.R. Park 76, Subpart F.

- E. **Certification Regarding Lobbying.**
The Cooperator certifies to the best of its knowledge and belief that no Federally appropriated funds have been paid or will be paid, by or on behalf of the Cooperator, to any person for influencing or attempting to influence a Federal officer or Federal employee of any agency in connection with the awarding of any Federal award. (Section 1352, Title 31, 45 U.S. Code.)

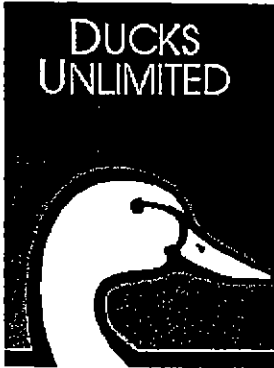
METROPOLITIAN SERVICE
DISTRICT OF OREGON

By: _____

Signature

Title: _____

Date: _____



DUCKS UNLIMITED, INC.

METROPOLITAN SERVICE DISTRICT OF OREGON

SITE SPECIFIC AGREEMENT

Project Name: COFFEE LAKE RESTORATION

Project Number: US-OR-85-1

This Site Specific Agreement ("Agreement") is effective this ____ day of _____, 2002 between Ducks Unlimited, Inc. (hereinafter referred to as "DU") and Metropolitan Service District of Oregon (hereinafter referred to as "Cooperator").

I. PURPOSE

DU and the Cooperator have entered into this Agreement to help facilitate the Cooperator's development of their property (hereinafter referred to as "Site") as described in the Proposed Project attached as Exhibit A (hereinafter referred to as "Project"). This Project is funded pursuant to North American Wetlands Conservation Act Grant Agreement No. 98210-1-G812 (hereinafter referred to as "Grant") between DU and the U.S. Fish and Wildlife Service (hereinafter referred to as "FWS"). The purpose of the Grant is to protect, restore, and enhance important wetland ecosystems in the Willamette Valley Ecoregion. The Grant is incorporated into this Agreement by this reference (attached as Exhibit B).

II. SCOPE OF THE AGREEMENT

In consideration of the above and the Terms and Conditions listed below, DU and the Cooperator agree to undertake the development of the Project on the Site as follows:

A. DU agrees to:

1. Provide funding not to exceed One Hundred Sixty-Three Thousand Two Hundred Twenty-Four Dollars (\$163,224) in cash or in-kind services or One Hundred Percent (100%) of the total Project cost, whichever is less and pending availability, for the funding of DU's obligations under this Section A.1. In-kind services completed by DU may include: biological planning, survey, design and construction management.
2. Serve as Grantee of the Grant, make application for reimbursement under the Grant and receive Grant funds in an amount of One Hundred Sixty-Three Thousand Two Hundred Twenty-Four Dollars (\$163,224) to fund DU's funding obligation in Section II.A.1 of this Agreement.
3. Subject to adequate funding, be responsible for: the development of the Site and any hiring of contractors for the development of the Site.
4. Construct, or cause to be constructed, the Project, subject to the terms and conditions of this Agreement, in substantial compliance with the Site Development plans and specifications developed pursuant to Section 6 of this Agreement.
5. Commence the construction of the Project in 2003. Should construction of the Project not commence during 2003 for reasons beyond the control of the parties including, but not limited to, the failure to timely obtain required permits, agreements, leases, approvals, and access rights necessary for the development of the Project, the parties will commence the construction of the Project in a mutually acceptable future year. The parties recognize the construction of the Project cannot be accomplished unless all required permits are granted.
6. Obtain the topographical, soils, and hydrological data required to design the Project; prepare Site development plans and specifications for the Project; and submit same to Cooperator for review and mutual approval.
7. Prepare all Project bid specifications, accept or reject all contract bids, and be solely responsible for making any contract changes, additions, or deletions as the work progresses. The prime contractor shall be required to provide performance and payment bonds and carry casualty and liability insurance. The contracts shall provide that the contractor acknowledges that the Cooperator is not a party and will assert no claims against the Cooperator in any disputes with subcontractors, material men, or DU.

8. Provide Project alignment and grade staking, and construction management services.

B. Cooperator agrees to:

1. Obtain, at Cooperator's expense, leases, approvals, and access rights necessary for the development of the Project and provide to DU, and its officers, employees, agents, and the like, all reasonable assistance and cooperation necessary for the implementation of this Agreement.
2. Be responsible for obtaining all permits including but not limited to land use permits, fill permits and grading permits.
3. In conjunction with DU, routinely inspect the Site when any construction is in progress, maintain a written record of the construction activity, and keep DU advised of any desired changes, additions, or deletions to the Project construction.
4. Provide DU with all information requested by DU that is necessary to meet DU's obligations under the Grant within the time period specified by DU in the request for information.
5. Upon and after joint approval of Site development plans, release DU from all responsibility and liability for any errors or omissions that may be found in the Project site development plans after the construction contract has been awarded, as well as from all responsibility and liability for any construction delays, beyond DU's control. No construction contract may be awarded until the site development plans have been jointly approved in writing by both parties.
6. Ensure that any lands and waters on which habitat is restored, enhanced and/or created in this Project are managed and maintained for the purpose for which they were intended in the Grant. Cooperator shall provide routine inspection and all operation, rehabilitation and maintenance necessary to maintain the continuing viability and function of the Project, as intended in the Grant throughout the term of this Agreement. If DU finds that Cooperator has failed to comply with the management and maintenance requirements set forth herein above, DU shall provide Cooperator with notice of same and 30 days to comply or provide proof acceptable to DU of Cooperator's intent to comply.

If upon notice by DU and opportunity to cure as set forth above Cooperator or any subrecipient does not ensure that such habitat is managed for the Project purpose in whole or in part, Cooperator or any subrecipient agrees to compensate DU for that percentage of the current fair market value of the original habitat restoration, enhancement, or creation attributable to DU's participation in the Project. Cooperator or subrecipient must determine the current fair market value by obtaining at Cooperator's or subrecipient's expense an appraisal completed according to nationally recognized appraisal standards and subject to DU's review and approval. Cooperator must repay DU on terms and conditions satisfactory to DU.

7. Be responsible for all costs associated with the operation and maintenance of the Site.
8. Work with DU to develop a cooperative site-inspection schedule for DU's and FWS's inspection of the Site. The purpose of Site inspections is to ensure that such habitat is managed for the purpose intended in this Agreement and the Grant. During Site inspections, DU and FWS may also assess the impact of habitat management practices on the immediate watershed of such Site.
9. Indemnify DU for any costs DU is obligated to repay under the Grant because of Cooperator's failure to comply with the terms and obligations of this Agreement.
10. Inform DU of any actions or inactions by either party to this Agreement which will change the required delivery or completion times stated in the Agreement.
11. That any pre-award costs by Cooperator must have occurred within two (2) years of the Project Proposal submission, and at the Cooperator's own risk.
12. Report any program income earned during the Period of Performance of the Grant to DU. DU will not deduct it from the total Project allowable cost and will treat it as additional funds committed under this Agreement for the purposes of the development of the Site.

Program Income: Program income is gross income earned by Cooperator between the effective date of this Agreement and the end of the Grant's Period of Performance that is directly generated as a result of funds

provided under this Agreement. Program income includes, but is not limited to, income from fees for services performed, the use, rental, or sale of real or personal property acquired under this Agreement and the sale of commodities or items fabricated under this Agreement.

13. That Cooperator's or any subrecipient's financial management systems must adhere to the standards established in 43 CFR 12.60 for state, local, and tribal governments or 43 CFR 12.921 for institutions of higher education, other nonprofit organizations, and commercial organizations (<http://www.access.gpo.gov/nara/cfr/index.html>). These systems must be capable of reporting receipts and expenditures (or use) of: (a) NAWCF dollars, (b) matching dollars, and (c) in-kind matching donations with reference to dollar values. The Cooperator and any subrecipients must report these expenditures, receipts, and values as required in this Agreement and upon demand if special audits are required.
14. Determine allowable costs in accordance with applicable OMB Cost Principles or regulations as listed below. If an institution of higher education, other non-profit organization or commercial organization, maintain written procedures to determine reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of this Agreement [43 CFR 12.921(b)(6)]. In absence of these procedures and to satisfy this requirement, Cooperator must comply with the following procedure:

Any of Cooperator's staff, agents or subrecipients (if any), who have the authority to administer or manage this Project or obligate funds for it, will review the terms of this Agreement and the provisions of the applicable Office of Management and Budget (OMB) Cost Principles before making a decision that will directly or indirectly result in expenditure of funds for the Project.

The following documents at the listed websites establish principles for determining which costs are allowable:

- Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organization," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-21, "Cost Principles for Educational Institutions," (<http://www.whitehouse.gov/OMB/grants/index.html>)

- 48 CFR 32.2, "Contracts with Commercial Organizations"
(<http://www.access.gpo.gov/nara/cfr/index.html>)

These Cost Principles apply to the use of funds under this Agreement and in-kind matching contributions. The applicability of circular or regulation depends on the type of organization incurring the costs. Thus, in some cases, Cooperator may be subject to a different circular or regulation than its subrecipients. In addition to restrictions in applicable OMB Costs Principles or regulations, Cooperator must not use funds under this Agreement for research studies, non-Project-specific communications products, travel for Federal employees; the costs of existing residences, structures, or buildings unnecessary for wetlands conservation purposes; or the cost of constructing, removing, or repairing residences, structures or buildings.

Cooperator agrees to include the above provision in any subaward to any subrecipient.

15. Submit to DU with any request for reimbursement:
 - (1) a completed Standard Form 270 (Request for Advance or Reimbursement), which is available at:
<http://www.whitehouse.gov/OMB/Grants/index.html>
 - or (2) its computer-generated equivalent. Cooperator must prepare the Standard Form 270 or its computer-generated equivalent on a cash basis for either an advance payment or a reimbursement as explained on the back of the form. Cooperator must enter the period covered by the request on the Standard Form 270 or its computer generated equivalent.

To receive advance payments, Cooperator must maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by Cooperator [43 CFR § 61 © or § 921 (b)(5)] as applicable. To comply with this requirement, Cooperator agrees to ensure that the DU Project Officer will receive a completed Standard Form 270 or its computer-generated equivalent [15-30] days before the date on which Cooperator must disburse the funds.]

16. That publication of any reports or parts thereof by the Cooperator's personnel is subject to DU review and comment. Authorship does not incur any privileges of copyright nor restriction on distribution.

Cooperator must send two copies of any publication produced under this Agreement to DU with a transmittal that identifies the sender and the publication. News releases or other information on the Project published

or released for publication by Cooperator or any subrecipient must acknowledge that funding was made possible through the North American Wetlands Conservation Act. Cooperator and any subrecipient agrees to include the above provision in any subaward.

17. That DU and the Federal Government may publish, reproduce, and use all technical data developed as a result of this Agreement in any manner and for any purpose without limitation and may authorize others to do the same.
18. That pursuant to Section 307 of the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, 110 Stat. 3009, that Cooperator is advised of the following:

In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

19. Comply with Section XI.G. of the Grant in managing and disposing of any equipment (tangible personal property), supplies, and other expendable property acquired in whole or in part under this Agreement.
20. That the general provisions applicable to this Agreement are included in 43 CFR 12, entitled, Administrative and Audit Requirements and Cost Principles for Assistance Programs, which are hereby incorporated by reference in this Agreement and that Cooperator shall comply with such provisions. These regulations are available at <http://www.nara.gov/fedreg>.
21. Enter into and be bound by those Certifications and Assurances applicable to Federal Grants and Cooperative Agreements required for funding this Agreement (Exhibit C).
22. To include Sections II. B. 3-21 in any subaward to any subrecipient of this Agreement.

C. DU and Cooperator Agree:

1. That the Project will be completed in accordance with the Proposal. Completion of the Project is scheduled for October 31, 2003.
2. That all Project objectives will be implemented in a timely manner.

3. To promptly inform the other party if, for any reason, problems arise during the course of the Project that may slow or stop progress of the Project including but not limited to the availability of funds and personnel changes.
4. To show the Project to potential bidders as deemed necessary and hold a pre-construction conference with the successful bidder prior to the commencement of Project construction.
5. To conduct a final inspection of the Site prior to accepting any completed Project developments. In the event the parties are unable to agree as to the acceptability of the completed Project developments, they shall select a mutually acceptable third party whose decision shall be binding.
6. To acknowledge the contribution of each party as well as the FWS in any oral or written communications related to the Site, including signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared by either party referencing this Project. DU will provide mutually acceptable Project signs, and Cooperator will erect and maintain these signs along roads, entrances, and/or convenient viewing locations on the Site in close proximity to the Project.
7. To recognize outside contributors who might provide significant funding to help underwrite costs of the Project or who otherwise are mutually deemed to deserve special recognition. This recognition can include signs, plaques, and/or carins on the Project site. The principal costs of such recognition shall be borne by the party initiating the recognition.
8. To mutually consider the possibility of funding any extraordinary Project repairs that might be required.
9. That the Site will remain under the jurisdiction of Cooperator and that Cooperator will be solely responsible for the Site's administration and management.
10. A. DU appoints Chris Bonsignore as its Project Officer.
B. Cooperator appoints Curt Zonick, as its Project Officer.

The parties may change their respective Project Officer at any time by providing the other party with the name of their new Project Officer.

11. This Agreement is contingent upon the Grant and should the Grant be terminated, both DU and Cooperator shall be excused from performance under this Agreement and this Agreement shall automatically terminate upon the termination date of the Grant.

III. TERM AND MODIFICATIONS

This Agreement shall become effective as of the date and year first above written, and shall thereafter continue in force for a period of thirty (30) years. Further, this Agreement may be modified only by the mutual prior written agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the date and year first written above.

**METROPOLITAN SERVICE DISTRICT
OF OREGON**

DUCKS UNLIMITED, INC.

BY: _____

Mike Burton

Title: Executive Officer

Address: 600 NE Grand Avenue

Portland, OR 97232

Ph: 503-797-1700

Date: _____

BY: _____

Ronald A. Stromstad

Title: Director of Operations

Date: _____

EXHIBIT A

Project Proposal

Restoration

Project Number: OR-85-1

Project Name: Coffee Lake Restoration

Location: County: Clackamas
Lat: 45°19'30"
Long: 122°47'00"

Ownership & Size: The site is owned and managed by Metro as a regional green space.
Project site:
Total Wetland Area: 91
Total Upland Area: 5
Total Project Area 96

Project Activities: Project will restore and enhance seasonal emergent, scrub-shrub and forested wetland habitat types and associated upland forest. Work will include topographic survey, design, construction of low levees, installation of water control structures, shallow excavation and planting of native trees and shrubs.

History & Management: This project is phase I of a multiphase project to restore and enhance lands owned by Metro in the Coffee Lake system.

Wildlife Values Ancillary Benefits: This site is used by several species of ducks during the migrating and wintering periods including northern pintail, mallard, American wigeon, gadwall, and green winged teal. Breeding cinnamon and blue winged teal, wood duck, and mallard use a restored wetland adjacent to this site. In addition there have been several pairs of sora and Virginia rails breeding at this site. Great egrets have been recorded at the site during the winter and spring and great blue herons frequent the project site throughout the year. An adult female western pond turtle was discovered at this site in July of 2001. Upland areas provide habitat for resident pileated woodpeckers and a number of other resident and migrant passerines.

Project Cost Estimate: \$163,224 (DU-NAWCA)

Length of Agreement: 30 years.

EXHIBIT B
GRANT AGREEMENT #98210-1-G812

GRANT AGREEMENT
BETWEEN
U. S. FISH AND WILDLIFE SERVICE
AND
DUCKS UNLIMITED, INC.

This document has been
OBLIGATED in FFS
 electronically via IDEAS-FFS Interface

7es
 5-16-01
 CGS initials
 date

I. RECIPIENT

Ducks Unlimited, Inc.
1101 SE Tech Center Drive, Suite 115
Vancouver, Washington 98683

Project Officer: Chris Bonsignore, Project Biologist
Phone: 360-885-2011 ext 14 FAX: 360-885-2088
E-mail: cbonsignore @ducks.org

II. FINANCIAL DATA

Agreement Number: 98210-1-G812

Accounting Data: 2001- 91100-411G-9676-0108

Tax Identification Number: 13-5643799

DUNS Number: 001377055

Amount Obligated from North American Wetlands Conservation Fund (NAWCF): \$999,124

Partners' Matching Commitments: Recipient, \$812,809; Metropolitan Service District of Oregon (Metro), \$1,500,000; Marion County, Oregon, \$100,000; Oregon Watershed Enhancement Board, \$145,000; Oregon Department of Fish and Wildlife, \$29,500; The Nature Conservancy, \$263,140; The Wetlands Conservancy, \$113,000; Private Landowners, \$28,000; Natural Resources Conservation Service, \$786,760; and U. S. Fish and Wildlife Service, \$581,335. Total = \$4,359,544.

Catalog of Federal Domestic Assistance Number: 15.623 (North American Wetlands Conservation Fund)

III. AUTHORITY The U.S. Fish and Wildlife Service (USFWS) and Ducks Unlimited, Inc. (Recipient) enter into this Agreement under the authority of Public Law 101-233, the North American Wetlands Conservation Act (NAWCA), as amended (16 USC 4401 *et seq.*). This Agreement supports the Willamette Valley Ecoregion Restoration Project, (Project) in Oregon. The North American Wetlands Conservation Council (NAWCC) recommended the Project on July 14, 2000, and the Migratory Bird Conservation Commission approved it on September 13, 2000.

IV. PURPOSE This Project will protect, restore, and enhance important wetland ecosystems in the Willamette Valley Ecoregion. This phase of the project will protect an estimated 563 acres of vital wetlands and associated uplands through fee title acquisition (69 acres), fee donated (29 acres), and purchase of conservation easements (465 acres) in the project area. In addition, an estimated 1,489 acres of wetlands and associated uplands will be restored (1,369 acres) and enhanced (120 acres) on public and private lands..

V. SCOPE OF WORK This Agreement incorporates by reference the Recipient's Willamette Valley Ecoregion Restoration Project Proposal (Proposal) dated March 30, 2000, as revised and/or clarified in a letter dated May 1, 2000, to David A. Smith and an e-mailed message with attachments dated January 10, 2001, to David Weaver. The Proposal includes all letters from or on behalf of Project partners and all correspondence between USFWS and the Recipient. (See Section XIV before deviating from the Proposal.)

VI. PROJECT PERIOD The Project period starts on the date that the USFWS Contracting Officer signs this Agreement and ends two years later.

VII. MEASURABLE OUTCOMES The Recipient must be able to demonstrate on-site accomplishment of all the Project's milestones, goals, and objectives as presented in the Proposal including the acres in the responses to Technical Assessment Questions 4 and 5.

VIII. REPORTS & OTHER REQUIRED DOCUMENTATION The Recipient must send to the USFWS Program Officer:

<u>Performance Report</u>	<u>Period Covered</u>	<u>Due Date</u>
Annual	1 st year after USFWS signs Agreement	90 days after 1 st period covered
Final	Entire Project period	90 days after end of Project period

Both annual and final performance reports must include or be accompanied by:

- a comparison of actual accomplishments with milestones and other objectives for the period including acres in the same categories as in the responses to Technical Assessment Questions 4 and 5 of the Proposal and explanation of any differences;
- the information requested on the Financial Status Report (Standard Form 269) on a "cash" basis as explained on the form (available at <http://www.whitehouse.gov/OMB/grants/index.html>). [On the Standard Form 269 do not report: any cash expenditures or in-kind contributions by the Recipient, subrecipients, partners, or other third parties unless such expenditures or in-kind contributions were committed as match as acknowledged in Sections II. and IX.B. (A subrecipient is a legal entity that

receives NAWCF or matching funds from a Recipient or another subrecipient.))

The final performance report must also include or be accompanied by:

- a comparison of each partner's matching commitments in the Proposal with the amounts actually contributed;
- map(s) [*U.S. Geological Survey 7½ minute topographic*] with the boundaries of all interests in real property that the recipient or a subrecipient has purchased, restored, enhanced, or created with NAWCF or matching dollars or accepted as in-kind matching donations;
- *(as an alternative to the maps described above for habitat restoration, enhancement, or creation sites smaller than 247 acres[100 hectares])* the coordinates of the center of each contiguous parcel in the UTM (Universal Transverse Mercator) coordinate system with the "North American Datum" (1927 or 1983) of the map from which coordinates were taken (or the North American Datum from the Ground Positioning System receiver that determined the coordinates) with each pair of coordinates referenced to the habitat modification; and
- an article of 500 words or less about the Project for the magazine Birdscapes to include the Project's name, location, partners, total NAWCF and partners' dollars, benefits to wildlife and people, unusual aspects, and a 35 mm slide(s) or photograph(s) with the photographer's name, organization, and a caption. [*Contact the Director of Communications of the USFWS Division of Bird Habitat Conservation at (703) 358-1884 or dee_butler@fws.gov. for more information and a copy of Birdscapes.*]

The Recipient must send to the USFWS Program Officer items (a) through (i) below for interests in real property purchased with NAWCF or matching dollars or committed to the Project as matching in-kind donations unless the acquisition is exempt from the requirement as indicated in the referenced provisions of Section XIII.:

- (a) the acreage, boundaries, and map location of any parcel or interest in real property (or any habitat to be restored, enhanced, or created) that was not identified in the original proposal or that is proposed as a modification of the Proposal as explained in Section XIV.;
- (b) a copy of the summary and signature pages from an approved appraisal as explained in Section XIII.A.1.; OR documentation other than an appraisal demonstrating that the value of the interest in real property is the fair market value if the acquisition is exempt from the appraisal requirement as indicated in Section XIII.A.1.;
- (c) a copy of an appraisal review as explained in Section XIII.A.2., OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.2.;
- (d) a copy of the Summary Statement of Just Compensation given to each seller of real property interest as explained in Section XIII.A.3., OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.3.;
- (e) a copy of any document from a landowner that donates the difference between: (i) the selling price and the offer of just compensation; or (ii) the selling price and what the Recipient or subrecipient communicated to the landowner as the amount it believed to be the fair market value of the interest in real property as explained in Section XIII.A.6.;
- (f) confirmation that the Recipient or subrecipient has complied with relocation assistance obligations (if any) as may be required in Section XIII.A.4. (confirmation may be included in a performance report); OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.4.;
- (g) a copy of the closing statement for each interest in real property purchased with NAWCF or matching dollars as may be required in Section XIII.A.7.; OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.7.;
- (h) a copy of deeds or other instruments conveying title to the interests in real property acquired with NAWCF or matching dollars or received as a matching in-kind donation as explained in Section XIII.A.8.; AND
- (vii) a copy of a statute or other legal instrument that guarantees the long-term conservation of the wetlands, migratory birds, and other fish and wildlife of a Federal, State, or Tribal land-management system if the Recipient or subrecipient places interests in real property in that system as explained in Section XIII.B.1., AND a recorded Notice of Grant (or Cooperative) Agreement for all other interests in real property acquired for the Project during the Project period or in the pre-award period as explained in Section XIII.B.2.

IX. FINANCIAL ADMINISTRATION

- A. **NAWCF Funding:** The NAWCF provides funding for this Project through USFWS not-to-exceed the "Amount Obligated ..." in Section II. The Recipient must spend these funds in accordance with the Proposal unless modified under Section XIV. The USFWS cannot reimburse the Recipient, in excess of the "Amount Obligated." NAWCF funding may not exceed 50 percent of the total cost of the Project.
- B. **Matching Donations:** The partners listed in Section II. of this Agreement under "Partners' Commitments" must provide the commitments as specified in the Proposal. At the end of the Project period, if the total amount of "Partner Commitments" does not equal the amount committed in the Proposal, the amount of NAWCF funding will be disallowed by an equal proportion. When such a disallowance occurs, the Recipient must return to USFWS any NAWCF funds received in excess of

the newly established allowable amount.

- C. **Pre-Award Costs:** USFWS authorizes pre-award costs not to exceed the "Amount Obligated from NAWCF" and the "Partners Matching Commitments" in Section II of this Agreement. The Recipient or subrecipient must not have incurred pre-award costs more than two years before the due date for submission of Project Proposals. All pre-award costs are incurred at the Recipient's or subrecipient's risk. The USFWS is under no obligation to reimburse such costs if for any reason the Recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award. This Section of the Agreement constitutes prior written approval for any pre-award costs consistent with the provisions of this Agreement and applicable laws, regulations, Federal Cost Principles, and NAWCA Grants Program policies.

A Recipient or subrecipient would incur the cost of a purchase on the date that the following actions occur for which payment would be required immediately or during a future period:

- place an order or sign a contract;
- receive a service;
- take title to an interest in real property;
- exercise an option or enter into a purchase agreement (*also called a contract of sale, sales contract, deposit receipt, offer and acceptance, agreement of sale, offer to lease or purchase, or sale agreement*) when such action commits the Recipient or subrecipient to buy an interest in real property UNLESS the Recipient or subrecipient withdraws from the purchase during a subsequent period of "due diligence" because the Recipient or subrecipient finds objectionable conditions, such as a cloud on title, or because the Recipient or subrecipient is unable to satisfy terms and conditions stipulated in the purchase agreement.

A Recipient or subrecipient would not incur any portion of the purchase price of an interest in real property by doing any of the following:

- purchase (or enter into) an option to buy an interest in real property;
- purchase (or enter into) an option to buy an interest in real property where the option consideration (option price, option money) will be applied to the purchase price of the interest in real property if the option is exercised.

- D. **Program Income:** Program income is gross income earned by the Recipient during the Project period that is directly generated as a result of this Agreement or earned by the Recipient as a result of the Agreement. Program income includes, but is not limited to, income from fees for services performed and the use or rental of personal or real property acquired under this Agreement. (See Section XIII.C. for proceeds from the sale of real property.)

The Recipient must report any program income earned during the Project period to the USFWS Program Officer on the Financial Status Report (Standard Form 269) and the Request for Advance or Reimbursement (Standard Form 270). In accordance with Title 43 of the Code of Federal Regulations (CFR), sections 12.65 or 12.924 as appropriate (<http://www.access.gpo.gov/nara/cfr/index.html>), the USFWS authorizes the Recipient to use program income and to treat it as additional funds committed under this Agreement. The Recipient must use the program income for the purposes and under the terms and conditions of this Agreement. USFWS will not deduct it from the amount of the grant and will treat it as additional funds committed under this Agreement for the purposes of the Project.

- E. **Financial Management System:** The Recipient's and subrecipient's financial management systems must adhere to the standards established in 43 CFR 12.60 for State, local, and Tribal governments or 43 CFR 12.921 for institutions of higher education, other nonprofit organizations, and commercial organizations (<http://www.access.gpo.gov/nara/cfr/index.html>). These systems must be capable of reporting receipts and expenditures (or use) of: (a) NAWCF dollars, (b) matching dollars, and (c) in-kind matching donations with reference to dollar values. The Recipient and any subrecipients must report these expenditures, receipts, and values as required in this Agreement and upon demand if special audits are required.
- F. **Allowable Costs:** The documents listed below establish principles for determining which costs are allowable or eligible based on the type of organization. Three of these documents are Cost Principles that apply to the use of both NAWCF and matching dollars and in-kind matching donations unless otherwise indicated. Note that a recipient nonprofit organization uses one set of Cost Principles and a subrecipient State agency uses another. Recipients and subrecipients must not use NAWCF or matching dollars for: research studies; non-Project-specific communications products; travel for Federal employees; the cost of existing residences, structures, or buildings unnecessary for wetlands conservation purposes; or the cost of constructing, removing, or repairing residences, structures, or buildings.

- Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organizations," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-21, "Cost Principles for Educational Institutions," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- 48 CFR 31.2, "Contracts with Commercial Organizations," (<http://www.access.gpo.gov/nara/cfr/index.html>)
- North American Wetlands Conservation Act, U.S. Standard Grant Application Instructions [*for the year applicant submits the Proposal*], "Grant Funds -Eligible Activities and Costs," "Match Funds - Eligible Activities and Costs," (<http://northamerican.fws.gov/nawca/elig8.html>)

Recipients and subrecipients that are institutions of higher education, other non-profit organizations, or commercial organizations must maintain written procedures to determine reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of this Agreement [43 CFR 12.921(b)(6)]. In the absence of these procedures and to satisfy this requirement, such a recipient or subrecipient must comply with the following procedure:

Any of the Recipient's staff, agents, or subrecipients (if any), who have the authority to administer or manage this Project or obligate funds for it, will review the terms of this Agreement and the provisions of the applicable Office of Management and Budget (OMB) Cost Principles or Federal regulations before making a decision that will directly or indirectly result in expenditure of funds for the Project.

- G. Advance Payments and Reimbursements: The Recipient's financial institution must be able to receive NAWCF funds through the electronic funds transfer process. To receive an advance or reimbursement of funds, the Recipient must submit all information requested on the Request for Advance or Reimbursement (Standard Form 270), which is available at <http://www.whitehouse.gov/OMB/Grants/index.html>. The Recipient must prepare this information on a cash basis as explained on the back of the form. As part of the information requested, the Recipient must:
- (a) enter in block 4 the "Agreement Number" listed in Section II.;
 - (b) enter in block 8 the period covered by the request;
 - (c) enter in column 11a the amounts used directly for the acquisition of real property interest and label it "Fee/Easement Acquired;"
 - (d) enter in column 11b the amounts used for all costs other than the amounts used directly for acquisition of real property and label it "All Other Costs;" and
 - (e) complete the TOTAL column.

To receive advance payments, the Recipient must maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Recipient. To comply with this requirement, the Recipient agrees: (a) to ensure that the USFWS Program Officer will receive the information requested on the Request for Advance or Reimbursement (Standard Form 270) 15-30 days before the date on which the Recipient or any subrecipient must disburse the funds; and (b) immediately notify the USFWS Program Officer if the Recipient or subrecipient becomes aware that the funds cannot be disbursed on the intended date. In signing this Agreement, a Recipient institution of higher learning, other non-profit organization, or commercial organization certifies that, if it requests an advance of funds, its financial management systems will meet the standards for fund control and accountability in 43 CFR 12.921 (<http://www.access.gpo.gov/nara/cfr/index.html>).

USFWS must withhold payments to the Recipient if the Recipient or its subrecipients have failed to comply with the Project objectives, the terms and conditions of this Agreement, or the Federal reporting requirements. When USFWS has withheld payments for these reasons, but has not suspended the grant, it must release such payments to the Recipient when the Recipient complies with the Project objectives, the terms and conditions of this Agreement, or the Federal reporting requirements.

X. USFWS PROGRAM AND CONTRACTING OFFICERS

USFWS Program Officer:
 U.S. Fish and Wildlife Service
 Attn: David K. Weaver
 Division of Bird Habitat Conservation
 4401 N. Fairfax Drive, Suite 110
 Arlington, Virginia 22203
 Phone: (703) 358-1883 FAX: (703)358-2282
 E-mail: david_k_weaver@fws.gov

USFWS Contracting Officer:
 U.S. Fish and Wildlife Service
 Attn: Nedra A. Stallone
 Contracting and General Services
 4401 N. Fairfax Drive, Suite 212
 Arlington, Virginia 22203
 Phone: (703) 358-1728 FAX: (703)358-1875
 E-mail: nedra_stallone@fws.gov

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The USFWS Program Officer is responsible for administering performance under this Agreement. However, no understanding, agreement, modification, change order, or other matter deviating from the terms of this Agreement is effective or binding upon the Government unless supported by documentation executed by the USFWS Contracting Officer unless otherwise indicated in Section XIV. The Recipient must inform the Contracting Officer of any actions or inactions by either party to this Agreement that will change the required completion times stated in the Agreement.

XI. SPECIAL PROVISIONS APPLICABLE TO ALL PROPOSALS

- G. **Equipment:** In managing and disposing of equipment acquired in whole or in part under this Agreement, Recipients and subrecipients that are State, local, and Tribal governments must comply with 43 CFR 12.72 and institutions of higher learning, other nonprofit organizations, and commercial organizations must comply with 43 CFR 12.934. Key provisions on the use and disposal of equipment are presented below.

Equipment means tangible personal property (including all pumps and their power units) having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Title to all equipment acquired for the Project will vest in the Recipient or subrecipient. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other recipients and subrecipients will follow the provisions of Section XI.A. for the use, management, and disposal of equipment purchased with NAWCF or matching dollars or received as a matching in-kind donation.

The Recipient or subrecipient must use the equipment acquired for the Project as long as needed, whether or not the Project continues to be supported by Federal funds. While the equipment is used for the Project, the Recipient or subrecipient must make it available for use on other projects or programs if such other use will not interfere with the work on the project for which the equipment was originally acquired. The Recipient or subrecipient must give first preference for such other use to other projects or programs sponsored by the Department of the Interior and second preference to projects and programs sponsored by other Federal agencies.

The Recipient must make a physical inventory of equipment at least once every two years and reconcile the results with the equipment records. The Recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment. The Recipient must ensure that adequate maintenance procedures are implemented to keep the equipment in good condition.

When acquiring replacement equipment, the Recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to USFWS's approval. In some cases, a Recipient may no longer need, for the purposes of the Project, any original or replacement equipment acquired with NAWCF or matching funds or received as a matching in-kind donation. The Recipient must request disposition instructions from the USFWS Program Officer, who will determine whether the equipment can be used to meet the requirements of a Project or program authorized for support by the United States Department of the Interior. If no such requirement exists, the USFWS Program Officer will report the availability of the equipment to the General Services Administration, which will determine whether a requirement for the equipment exists in other Federal agencies. If a Federal agency does not need the equipment and it has a current per-unit fair market value of less than \$5,000, the Recipient may retain, sell, or otherwise dispose of it with no further obligation to USFWS. If such equipment has a current per-unit fair market value of more than \$5,000, the USFWS Program Officer will issue instructions to the Recipient no later than 120 calendar days after the Recipients's request. These instructions may include:

- ship or otherwise transfer the equipment to the Federal government or to an eligible third party;
(USFWS must reimburse the Recipient or subrecipient by an amount which is computed by applying the percentage of the Recipient's participation in the cost of the original project to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.)
- sell the equipment providing for competition to the extent practicable with the highest possible return;
(If USFWS instructs the Recipient or subrecipient to sell the equipment or if USFWS does not issue disposition instructions within 120 calendar days after the request, the Recipient or subrecipient must sell the equipment and reimburse the USFWS an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project. However the Recipient or subrecipient will be permitted to deduct and retain from the Federal share \$500 or 10 percent of the proceeds, whichever is less, for the Recipient's selling and handling expenses.)
- otherwise dispose of the equipment.
(USFWS will reimburse the Recipient for any cost incurred in disposition.)

- H. Supplies and Other Expendable Property: The provisions of this section will apply to all supplies and other expendable property purchased with NAWCF or matching dollars or received as a matching in-kind donation. Title to such supplies and other expendable property will vest in the recipient or subrecipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the Project and the supplies are not needed for any other federally sponsored project or program, the recipient will retain the supplies for use on non-federally sponsored activities or sell them, but must, in either case, compensate the Federal government for its share. The amount of compensation must be computed in the same manner as presented in Section XI.A. for equipment
- C. Information Releases: News releases or other information on the Project published or released for publication by the Recipient or subrecipients must acknowledge that funding was made possible through NAWCA. The Recipient must send two copies of any publication on the Project, its accomplishments, or data obtained on the Project to the Natural Resources Library with a transmittal that identifies the sender and the publication. The address is:
 U.S. Department of the Interior, Natural Resources Library
 Div. of Information & Library, Services, Gifts & Exchanges Section
 1849 C Street, NW, Washington, DC 20240
 The Recipient agrees to include the above provision of Section XI.C. in any subaward.
- D. Government Right to Publish and Use Data: Unless waived by USFWS, the Federal Government has the right to:
 (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
 (2) Authorize others to receive, reproduce, publish, or otherwise use the data for Federal purposes.
- E. Buy American: 43 CFR part 12, requires USFWS to provide the following notice to each recipient:
 Pursuant to sec. 307 of the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, 110 Stat. 3009, as adopted in subsequent Appropriations Acts, please be advised of the following: In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

XII. SPECIAL PROVISIONS APPLICABLE TO HABITAT RESTORATION & ENHANCEMENT

- A. Management for Project Purpose: The Recipient must ensure that any habitat restored, enhanced, and/or created in this Project is managed for the purposes for which it was intended in the Project. If the Recipient or subrecipient does not ensure that such habitat is managed for the Project purpose in whole or in part, it agrees to pay USFWS for that percentage of the current fair market value of the original habitat restoration, enhancement, or creation attributable to the Federal participation in the Project. A Recipient or subrecipient must determine the current fair market value by obtaining at the Recipient's or subrecipient's expense an appraisal completed according to nationally recognized appraisal standards and subject to USFWS's review and approval.
- B. Inspection: The Recipient must ensure that the owner of any habitat restored, enhanced, or created in the Project (including such work completed with matching funds or as a matching in-kind contribution) must be willing to work with the USFWS Program Officer to develop a cooperative site-inspection schedule to ensure that such habitat is managed for the purposes for which it was intended in the Project. Section XII. of this Agreement will be in force for 25 years from the end of the Project period unless limited by easements, leases, other legal instruments, or special considerations described in the Proposal or approved by the USFWS Program Officer.

XIII. SPECIAL PROVISIONS APPLICABLE TO REAL PROPERTY ACQUISITION

- A. Acquisition of Interest in Real Property: This section applies to interests in real property purchased or leased with NAWCF or matching dollars or committed to the Project as matching in-kind donations unless otherwise indicated.
1. Notice to Owner and Appraisals: As soon as feasible, a Recipient or subrecipient intending to acquire an interest in real property must notify the owner of its interest in acquiring the interest in real property. The Recipient or subrecipient must also notify the owner of the basic protections provided to the owner by law including the Recipient's or subrecipient's obligation to secure an appraisal. However, if the acquisition qualifies for an exception or waiver under Section XIII.A.6., such notices are not required.

The Recipient or subrecipient must secure appraisals for all interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations unless exempt from such requirement as indicated below. The Recipient or subrecipient must pay for the appraisal unless the landowner releases the Recipient or subrecipient from such obligation. Appraisals of interests in real property purchased or committed to the Project after the USFWS Contracting Officer signs the Agreement must comply with the most recent version of the Uniform Appraisal Standards for Federal Land Acquisition

(UASFLA) (Interagency Land Acquisition Conference, Washington, D.C., 1992, as subsequently revised or clarified). The period between the date of value of an appraisal and the date of issuance or reissuance of any Summary Statement of Just Compensation must not exceed one year. (See Section XIII.A.3.) The period between the date of value of any appraisal and the date that an owner commits the land to the Project as a matching in-kind donation also must not exceed one year.

The Recipient must ensure that the USFWS Program Officer receives a copy of each appraisal's summary page(s) and signature page or documentation that it is exempt from this requirement. The summary page(s) must include the appraised fair market value. The USFWS Program Officer must receive these copies:

- when the Recipient requests payment for the purchase from NAWCF; and
- as soon as feasible during the Project period for real property purchased with matching funds or committed as a matching in-kind donation.

The following acquisitions are exempt from the requirement for an appraisal:

- less-than-permanent easements;
- leases for 50 years or less including option(s) for extension;
- uncomplicated valuation problems where the fair market value is estimated at \$2,500 or less, based on a review of available data;
- a purchase of an interest in real property with NAWCF or matching funds for which all or part of the purchase price was incurred before the USFWS Contracting Officer signed the grant agreement; *[In such cases, the Recipient must provide the USFWS Program Officer with other documentation supporting the fair market value donation.]*
- a matching in-kind donation of an interest in real property that is committed to a Project before the USFWS Contracting Officer signs the grant agreement if a State, local, or Tribal government will hold title to the interest; *[In such cases, the State, local, or Tribal government Recipient must provide the USFWS Program Officer with other documentation supporting the fair market value of the matching in-kind donation]*
- an acquisition that qualifies for an exception or waiver under Section XIII.A.6. *[However, if a matching in-kind donation of an interest in real property is committed to a Project and an institution of higher education, other nonprofit organization, or a commercial organization will hold title to the interest, it will require an appraisal of the fair market value at the time of donation regardless of the exception or waiver and regardless of when the commitment was made or accepted.]*

2. Appraisal Reviews: The Recipient must obtain an appraisal review for all appraisals of interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations unless exempt as indicated below. The Recipient must request the appraisal review from a USFWS reviewing appraiser unless the Regional USFWS Realty Office delegates the responsibility to another Federal agency or to a State or Tribal agency or approves the use of a private reviewing appraiser. Such approvals must be obtained through the Joint Venture Coordinator responsible for the Project Area, or his or her designee. *[Alaska Recipients for projects outside all Joint Ventures' areas of responsibility must obtain approvals directly from the Division of Realty in the Anchorage Regional Office.]* The USFWS Program Officer, at his or her option, may obtain an appraisal review directly from a USFWS reviewing appraiser of any appraisal that has not been reviewed by a USFWS reviewing appraiser. A USFWS review appraisal will take precedence over a private appraisal review for the purpose of determining an appraisal's acceptability.

To obtain reviews by USFWS reviewing appraisers, the Recipient must send the appraisal to the Joint Venture Coordinator responsible for the Project Area or his or her designee. *[Alaska Recipients for projects outside all Joint Ventures' areas of responsibility must send appraisals directly to the Division of Realty in the Anchorage Regional Office.]* The Recipient must indicate whether the appraisal is for an interest in real property: (a) purchased with NAWCF funds, (b) purchased with matching funds, or (c) received as a matching in-kind donation. The Joint Venture Coordinator, or his or her designee, will then deliver it to the USFWS Realty Office or its designee with enough lead time for the reviewing appraiser to review it and resolve any problems. This will generally be three months before the anticipated date of purchase or three months before the anticipated date of requesting payment from USFWS for acquisition costs, whichever comes first. The reviewing appraiser must approve or recommend approval of each appraisal required under Section XIII.A.1. as an adequate basis for an offer of just compensation. The reviewing appraiser may request the Recipient or subrecipient to obtain a second appraisal if the reviewing appraiser finds the first appraisal to be technically insufficient.

Recipients and subrecipients must not use NAWCF or matching dollars to pay landowners any more than the valuation of the interest in real property as determined in an approved appraisal. Recipients and subrecipients also must not propose or accept as match any valuation of an in-kind donation of real property that is above the approved appraisal.

The Recipient must send a copy of the appraisal review to the USFWS Program Officer or documentation that it is exempt

from this requirement:

- when the Recipient requests payment for the purchase from NAWCF;
- as soon as feasible during the Project period for real property purchased with matching funds or received as a matching in-kind donation.

The following acquisitions with NAWCF or matching dollars are exempt from the requirement for an appraisal review:

- an acquisition for which an appraisal is not required under Section XIII.A.1.;
- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

3. Summary Statement of Just Compensation: The Recipient must give landowners a Summary Statement of Just Compensation for all interests in real property to be purchased with NAWCF or matching dollars unless exempt as indicated below. The Recipient or subrecipient intending to acquire an interest in real property must establish an amount that it believes to be just compensation. The Recipient or subrecipient must do this before delivery of the initial written offer to the owner or the owner's representative to purchase an interest in real property for the Project with NAWCF or matching funds. The amount must equal the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The Recipient or subrecipient must promptly make a written offer to the owner to acquire the property for the full amount believed to be the just compensation.

The owner must be given a written statement of the basis for the offer of just compensation along with the initial written purchase offer. The statement must include:

- the amount offered as just compensation; *[For a partial acquisition, the compensation for the real property to be acquired and the compensation for any damages to the remaining real property must be separately stated.]*
- description and location identification of the real property and the interest in real property to be acquired;
- identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) that are considered to be part of the real property for which the offer of just compensation is made; and *[See Section IX.F.]*
- the statement must identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

The Recipient or subrecipient must have the appraisal(s) updated or obtain a new appraisal(s):

- if the information presented by the owner indicates a need for new appraisal information;
- if a material change in the character or condition of the property indicates a need for new appraisal information; or
- if more than one year has elapsed since the date of value of the appraisal and the date of issuance (or any reissuance) of the Summary Statement of Just Compensation except in rapidly changing real estate markets where the USFWS Program Officer may determine that a shorter interval is significant.

If the latest appraisal information indicates that a change in the purchase offer is warranted, the Recipient or subrecipient must promptly reestablish just compensation and offer that amount to the owner in writing.

The Recipient must provide the USFWS Program Officer with a copy of the Summary Statement of Just Compensation or documentation that it is exempt from this requirement:

- when the Recipient requests payment for the purchase from NAWCF; and
- as soon as feasible in the Project period for real property purchased with matching funds.

The following acquisitions with NAWCF or matching dollars are exempt from the requirement for a Summary Statement of Just Compensation:

- an acquisition for which an appraisal is not required under Section XIII.A.1.;
- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

4. Relocation Assistance: A landowner and/or a tenant may be eligible for relocation assistance when a Recipient or subrecipient acquires an interest in real property with NAWCF or matching dollars or receives an interest in real property as a matching in-kind donation. Some of the potentially eligible expenses under certain conditions may include, but are not limited to: transportation of personal property (including livestock), storage of personal property for up to 12 months, direct loss of tangible personal property as a result of discontinuing a farm operation, searching for a replacement location, and purchase of substitute personal property. The Recipient or subrecipients must provide eligible landowners or tenants with relocation assistance unless exempt as indicated below.

The Recipient must request the assistance of a USFWS Realty specialist if a landowner or tenant must move from the real property or move his or her personal property from the real property as a result of a Project. The Recipient should contact the Joint Venture Coordinator responsible for the Project area. The Joint Venture Coordinator will contact a Realty specialist in the appropriate USFWS administrative region for the Project. *[Recipients for Alaska projects outside all Joint Ventures' areas of responsibility must contact the Division of Realty in the Alaska Regional Office directly.]*

The Recipient must provide written confirmation to the USFWS Program Officer that it and its subrecipients have complied with relocation assistance obligations (if any) or documentation that it is exempt from this requirement:

- when the Recipient requests reimbursement from NAWCF for the purchase of an interest in real property; or
- as soon as feasible during the Project period after the Recipient acquires the interest in real property when the Recipient is requesting an advance of funds (instead of a reimbursement) for the purchase of the real property, or is using matching funds for the purchase, or where the relocation benefits cannot be determined or paid until after the purchase.

The following acquisitions with NAWCF or matching dollars are exempt from relocation assistance obligations:

- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement. *[The exceptions under Section XIII.A.6. are not possible for relocation assistance due a tenant.]*

5. Expenses Incidental to Transfer of Title: Unless exempt as indicated below, the Recipient or subrecipients must pay the owner of the real property for all reasonable expenses the owner necessarily incurred for:
- recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Recipient or subrecipient *(The Recipient or subrecipient is not required to pay costs solely required to perfect the owner's title to the real property.);*
 - penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
 - the pro rata portion of any prepaid real property taxes which are allocable to the period after the agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Recipient or subrecipient must pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Recipient or subrecipient.

The following acquisitions with NAWCF or matching dollars are exempt from the requirement that the Recipient or subrecipients pay expenses incidental to transfer of title:

- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

6. Exceptions and Waivers: Some recipients and subrecipients may qualify for an exception to the requirements for appraisals, appraisal reviews, expenses incidental to transfer of title, just compensation, and relocation assistance to a landowner (but not to a tenant) if the transaction is voluntary and under certain conditions. The following two conditions are required of all recipients and subrecipients seeking an exception:

- (a) The Recipient or subrecipient must clearly advise the owner in writing prior to making an offer for the property that it is unable to acquire the property if negotiations fail to result in an amicable agreement.
- (b) The Recipient or subrecipient must clearly inform the owner in writing of what it believes to be the fair market value of the property. This value must be adequately supported in the Recipient's or subrecipient's file and copies of the file documentation must be acceptable to the USFWS Program Officer. It may consist of: (i) recent sale prices of specific identified comparable properties, (ii) the assessed value with documentation of how the assessed value is determined including its relationship to the fair market value, (iii) or other similar factual data. Such evidence in support of the fair market value must not be more than one year old unless the Recipient or subrecipient provides a justification acceptable to the USFWS Program Officer. An appraisal is not required if the acquisition qualifies for an exception. However, if the Recipient or subrecipient obtains an appraisal (even though it is not required) it must be used as the determinant of fair market value unless the Recipient can conclusively demonstrate that it is not accurate. Once the Recipient or subrecipient informs the owner in writing of what it believes to be the fair market value of the property, the owner may donate all or any lesser portion of the property's value to the Recipient or subrecipient. The Recipient's or subrecipient's records must contain a written document from the donor which confirms that the owner is donating a specific amount of the real property's fair market value.

The following additional conditions are required for a recipient or subrecipient that has eminent domain authority and is seeking an exception:

- No specific site or property needs to be acquired, although the Recipient or subrecipient may limit its search for alternative sites to a general geographic area. All owners are to be treated similarly where a Recipient or subrecipient wishes to purchase more than one site within a geographic area on this basis.
- The property to be acquired is not part of an intended, planned, or designated Project area where all or substantially all of the property within the area is to be acquired within specific time limits.

A Recipient or subrecipient seeking to qualify for an exception must provide the USFWS Program Officer with:

- a copy of the written communications that demonstrate compliance with the first two conditions listed above;
- documentation that supports the value of the interest in real property that the Recipient or subrecipient communicated to the landowner(s) as the fair market value of the property; and
- a copy of any document from a landowner(s) which confirms that the owner is donating a specific amount of the real property's fair market value.

Recipients may request that the USFWS Program Officer grant a waiver from the requirements on appraisals, appraisal reviews, offers of just compensation, expenses incidental to transfer of title, and relocation assistance. To qualify for a waiver, the Recipient or subrecipient must provide a signed statement from the landowner (or tenant) whose property is being acquired. This written statement must confirm the following:

- (a) The landowner or tenant understands the assistance or protections provided under 49 CFR, part 24, that pertain to the subject of the waiver request. For waiver requests relating to relocation benefits, the written statement must also confirm that a USFWS Realty Specialist interviewed the landowner or tenant to explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.
- (b) The requested waiver would not reduce any assistance or protection provided to the landowner or any tenant in 49 CFR, part 24.

7. Closing Statement: A closing statement is a written breakdown of the costs involved in the purchase of an interest in real property. It is usually prepared by a broker, escrow officer, lender, or attorney, showing all cash received, all charges and credits made, and all cash paid out. It may also be called a "settlement statement" or "adjustment sheet." Unless exempt as indicated below, the Recipient must send the USFWS Program Officer the closing statement:

- when it requests reimbursement for the purchase of an interest in real property;
- no later than 90 days after closing if the Recipient requested an advance of funds for the purchase of an interest in real property or used only matching funds or other funds that are not reimbursable from the NAWCF.

The following acquisitions are exempt from the requirement that the Recipient or subrecipients submit a closing statement:

- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

8. Title: The Recipient must ensure that title to any interest in real property purchased or donated for the Project is recorded in fee simple, free and clear of all easements, reservations, exceptions, restrictions, and encumbrances unless:

- the Proposal indicates that an easement or lease will be acquired instead of fee title;
- the Proposal indicates that the title to the interest in real property is, or will be, subject to easements, reservations, exceptions, restrictions, and encumbrances and these are specified in the proposal; or
- the USFWS Program Officer determines that any existing or newly recorded easements, reservations, exceptions, restrictions, and encumbrances do not jeopardize the purposes for which the land was purchased or donated for the Project.

The Recipient must send the USFWS Program Officer the following as soon as it is feasible to do so during the project period:

- a copy of the recorded deeds or other instruments conveying title to all interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations; and
- copies of any Notice of Grant [or Cooperative] Agreement recorded pursuant to Section XIII.B.2.

B. Long-term Conservation: The Recipient must ensure that any interest in real property purchased or contributed as a matching in-kind donation for the Project is managed:

- to achieve the purpose(s) of the Project as stated in the Proposal and Section IV. of this Agreement;
- consistent with any management plan, objectives, goals, or descriptions of desired habitat stated in the Proposal; and
- for the long-term conservation and management of the affected wetland ecosystem and the fish and wildlife dependent thereon.

1. Federal, State, or Tribal Land Management Systems: In some projects, an interest in real property purchased or contributed for the project is included in a Federal, State, or Tribal system of lands managed for long-term conservation. In such projects, the Recipient must send the USFWS Program Officer copies of any statutes or other legal instruments that established and otherwise govern the system. The Recipient must send the USFWS Program Officer these items as soon as it is feasible to do so during the Project period. If, in the USFWS Program Officer's opinion, the applicable statutes or other instruments do not ensure that the interest in real property will be administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon, a recorded Notice of Grant [or Cooperative] Agreement as described in Section XIII.B.2. is required.

2. Notice of Grant [or Cooperative] Agreement: In some projects, an interest in real property acquired, in whole or in part, with grant or matching funds or as an in-kind matching donation will not be included in a Federal, State, or Tribal land management system managed for long-term conservation. This interest in real property may be either fee title, permanent easements, or leases where the lease term is 50 years or more including options for extension. For such interests in real property, Recipient or subrecipient titleholders must record a Notice of Grant [or Cooperative] Agreement in the local government office set up for that purpose, e.g., County Recorder or Registrar of Deeds. The Notice of Grant [or Cooperative] Agreement must:

- identify the interest in real property to which the Notice of Grant [or Cooperative] Agreement applies and attach a description;
- identify the name and address of the grant recipient or subrecipient;
- reference the grant agreement and the address where it is kept on file;
- state the purpose of the Project;
- state that the grant recipient or subrecipient titleholder confirms its obligation to manage the interest in real property pursuant to the grant agreement, its incorporated project proposal, and the purpose of the Project unless the USFWS relieves it of that responsibility; and
- state that the grant recipient or subrecipient titleholder will not convey or encumber the interest in real property, in whole or in part, to another party without USFWS's consent.

The Notice of Grant [or Cooperative] Agreement does not give any property rights to the USFWS. It merely provides a public record of the contractual obligations of the Recipient or subrecipient. These contractual obligations do not apply to any other individuals or entities that may own part of the property rights on the parcel of real property described in the Notice of Grant [or Cooperative] Agreement. In lieu of a Notice of Grant [or Cooperative] Agreement, the Recipient or subrecipient may include the required elements of a Notice of Grant [or Cooperative] Agreement in the terms of any recorded easement, deed, or lease in which the Recipient or subrecipient acquires an interest in real property for the purposes of the Project.

C. Real Property Disposal: Title to an interest in real property shall vest in the Recipient or subrecipient subject to the condition that the Recipient must use the interest in real property for the Project's authorized purpose as long as it is needed. The USFWS will be the final arbiter of when an interest in real property will be no longer needed for the Project's authorized purpose. The Recipient or subrecipient may not:

- encumber the interest in real property without the approval of USFWS or its successor;
- dispose of or cease administering the interest in real property for its authorized purpose without requesting the approval of USFWS or its successor or without requesting disposition instructions from USFWS or its successor as explained below.

1. Authorized Conveyance: In some cases, a Recipient or subrecipient will determine during or after the Project period that:

- it is no longer able or willing to retain title to or administer an interest in real property acquired in this Project for the Project's authorized purpose; or
- the interest in real property acquired in this Project is no longer needed for the Project's authorized purpose.

If such a Recipient or subrecipient is a State, local, or Tribal government, it must request disposition instructions from USFWS or its successor. USFWS will give (at its option) one or more of the following three instructions:

- (a) Retain title without further obligation to the Federal government after it compensates USFWS for that percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project.
- (b) Sell the interest in real property under guidelines provided by USFWS and pay USFWS for that percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project (after deducting actual and reasonable selling or fix-up expenses, if any, from the sales proceeds). When USFWS authorizes or requires the Recipient or subrecipient to sell the interest in real property, the Recipient or subrecipient must establish proper sales procedures that provide for competition to the extent practicable and result in the highest possible return.
- (c) Transfer title to the interest in real property to the Federal Government or to an eligible third party provided that,

in such cases, the Recipient or subrecipient shall be entitled to compensation for its attributable percentage of the current fair market value of the interest in real property. (USFWS or its successor will direct the Recipient or subrecipient to transfer the interest in real property to a specific Federal, State, or Tribal agency for long-term conservation if such transfer was specified in the Proposal. The Recipient or subrecipient, at its option, may waive its right to compensation on any transfer of an interest in real property that is directed by USFWS.)

If such a Recipient or subrecipient is an institution of higher education, other nonprofit organization, or a commercial organization, it must first obtain USFWS's written approval for the use of the interest in real property in other federally sponsored projects. Use in other projects shall be limited to those under federally sponsored projects that have purposes consistent with those authorized for support by the United States Department of the Interior. If use in other federally sponsored projects is not possible or appropriate, the Recipient or subrecipient institution of higher education, other nonprofit organization, or commercial organization it must request disposition instructions from USFWS or its successor. USFWS will give (at its option) one or more of instructions (a) through (c) as listed above.

2. Unauthorized Conveyance or Administration Inconsistent with Project Purpose: The Recipient agrees to be bound by the alternative for redress that USFWS chooses from those listed below if the Recipient or its subrecipient:
- sells, transfers, encumbers, pledges as security or collateral for a debt, or otherwise disposes of any interest in real property acquired in whole or in part with NAWCF or matching funds or as a matching in-kind donation without the permission of USFWS; or
 - ceases administering the interest in real property interest in whole or in part for the authorized purpose of this Project in the opinion of USFWS and without USFWS's approval.

The following are alternatives for redress for (i) an unauthorized conveyance of an interest in real property or (ii) administration of an interest in real property in a manner inconsistent with the Project Purpose:

- (a) USFWS may direct a Recipient or subrecipient to convey to the USFWS or its designee an interest in real property that has a value equal to the percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project and that will serve the same purpose of long-term conservation and management of the affected wetland ecosystem and the fish and wildlife dependent thereon.
- (b) USFWS may direct a Recipient or subrecipient to pay USFWS that percentage of the fair market value of the interest in real property attributable to the Federal participation in the Project.

In the case of alternatives (a) and (b) above, the USFWS, at its option, may require the Recipient or subrecipient to obtain at the Recipient's or subrecipient's expense an appraisal conforming to the most recent version of the Uniform Appraisal Standards of Federal Land Acquisition or their equivalent. A USFWS or other Federal reviewing appraiser must review and approve the appraisal before the amount of compensation is established.

3. Duration of Authorized and Unauthorized Conveyance Provisions: Sections XIII.C.1. & 2. of this Agreement will be in force in perpetuity for any interest in real property purchased with NAWCF or matching dollars or received as a matching in-kind donation unless limited to shorter periods by less-than-perpetual easements, leases, or other legal instruments. Any exception to the application of Section XIII.C. in perpetuity must be supported by the Proposal or the written permission of the USFWS Program Officer.

XIV. MODIFICATIONS The Recipient must request prior written approval of the USFWS Program Officer and, only where indicated parenthetically below, the prior approval of the USFWS Contracting Officer for any change of a provision of this Agreement and any of the following changes of the Proposal:

- changes in the scope and objective of the Project (regardless of whether there is an associated budget revision requiring prior approval) including but not necessarily limited to, changes in the Project Purpose (USFWS Contracting Officer), extension of the Project period except as provided below (USFWS Contracting Officer), changes in the Project area, a change in the proposed titleholder of any interests in real property purchased or donated for the Project, a cumulative decrease of any acreage category or subcategory in the responses to Technical Assessment Questions 4 and 5 of the Proposal (USFWS Contracting Officer), and changes in the matching contributions;
- a change of the Recipient's Project Officer;
- the transfer of amounts budgeted for the direct costs of Acquisition, Restoration, or Enhancement to indirect costs, administrative overhead, or its equivalent (USFWS Contracting Officer);
- the inclusion of costs that are not allowed in accordance with the Federal Cost Principles (USFWS Contracting Officer) or the policy of the NAWCA Grants Program;
- the inclusion of costs that require prior approval in accordance with the applicable Federal Cost Principles, including (i) changes in the specific parcels or interests in real property to be acquired, and (ii) identification of the specific parcels or interests in real property to be acquired for projects where such parcels or interests were not identified in the original proposal.

The Recipient must send all requests for prior approval to the USFWS Program Officer at least 30 days in advance of the desired implementation. When the concurrence of the USFWS Contracting Officer is required, the USFWS Program Officer will make a recommendation to the Contracting Officer who will make the final determination and notify the Recipient in writing. The Recipient must include a narrative justification with any request for changes in the Agreement or Proposal. A request for prior approval of any budget revision must be accompanied by a revised budget table in the same format as in the original Proposal. Any proposal for changes in parcels of real property to be acquired will require a determination by the Secretary of the Interior that the interests in real property should not be included in the National Wildlife Refuge System as required by Section 6 of NAWCA. Neither the USFWS Contracting or Program Officer has the authority to increase the Federal funding awarded to this Project.

Recipients may initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the conditions listed below apply. For one-time extensions, the Recipient must notify the USFWS Project Officer in writing, with the supporting reasons and revised expiration date, at least 10 days before the expiration date, specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. The conditions that prevent issuance of a one-time extension are:

- the extension requires additional Federal funds; or
- the extension involves any change in the approved objectives, scope, or purpose of the Project.

Any extension after this one-time Recipient-initiated extension will require the USFWS Contracting Officer's prior written approval.

Except as required or authorized above, USFWS waives all other cost-related or administrative prior approvals authorized in 43 CFR 12.70 and 43 CFR 12.925. In addition to the above potential modifications of the grant agreement, the Recipient may request that the USFWS Program Officer and Contracting Officer grant, in unusual situations, an exception to any requirement of the grant agreement that is derived from the Federal grant regulations in 43 CFR, part 12. The need for such exceptions must be convincingly demonstrated in an accompanying narrative justification. The USFWS Program and Contracting Officers will only approve such exceptions on a case-by-case basis and when the request is supported by a persuasive justification. To ensure that consistent criteria are applied to all subsequent requests for exceptions and modifications, the USFWS Program Officer must develop decision criteria before approving or disapproving any request.

The USFWS requires written confirmation from USFWS Regional Offices that NAWCA projects are in compliance with the National Environmental Policy Act of 1969 (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) before the USFWS Contracting Officer signs the grant agreement. USFWS also requires that Regional Offices submit, before the USFWS Contracting Officer signs the grant agreement, documentation that a contaminants survey has been completed for any interest in real property acquired with NAWCF or matching dollars or donated as a matching in-kind donation if the USFWS will be the owner. After the USFWS Contracting Officer signs the grant agreement, the Recipient may: (a) propose a change in a parcel or interest in real property to be acquired; (b) propose a change in the location or boundaries of the habitat to be restored, enhanced, or created; or (c) identify a specific parcel or interest in real property to be acquired for projects where such parcels or interests were not identified in the original proposal. In response to such a proposal or identification, the USFWS Program Officer will review the previous Regional Office confirmation of compliance with NEPA or NHPA and its documentation of a contaminants survey. If indicated by this review, the USFWS Program Officer will request from the USFWS Regional Office a new or supplemental confirmation of compliance with NEPA or NHPA and, if applicable, documentation of a contaminants survey specific to the newly proposed or identified parcel or interest in real property or to the new location or boundaries of the habitat to be restored, enhanced or created. The Recipient may have to bear any costs associated with obtaining such new or supplemental confirmation or documentation from USFWS Regional Offices.

Pursuant to Section 6 of NAWCA and before the USFWS Contracting Officer signs the grant agreement, the USFWS requests confirmation from the USFWS Divisions of Refuges and Realty and the appropriate Regional Office that all interests in real property proposed for acquisition in a NAWCA proposal should not be included in the National Wildlife Refuge System. If the Recipient proposes a change in a parcel or interest in real property to be acquired, or if it identifies a specific parcel or interest in real property to be acquired for projects where such parcels or interests were not identified in the original proposal, the USFWS Program Officer will review the previous USFWS Regional Office confirmation. If indicated by this review, the USFWS Program Officer will request from the Regional Office a new or supplemental confirmation that the newly proposed or identified parcel or interest in real property should not be included in the National Wildlife Refuge System.

XV. TERMINATION USFWS may terminate this award in whole or in part if a Recipient materially fails to comply with the terms and conditions of an award. The USFWS may also terminate this award with the consent of the Recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Recipient may terminate the award upon sending to USFWS 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 USFWS determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety. Since encouraging partnerships is part of the purpose of NAWCA, USFWS may terminate the award in its entirety if a partial termination will reduce the ratio of Partners' matching commitments to NAWCF funds. In any termination of an award, USFWS must consider the Recipient's responsibilities for property management (if any) and to submit financial, performance, and other reports required by this Agreement.

XVI. AUDIT REQUIREMENTS Recipients that expend \$300,000 or more in a year in Federal awards must have a single or program-specific audit conducted for that year in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" (<http://www.whitehouse.gov/OMB/grants/index.html>).

XVII. GENERAL PROVISIONS General provisions applicable to this Agreement are in 43 CFR, part 12, entitled, "Administrative and Audit Requirements and Cost Principles for Assistance Programs." General provisions for acquisition of interests in real property and relocation assistance are in 49 CFR, part 24, entitled "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs." These regulations are available at <http://www.nara.gov/nara/cfr/index.html> and are incorporated by reference.

XVIII. CERTIFICATIONS AND ASSURANCES Certifications and Assurances applicable to Federal Grant and Cooperative Agreements executed by the Recipient are a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

DUCKS UNLIMITED, INC.



Signature

JAMES L. WARE

Typed or Printed Name

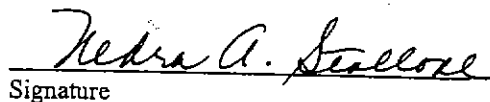
SENIOR GROUP MANAGER

Title

Date

4/19/01

U.S. FISH & WILDLIFE SERVICE



Signature

Nedra A. Stallone

Typed or Printed Name

Contracting Officer

Title

Date

5-4-01

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EXHIBIT C
CERTIFICATIONS AND ASSURANCES

Cooperator agrees to enter into and be bound by the following Certifications and Assurances:

- A. **Nondiscrimination.**
The Cooperator agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq.; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.; Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq.

- B. **Debarment and Suspension.**
The Cooperator certifies to the best of its knowledge and belief that it is not presently debarred, suspended, or proposed for debarment or declared ineligible for the award of subawards, by any federal agency, in accordance with OMB guidelines.

- C. **Certification of Non-Delinquency on Federal Debt.**
The Cooperator certifies that it is in compliance with the Non-Delinquency on Federal Debt criteria, in accordance with OMB-129.

- D. **Certification of Drug-Free Workplace.**
The Cooperator certifies that it has implemented appropriate policy in accordance with Drug-Free Workplace Act of 1988, 45 C.F.R. Part 76, Subpart F.

- E. **Certification Regarding Lobbying.**
The Cooperator certifies to the best of its knowledge and belief that no Federally appropriated funds have been paid or will be paid, by or on behalf of the Cooperator, to any person for influencing or attempting to influence a Federal officer or Federal employee of any agency in connection with the awarding of any Federal award. (Section 1352, Title 31, 45 U.S. Code.)

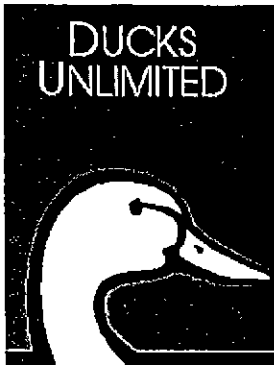
**METROPOLITAN SERVICE DISTRICT
OF OREGON**

By: _____
Signature

Title: _____

Date: _____

EXHIBIT C
RESOLUTION NO. 02-3235



DUCKS UNLIMITED, INC.

METROPOLITAN SERVICE DISTRICT OF OREGON

SITE SPECIFIC AGREEMENT

Project Name: GOTTER RESTORATION

Project Number: US-OR-119-1

This Site Specific Agreement ("Agreement") is effective this ____ day of _____, 2002 between Ducks Unlimited, Inc. (hereinafter referred to as "DU") and Metropolitan Service District of Oregon (hereinafter referred to as "Cooperator").

I. PURPOSE

DU and the Cooperator have entered into this Agreement to help facilitate the Cooperator's development of their property (hereinafter referred to as "Site") as described in the Proposed Project attached as Exhibit A (hereinafter referred to as "Project"). This Project is funded pursuant to North American Wetlands Conservation Act Grant Agreement No. 98210-1-G812 (hereinafter referred to as "Grant") between DU and the U.S. Fish and Wildlife Service (hereinafter referred to as "FWS"). The purpose of the Grant is to protect, restore, and enhance important wetland ecosystems in the Willamette Valley Ecoregion. The Grant is incorporated into this Agreement by this reference (attached as Exhibit B).

II. SCOPE OF THE AGREEMENT

In consideration of the above and the Terms and Conditions listed below, DU and the Cooperator agree to undertake the development of the Project on the Site as follows:

A. DU agrees to:

1. Provide funding not to exceed Fifty Thousand Dollars (\$50,000) in cash or in-kind services or Seventeen and Seven Tenths Percent (17.7%) of the total Project cost, whichever is less and pending availability, for phase I of the Project for the funding of DU's obligations under this Section A.1. In-kind services completed by DU may include: biological planning, survey, design, construction management and indirect costs.
2. Serve as Grantee of the Grant, make application for reimbursement under the Grant and receive Grant funds in an amount of Forty Five Thousand Dollars (\$45,000) to fund DU's funding obligation in Section II.A.1 of this Agreement.
3. Seek an additional Fifteen Thousand Dollars (\$15,000) or Five and Three Tenths Percent (5.3%), of the total project costs, whichever is less, for phase II of this Project from the U.S. Fish and Wildlife Service (hereinafter referred to "USFWS"). A copy of the agreement will be provided to Cooperator upon request. If the additional funds are not secured from Agency, either the Cooperator or DU may terminate the Agreement.
4. Subject to adequate funding, reimbursement of costs of development of that portion of the site where phase I of the Project will be completed.
5. Commence the construction of phase I of the Project in 2002. Should construction of phase I of the Project not commence during 2002 for reasons beyond the control of the parties including, but not limited to, the failure to timely obtain required permits, agreements, leases, approvals, and access rights necessary for the development of the Project, the parties will commence the construction of the Project in a mutually acceptable future year. The parties recognize the construction of the Project cannot be accomplished unless all required permits are granted.
6. Obtain the topographical, soils, and hydrological data required to design the Project; prepare Site development plans and specifications for phase I of the Project; and submit same to Cooperator for review and mutual approval.

B. Cooperator agrees to:

1. Provide funding, for the development of phase II of the Project in the amount not to exceed Nine Thousand Six Hundred Dollars and 00/100 (\$9,600) or Three and Four Tenths Percent (3.4%) of the total project costs, of in-kind services, whichever is less.
2. Construct, or cause to be constructed, phase I of the Project, subject to the terms and conditions of this Agreement, in substantial compliance with the Site development plans and specifications developed pursuant to Section II.A.6. of this Agreement including hiring of contractors for phase I of the Project.
3. Construct, or cause to be constructed, phase II of the Project.
4. Secure additional funding for development of phase II of the Project in cash or in-kind services from Division of State Lands (hereinafter referred to as "DSL") for One Hundred Eighty Seven Thousand Dollars (\$187,000) and from Tualatin Riverkeepers (hereinafter referred to as "TRK") for Twenty Thousand Four Hundred Dollars (\$20,400). If the additional funds are not secured from DSL or TRK, either the Cooperator or DU may terminate the Agreement.
5. Obtain, at Cooperator's expense, all required permits, leases, approvals, and access rights necessary for the development of phases I and II of the Project and provide to DU, and its officers, employees, agents, and the like, all reasonable assistance and cooperation necessary for the implementation of this Agreement.
6. In conjunction with DU, routinely inspect the Site when any construction is in progress, maintain a written record of the construction activity, and keep DU advised of any desired changes, additions, or deletions to the Project construction.
7. Provide DU with all information requested by DU that is necessary to meet DU's obligations under the Grant within the time period specified by DU in the request for information.
8. Upon and after joint approval of Site development plan, release DU from all responsibility and liability for any errors or omissions that may be found in the Project Site development plans for phase I of the Project after the construction contract has been awarded, as well as from all responsibility and liability for any construction delays beyond DU's control. No construction contract may be awarded until the site

development plans have been jointly approved in writing by both parties.

9. Ensure that any lands and waters on which habitat is restored, enhanced and/or created in this Project are managed and maintained for the purpose for which they were intended in the Grant. Cooperator shall provide routine inspection and all operation, rehabilitation and maintenance necessary to maintain the continuing viability and function of the Project as intended in the Grant throughout the term of this Agreement. If DU finds that Cooperator has failed to comply with the management and maintenance requirements set forth herein above, DU shall provide Cooperator with notice of same and 30 days to comply or provide proof acceptable to DU of Cooperator's intent to comply.

If upon notice by DU and opportunity to cure as set forth above Cooperator or any subrecipient does not ensure that such habitat is managed for the Project purpose in whole or in part, Cooperator or any subrecipient agrees to compensate DU for that percentage of the current fair market value of the original habitat restoration, enhancement, or creation attributable to DU's participation in the Project. Cooperator or subrecipient must determine the current fair market value by obtaining at Cooperator's or subrecipient's expense an appraisal completed according to nationally recognized appraisal standards and subject to DU's review and approval. Cooperator must repay DU on terms and conditions satisfactory to DU.

10. Be responsible for all costs associated with the operation and maintenance of the Site.
11. Work with DU to develop a cooperative site-inspection schedule for DU's and FWS's inspection of the Site. The purpose of Site inspections is to ensure that such habitat is managed for the purpose intended in this Agreement and the Grant. During Site inspections, DU and FWS may also assess the impact of habitat management practices on the immediate watershed of such Site.
12. Indemnify DU for any costs DU is obligated to repay under the Grant because of Cooperator's failure to comply with the terms and obligations of this Agreement.
13. Inform DU of any actions or inactions by either party to this Agreement which will change the required delivery or completion times stated in the Agreement.

14. That any pre-award costs by Cooperator must have occurred within two (2) years of the Project Proposal submission, and at the Cooperator's own risk
15. Report any program income earned during the Period of Performance of the Grant to DU. DU will not deduct it from the total Project allowable cost and will treat it as additional funds committed under this Agreement for the purposes of the development of the Site.

Program Income: Program income is gross income earned by Cooperator between the effective date of this Agreement and the end of the Grant's Period of Performance that is directly generated as a result of funds provided under this Agreement. Program income includes, but is not limited to, income from fees for services performed, the use, rental, or sale of real or personal property acquired under this Agreement and the sale of commodities or items fabricated under this Agreement.

16. That Cooperator's or any subrecipient's financial management systems must adhere to the standards established in 43 CFR 12.60 for state, local, and tribal governments or 43 CFR 12.921 for institutions of higher education, other nonprofit organizations, and commercial organizations (<http://www.access.gpo.gov/nara/cfr/index.html>). These systems must be capable of reporting receipts and expenditures (or use) of: (a) NAWCF dollars, (b) matching dollars, and (c) in-kind matching donations with reference to dollar values. The Cooperator and any subrecipients must report these expenditures, receipts, and values as required in this Agreement and upon demand if special audits are required.
17. Determine allowable costs in accordance with applicable OMB Cost Principles or regulations as listed below. If an institution of higher education, other non-profit organization or commercial organization, maintain written procedures to determine reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of this Agreement [43 CFR 12.921(b)(6)]. In absence of these procedures and to satisfy this requirement, Cooperator must comply with the following procedure:

Any of Cooperator's staff, agents or subrecipients (if any), who have the authority to administer or manage this Project or obligate funds for it, will review the terms of this Agreement and the provisions of the applicable Office of Management and Budget (OMB) Cost Principles before making a decision that will directly or indirectly result in expenditure of funds for the Project.

The following documents at the listed websites establish principles for determining which costs are allowable:

- Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organization," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-21, "Cost Principles for Educational Institutions," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- 48 CFR 32.2, "Contracts with Commercial Organizations" (<http://www.access.gpo.gov/nara/cfr/index.html>)

These Cost Principles apply to the use of funds under this Agreement and in-kind matching contributions. The applicability of circular or regulation depends on the type of organization incurring the costs. Thus, in some cases, Cooperator may be subject to a different circular or regulation than its subrecipients. In addition to restrictions in applicable OMB Costs Principles or regulations, Cooperator must not use funds under this Agreement for research studies, non-Project-specific communications products, travel for Federal employees; the costs of existing residences, structures, or buildings unnecessary for wetlands conservation purposes; or the cost of constructing, removing, or repairing residences, structures or buildings.

Cooperator agrees to include the above provision in any subaward to any subrecipient.

18. Submit to DU with any request for reimbursement:
- (1) a completed Standard Form 270 (Request for Advance or Reimbursement), which is available at: <http://www.whitehouse.gov/OMB/Grants/index.html>
 - or (2) its computer-generated equivalent. Cooperator must prepare the Standard Form 270 or its computer-generated equivalent on a cash basis for either an advance payment or a reimbursement as explained on the back of the form. Cooperator must enter the period covered by the request on the Standard Form 270 or its computer generated equivalent.

To receive advance payments, Cooperator must maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by Cooperator [43 CFR § 61 © or § 921 (b)(5)] as applicable. To comply with this requirement, Cooperator agrees to ensure that the DU Project Officer will receive a completed Standard Form 270 or its computer-generated equivalent [15-30] days before the date on which

Cooperator must disburse the funds.]

19. That publication of any reports or parts thereof by the Cooperator's personnel is subject to DU review and comment. Authorship does not incur any privileges of copyright nor restriction on distribution.

Cooperator must send two copies of any publication produced under this Agreement to DU with a transmittal that identifies the sender and the publication. News releases or other information on the Project published or released for publication by Cooperator or any subrecipient must acknowledge that funding was made possible through the North American Wetlands Conservation Act. Cooperator and any subrecipient agrees to include the above provision in any subaward.

20. That DU and the Federal Government may publish, reproduce, and use all technical data developed as a result of this Agreement in any manner and for any purpose without limitation and may authorize others to do the same.
21. That pursuant to Section 307 of the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, 110 Stat. 3009, that Cooperator is advised of the following:

In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

22. Comply with Section XI.G. of the Grant in managing and disposing of any equipment (tangible personal property), supplies, and other expendable property acquired in whole or in part under this Agreement.
23. That the general provisions applicable to this Agreement are included in 43 CFR 12, entitled, Administrative and Audit Requirements and Cost Principles for Assistance Programs, which are hereby incorporated by reference in this Agreement and that Cooperator shall comply with such provisions. These regulations are available at <http://www.nara.gov/fedreg>.
24. Enter into and be bound by those Certifications and Assurances applicable to Federal Grants and Cooperative Agreements required for funding this Agreement (Exhibit C).
25. To include Sections II. B. 6-24 in any subaward to any subrecipient of this Agreement.

C. DU and Cooperator Agree:

1. That the Project will be completed in accordance with the Proposal. Completion of phase I of the Project is scheduled for October 31, 2002. Completion of phase II of the Project is scheduled for August 31, 2005.
2. That all Project objectives will be implemented in a timely manner.
3. To promptly inform the other party if, for any reason, problems arise during the course of the Project that may slow or stop progress of the Project including but not limited to the availability of funds and personnel changes.
4. To show the Project to potential bidders as deemed necessary and hold a pre-construction conference with the successful bidder prior to the commencement of Project construction.
5. To conduct a final inspection of the Site prior to accepting any completed Project developments. In the event the parties are unable to agree as to the acceptability of the completed Project developments, they shall select a mutually acceptable third party whose decision shall be binding.
6. To acknowledge the contribution of each party as well as the FWS in any oral or written communications related to the Site, including signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared by either party referencing this Project. DU will provide mutually acceptable Project signs, and Cooperator will erect and maintain these signs along roads, entrances, and/or convenient viewing locations on the Site in close proximity to the Project.
7. To recognize outside contributors who might provide significant funding to help underwrite costs of the Project or who otherwise are mutually deemed to deserve special recognition. This recognition can include signs, plaques, and/or carins on the Project site. The principal costs of such recognition shall be borne by the party initiating the recognition.
8. To mutually consider the possibility of funding any extraordinary Project repairs that might be required.
9. That the Site will remain under the jurisdiction of Cooperator and that Cooperator will be solely responsible for the Site's administration and management.

- 10. A. DU appoints Chris Bonsignore as its Project Officer.
B. Cooperator appoints Jim Morgan as its Project Officer.

The parties may change their respective Project Officer at any time by providing the other party with the name of their new Project Officer.

- 11. This Agreement is contingent upon the Grant and should the Grant be terminated, both DU and Cooperator shall be excused from performance under this Agreement and this Agreement shall automatically terminate upon the termination date of the Grant.

III. TERM AND MODIFICATIONS

This Agreement shall become effective as of the date and year first above written, and shall thereafter continue in force for a period of thirty (30) years. Further, this Agreement may be modified only by the mutual prior written agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the date and year first written above.

**METROPOLITAN SERVICE DISTRICT
OF OREGON**

DUCKS UNLIMITED, INC.

BY: _____

Mike Burton

Title: Executive Officer

Address: 600 NE Grand Avenue

Portland, OR 97232

Ph: 503-797-1700

Date: _____

BY: _____

Ronald A. Stromstad

Title: Director of Operations

Date: _____

Ducks Unlimited, Inc.
EXHIBIT A
PROPOSED PROJECT

PROJECT NUMBER: OR-119-1

PROJECT NAME: Gotter Restoration

RESTORATION PLAN: This project will include restoration of palustrine emergent, scrub-shrub, and forested wetlands, oak savannah and riparian forest along the Tualatin River near Scholls, Oregon. Restoration will be completed in two phases. Phase I will consist of: 1) Topographic survey of the site and construction design, 2) replacement of a dilapidated slide-gate water control structure, 3) excavation of fill material from an area of the wetland, 4) breaking and plugging a drain tile. Phase II will include: 1) site preparation (spraying, mowing, disking), 2) seeding and planting with native wetland, upland and riparian vegetation, and 3) regular monitoring and maintenance of the site.

LONG-TERM MANAGEMENT PLAN: Metro and Tualatin Rivekeepers will be responsible for long-term stewardship and management of the site. The site will be managed for wetlands and associated habitats for the benefit of a broad range of wildlife species. Restored habitat will include palustrine emergent, scrub-shrub and forested wetlands and associated forest and prairie upland habitat. Water levels within the wetlands will be manipulated as necessary to encourage the continued existence of productive native wetland plant communities. Noxious weed control will be a regular part of site management. Treatments such as mowing, periodic grazing and burning may be employed when practical and beneficial to management of the site.

FUNDING PARTNER	\$ AMOUNT	TYPE OF CONTRIBUTION	PHASE
Division of State Lands	\$187,000	Cash reimbursement through Metro	II
DU	\$50,000	Cash (\$45,000 NAWCA) and In-Kind (\$5,000)	I
USFWS Partners Program	\$15,000	Cash reimbursement to DU	II
Tualatin Riverkeepers	\$20,400	In-Kind through Metro	II
Metro	\$9,600	In-Kind through Metro	II
TOTAL	\$282,000		

EXHIBIT B
GRANT AGREEMENT NO. 98210-1-G812

GRANT AGREEMENT
BETWEEN
U. S. FISH AND WILDLIFE SERVICE
AND
DUCKS UNLIMITED, INC.

This award has been
OBLIGATED in FFS
electronically via IDEAS-FFS interface

nas 5-16-01
CGS Initials date

I. RECIPIENT

Ducks Unlimited, Inc.
1101 SE Tech Center Drive, Suite 115
Vancouver, Washington 98683

Project Officer: Chris Bonsignore, Project Biologist
Phone: 360-885-2011 ext 14 FAX: 360-885-2088
E-mail: cbonsignore @ducks.org

II. FINANCIAL DATA

Agreement Number: 98210-1-G812

Accounting Data: 2001- 91100-411G-9676-0108

Tax Identification Number: 13-5643799

DUNS Number: 001377055

Amount Obligated from North American Wetlands Conservation Fund (NAWCF): \$999,124

Partners' Matching Commitments: Recipient, \$812,809; Metropolitan Service District of Oregon (Metro), \$1,500,000; Marion County, Oregon, \$100,000; Oregon Watershed Enhancement Board, \$145,000; Oregon Department of Fish and Wildlife, \$29,500; The Nature Conservancy, \$263,140; The Wetlands Conservancy, \$113,000; Private Landowners, \$28,000; Natural Resources Conservation Service, \$786,760; and U. S. Fish and Wildlife Service, \$581,335. Total = \$4,359,544.

Catalog of Federal Domestic Assistance Number: 15.623 (North American Wetlands Conservation Fund)

III. AUTHORITY The U.S. Fish and Wildlife Service (USFWS) and Ducks Unlimited, Inc. (Recipient) enter into this Agreement under the authority of Public Law 101-233, the North American Wetlands Conservation Act (NAWCA), as amended (16 USC 4401 *et seq.*). This Agreement supports the Willamette Valley Ecoregion Restoration Project, (Project) in Oregon. The North American Wetlands Conservation Council (NAWCC) recommended the Project on July 14, 2000, and the Migratory Bird Conservation Commission approved it on September 13, 2000.

IV. PURPOSE This Project will protect, restore, and enhance important wetland ecosystems in the Willamette Valley Ecoregion. This phase of the project will protect an estimated 563 acres of vital wetlands and associated uplands through fee title acquisition (69 acres), fee donated (29 acres), and purchase of conservation easements (465 acres) in the project area. In addition, an estimated 1,489 acres of wetlands and associated uplands will be restored (1,369 acres) and enhanced (120 acres) on public and private lands.

V. SCOPE OF WORK This Agreement incorporates by reference the Recipient's Willamette Valley Ecoregion Restoration Project Proposal (Proposal) dated March 30, 2000, as revised and/or clarified in a letter dated May 1, 2000, to David A. Smith and an e-mailed message with attachments dated January 10, 2001, to David Weaver. The Proposal includes all letters from or on behalf of Project partners and all correspondence between USFWS and the Recipient. (See Section XIV before deviating from the Proposal.)

VI. PROJECT PERIOD The Project period starts on the date that the USFWS Contracting Officer signs this Agreement and ends two years later.

VII. MEASURABLE OUTCOMES The Recipient must be able to demonstrate on-site accomplishment of all the Project's milestones, goals, and objectives as presented in the Proposal including the acres in the responses to Technical Assessment Questions 4 and 5.

VIII. REPORTS & OTHER REQUIRED DOCUMENTATION The Recipient must send to the USFWS Program Officer:

<u>Performance Report</u>	<u>Period Covered</u>	<u>Due Date</u>
Annual	1 st year after USFWS signs Agreement	90 days after 1 st period covered
Final	Entire Project period	90 days after end of Project period

Both annual and final performance reports must include or be accompanied by:

- a comparison of actual accomplishments with milestones and other objectives for the period including acres in the same categories as in the responses to Technical Assessment Questions 4 and 5 of the Proposal and explanation of any differences;
- the information requested on the Financial Status Report (Standard Form 269) on a "cash" basis as explained on the form (available at <http://www.whitehouse.gov/OMB/grants/index.html>). [On the Standard Form 269 do not report: any cash expenditures or in-kind contributions by the Recipient, subrecipients, partners, or other third parties unless such expenditures or in-kind contributions were committed as match as acknowledged in Sections II. and IX.B. (A subrecipient is a legal entity that

receives NAWCF or matching funds from a Recipient or another subrecipient.))

The final performance report must also include or be accompanied by:

- a comparison of each partner's matching commitments in the Proposal with the amounts actually contributed;
- map(s) [U.S. Geological Survey 7½ minute topographic] with the boundaries of all interests in real property that the recipient or a subrecipient has purchased, restored, enhanced, or created with NAWCF or matching dollars or accepted as in-kind matching donations;
- (as an alternative to the maps described above for habitat restoration, enhancement, or creation sites smaller than 247 acres [100 hectares]) the coordinates of the center of each contiguous parcel in the UTM (Universal Transverse Mercator) coordinate system with the "North American Datum" (1927 or 1983) of the map from which coordinates were taken (or the North American Datum from the Ground Positioning System receiver that determined the coordinates) with each pair of coordinates referenced to the habitat modification; and
- an article of 500 words or less about the Project for the magazine Birdscapes to include the Project's name, location, partners, total NAWCF and partners' dollars, benefits to wildlife and people, unusual aspects, and a 35 mm slide(s) or photograph(s) with the photographer's name, organization, and a caption. [Contact the Director of Communications of the USFWS Division of Bird Habitat Conservation at (703) 358-1884 or dee_buller@fws.gov for more information and a copy of Birdscapes.]

The Recipient must send to the USFWS Program Officer items (a) through (i) below for interests in real property purchased with NAWCF or matching dollars or committed to the Project as matching in-kind donations unless the acquisition is exempt from the requirement as indicated in the referenced provisions of Section XIII.:

- (a) the acreage, boundaries, and map location of any parcel or interest in real property (or any habitat to be restored, enhanced, or created) that was not identified in the original proposal or that is proposed as a modification of the Proposal as explained in Section XIV.;
- (b) a copy of the summary and signature pages from an approved appraisal as explained in Section XIII.A.1.; OR documentation other than an appraisal demonstrating that the value of the interest in real property is the fair market value if the acquisition is exempt from the appraisal requirement as indicated in Section XIII.A.1.;
- (c) a copy of an appraisal review as explained in Section XIII.A.2., OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.2.;
- (d) a copy of the Summary Statement of Just Compensation given to each seller of real property interest as explained in Section XIII.A.3., OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.3.;
- (e) a copy of any document from a landowner that donates the difference between: (i) the selling price and the offer of just compensation; or (ii) the selling price and what the Recipient or subrecipient communicated to the landowner as the amount it believed to be the fair market value of the interest in real property as explained in Section XIII.A.6.;
- (f) confirmation that the Recipient or subrecipient has complied with relocation assistance obligations (if any) as may be required in Section XIII.A.4. (confirmation may be included in a performance report); OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.4.;
- (g) a copy of the closing statement for each interest in real property purchased with NAWCF or matching dollars as may be required in Section XIII.A.7.; OR documentation that the real property acquisition is exempt from this requirement as indicated in Section XIII.A.7.;
- (h) a copy of deeds or other instruments conveying title to the interests in real property acquired with NAWCF or matching dollars or received as a matching in-kind donation as explained in Section XIII.A.8.; AND
- (vii) a copy of a statute or other legal instrument that guarantees the long-term conservation of the wetlands, migratory birds, and other fish and wildlife of a Federal, State, or Tribal land-management system if the Recipient or subrecipient places interests in real property in that system as explained in Section XIII.B.1., AND a recorded Notice of Grant (or Cooperative Agreement) for all other interests in real property acquired for the Project during the Project period or in the pre-award period as explained in Section XIII.B.2.

IX. FINANCIAL ADMINISTRATION

- A. NAWCF Funding: The NAWCF provides funding for this Project through USFWS not-to-exceed the "Amount Obligated ..." in Section II. The Recipient must spend these funds in accordance with the Proposal unless modified under Section XIV. The USFWS cannot reimburse the Recipient, in excess of the "Amount Obligated." NAWCF funding may not exceed 50 percent of the total cost of the Project.
- B. Matching Donations: The partners listed in Section II. of this Agreement under "Partners' Commitments" must provide the commitments as specified in the Proposal. At the end of the Project period, if the total amount of "Partner Commitments" does not equal the amount committed in the Proposal, the amount of NAWCF funding will be disallowed by an equal proportion. When such a disallowance occurs, the Recipient must return to USFWS any NAWCF funds received in excess of

the newly established allowable amount.

C. Pre-Award Costs: USFWS authorizes pre-award costs not to exceed the "Amount Obligated from NAWCF" and the "Partners Matching Commitments" in Section II of this Agreement. The Recipient or subrecipient must not have incurred pre-award costs more than two years before the due date for submission of Project Proposals. All pre-award costs are incurred at the Recipient's or subrecipient's risk. The USFWS is under no obligation to reimburse such costs if for any reason the Recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award. This Section of the Agreement constitutes prior written approval for any pre-award costs consistent with the provisions of this Agreement and applicable laws, regulations, Federal Cost Principles, and NAWCA Grants Program policies.

A Recipient or subrecipient would incur the cost of a purchase on the date that the following actions occur for which payment would be required immediately or during a future period:

- place an order or sign a contract;
- receive a service;
- take title to an interest in real property;
- exercise an option or enter into a purchase agreement (*also called a contract of sale, sales contract, deposit receipt, offer and acceptance, agreement of sale, offer to lease or purchase, or sale agreement*) when such action commits the Recipient or subrecipient to buy an interest in real property UNLESS the Recipient or subrecipient withdraws from the purchase during a subsequent period of "due diligence" because the Recipient or subrecipient finds objectionable conditions, such as a cloud on title, or because the Recipient or subrecipient is unable to satisfy terms and conditions stipulated in the purchase agreement.

A Recipient or subrecipient would not incur any portion of the purchase price of an interest in real property by doing any of the following:

- purchase (or enter into) an option to buy an interest in real property;
- purchase (or enter into) an option to buy an interest in real property where the option consideration (option price, option money) will be applied to the purchase price of the interest in real property if the option is exercised.

D. Program Income: Program income is gross income earned by the Recipient during the Project period that is directly generated as a result of this Agreement or earned by the Recipient as a result of the Agreement. Program income includes, but is not limited to, income from fees for services performed and the use or rental of personal or real property acquired under this Agreement. (See Section XIII.C. for proceeds from the sale of real property.)

The Recipient must report any program income earned during the Project period to the USFWS Program Officer on the Financial Status Report (Standard Form 269) and the Request for Advance or Reimbursement (Standard Form 270). In accordance with Title 43 of the Code of Federal Regulations (CFR), sections 12.65 or 12.924 as appropriate (<http://www.access.gpo.gov/nara/cfr/index.html>), the USFWS authorizes the Recipient to use program income and to treat it as additional funds committed under this Agreement. The Recipient must use the program income for the purposes and under the terms and conditions of this Agreement. USFWS will not deduct it from the amount of the grant and will treat it as additional funds committed under this Agreement for the purposes of the Project.

E. Financial Management System: The Recipient's and subrecipient's financial management systems must adhere to the standards established in 43 CFR 12.60 for State, local, and Tribal governments or 43 CFR 12.921 for institutions of higher education, other nonprofit organizations, and commercial organizations (<http://www.access.gpo.gov/nara/cfr/index.html>). These systems must be capable of reporting receipts and expenditures (or use) of: (a) NAWCF dollars, (b) matching dollars, and (c) in-kind matching donations with reference to dollar values. The Recipient and any subrecipients must report these expenditures, receipts, and values as required in this Agreement and upon demand if special audits are required.

F. Allowable Costs: The documents listed below establish principles for determining which costs are allowable or eligible based on the type of organization. Three of these documents are Cost Principles that apply to the use of both NAWCF and matching dollars and in-kind matching donations unless otherwise indicated. Note that a recipient nonprofit organization uses one set of Cost Principles and a subrecipient State agency uses another. Recipients and subrecipients must not use NAWCF or matching dollars for: research studies; non-Project-specific communications products; travel for Federal employees; the cost of existing residences, structures, or buildings unnecessary for wetlands conservation purposes; or the cost of constructing, removing, or repairing residences, structures, or buildings.

- Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organizations," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- OMB Circular A-21, "Cost Principles for Educational Institutions," (<http://www.whitehouse.gov/OMB/grants/index.html>)
- 48 CFR 31.2, "Contracts with Commercial Organizations," (<http://www.access.gpo.gov/nara/cfr/index.html>)
- North American Wetlands Conservation Act, U.S. Standard Grant Application Instructions [for the year applicant submits the Proposal], "Grant Funds -Eligible Activities and Costs," "Match Funds - Eligible Activities and Costs," (<http://northamerican.fws.gov/nawca/elig8.html>)

Recipients and subrecipients that are institutions of higher education, other non-profit organizations, or commercial organizations must maintain written procedures to determine reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of this Agreement [43 CFR 12.921(b)(6)]. In the absence of these procedures and to satisfy this requirement, such a recipient or subrecipient must comply with the following procedure:

Any of the Recipient's staff, agents, or subrecipients (if any), who have the authority to administer or manage this Project or obligate funds for it, will review the terms of this Agreement and the provisions of the applicable Office of Management and Budget (OMB) Cost Principles or Federal regulations before making a decision that will directly or indirectly result in expenditure of funds for the Project.

G. Advance Payments and Reimbursements: The Recipient's financial institution must be able to receive NAWCF funds through the electronic funds transfer process. To receive an advance or reimbursement of funds, the Recipient must submit all information requested on the Request for Advance or Reimbursement (Standard Form 270), which is available at <http://www.whitehouse.gov/OMB/Grants/index.html>. The Recipient must prepare this information on a cash basis as explained on the back of the form. As part of the information requested, the Recipient must:

- enter in block 4 the "Agreement Number" listed in Section II.;
- enter in block 8 the period covered by the request;
- enter in column 11a the amounts used directly for the acquisition of real property interest and label it "Fee/Easement Acquired;"
- enter in column 11b the amounts used for all costs other than the amounts used directly for acquisition of real property and label it "All Other Costs;" and
- complete the TOTAL column.

To receive advance payments, the Recipient must maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the Recipient. To comply with this requirement, the Recipient agrees: (a) to ensure that the USFWS Program Officer will receive the information requested on the Request for Advance or Reimbursement (Standard Form 270) 15-30 days before the date on which the Recipient or any subrecipient must disburse the funds; and (b) immediately notify the USFWS Program Officer if the Recipient or subrecipient becomes aware that the funds cannot be disbursed on the intended date. In signing this Agreement, a Recipient institution of higher learning, other non-profit organization, or commercial organization certifies that, if it requests an advance of funds, its financial management systems will meet the standards for fund control and accountability in 43 CFR 12.921 (<http://www.access.gpo.gov/nara/cfr/index.html>).

USFWS must withhold payments to the Recipient if the Recipient or its subrecipients have failed to comply with the Project objectives, the terms and conditions of this Agreement, or the Federal reporting requirements. When USFWS has withheld payments for these reasons, but has not suspended the grant, it must release such payments to the Recipient when the Recipient complies with the Project objectives, the terms and conditions of this Agreement, or the Federal reporting requirements.

X. USFWS PROGRAM AND CONTRACTING OFFICERS

USFWS Program Officer:

U.S. Fish and Wildlife Service
 Attn: David K. Weaver
 Division of Bird Habitat Conservation
 4401 N. Fairfax Drive, Suite 110
 Arlington, Virginia 22203
 Phone: (703) 358-1883 FAX: (703)358-2282
 E-mail: david_k_weaver@fws.gov

USFWS Contracting Officer:

U.S. Fish and Wildlife Service
 Attn: Nedra A. Stallone
 Contracting and General Services
 4401 N. Fairfax Drive, Suite 212
 Arlington, Virginia 22203
 Phone: (703) 358-1728 FAX: (703)358-1875
 E-mail: nedra_stallone@fws.gov

The USFWS Program Officer is responsible for administering performance under this Agreement. However, no understanding, agreement, modification, change order, or other matter deviating from the terms of this Agreement is effective or binding upon the Government unless supported by documentation executed by the USFWS Contracting Officer unless otherwise indicated in Section XIV. The Recipient must inform the Contracting Officer of any actions or inactions by either party to this Agreement that will change the required completion times stated in the Agreement.

XI. SPECIAL PROVISIONS APPLICABLE TO ALL PROPOSALS

- G. Equipment: In managing and disposing of equipment acquired in whole or in part under this Agreement, Recipients and subrecipients that are State, local, and Tribal governments must comply with 43 CFR 12.72 and institutions of higher learning, other nonprofit organizations, and commercial organizations must comply with 43 CFR 12.934. Key provisions on the use and disposal of equipment are presented below.

Equipment means tangible personal property (including all pumps and their power units) having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Title to all equipment acquired for the Project will vest in the Recipient or subrecipient. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other recipients and subrecipients will follow the provisions of Section XI.A. for the use, management, and disposal of equipment purchased with NAWCF or matching dollars or received as a matching in-kind donation.

The Recipient or subrecipient must use the equipment acquired for the Project as long as needed, whether or not the Project continues to be supported by Federal funds. While the equipment is used for the Project, the Recipient or subrecipient must make it available for use on other projects or programs if such other use will not interfere with the work on the project for which the equipment was originally acquired. The Recipient or subrecipient must give first preference for such other use to other projects or programs sponsored by the Department of the Interior and second preference to projects and programs sponsored by other Federal agencies.

The Recipient must make a physical inventory of equipment at least once every two years and reconcile the results with the equipment records. The Recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment. The Recipient must ensure that adequate maintenance procedures are implemented to keep the equipment in good condition.

When acquiring replacement equipment, the Recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to USFWS's approval. In some cases, a Recipient may no longer need, for the purposes of the Project, any original or replacement equipment acquired with NAWCF or matching funds or received as a matching in-kind donation. The Recipient must request disposition instructions from the USFWS Program Officer, who will determine whether the equipment can be used to meet the requirements of a Project or program authorized for support by the United States Department of the Interior. If no such requirement exists, the USFWS Program Officer will report the availability of the equipment to the General Services Administration, which will determine whether a requirement for the equipment exists in other Federal agencies. If a Federal agency does not need the equipment and it has a current per-unit fair market value of less than \$5,000, the Recipient may retain, sell, or otherwise dispose of it with no further obligation to USFWS. If such equipment has a current per-unit fair market value of more than \$5,000, the USFWS Program Officer will issue instructions to the Recipient no later than 120 calendar days after the Recipients's request. These instructions may include:

- ship or otherwise transfer the equipment to the Federal government or to an eligible third party;
(USFWS must reimburse the Recipient or subrecipient by an amount which is computed by applying the percentage of the Recipient's participation in the cost of the original project to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.)
- sell the equipment providing for competition to the extent practicable with the highest possible return;
(If USFWS instructs the Recipient or subrecipient to sell the equipment or if USFWS does not issue disposition instructions within 120 calendar days after the request, the Recipient or subrecipient must sell the equipment and reimburse the USFWS an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project. However the Recipient or subrecipient will be permitted to deduct and retain from the Federal share \$500 or 10 percent of the proceeds, whichever is less, for the Recipient's selling and handling expenses.)
- otherwise dispose of the equipment.
(USFWS will reimburse the Recipient for any cost incurred in disposition.)

- H. Supplies and Other Expendable Property: The provisions of this section will apply to all supplies and other expendable property purchased with NAWCF or matching dollars or received as a matching in-kind donation. Title to such supplies and other expendable property will vest in the recipient or subrecipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the Project and the supplies are not needed for any other federally sponsored project or program, the recipient will retain the supplies for use on non-federally sponsored activities or sell them, but must, in either case, compensate the Federal government for its share. The amount of compensation must be computed in the same manner as presented in Section XI.A. for equipment
- C. Information Releases: News releases or other information on the Project published or released for publication by the Recipient or subrecipients must acknowledge that funding was made possible through NAWCA. The Recipient must send two copies of any publication on the Project, its accomplishments, or data obtained on the Project to the Natural Resources Library with a transmittal that identifies the sender and the publication. The address is:
 U.S. Department of the Interior, Natural Resources Library
 Div. of Information & Library, Services, Gifts & Exchanges Section
 1849 C Street, NW, Washington, DC 20240
- The Recipient agrees to include the above provision of Section XI.C. in any subaward.
- D. Government Right to Publish and Use Data: Unless waived by USFWS, the Federal Government has the right to:
 (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
 (2) Authorize others to receive, reproduce, publish, or otherwise use the data for Federal purposes.
- E. Buy American: 43 CFR part 12, requires USFWS to provide the following notice to each recipient:
 Pursuant to sec. 307 of the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, 110 Stat. 3009, as adopted in subsequent Appropriations Acts, please be advised of the following: In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

XII. SPECIAL PROVISIONS APPLICABLE TO HABITAT RESTORATION & ENHANCEMENT

- A. Management for Project Purpose: The Recipient must ensure that any habitat restored, enhanced, and/or created in this Project is managed for the purposes for which it was intended in the Project. If the Recipient or subrecipient does not ensure that such habitat is managed for the Project purpose in whole or in part, it agrees to pay USFWS for that percentage of the current fair market value of the original habitat restoration, enhancement, or creation attributable to the Federal participation in the Project. A Recipient or subrecipient must determine the current fair market value by obtaining at the Recipient's or subrecipient's expense an appraisal completed according to nationally recognized appraisal standards and subject to USFWS's review and approval.
- B. Inspection: The Recipient must ensure that the owner of any habitat restored, enhanced, or created in the Project (including such work completed with matching funds or as a matching in-kind contribution) must be willing to work with the USFWS Program Officer to develop a cooperative site-inspection schedule to ensure that such habitat is managed for the purposes for which it was intended in the Project. Section XII. of this Agreement will be in force for 25 years from the end of the Project period unless limited by easements, leases, other legal instruments, or special considerations described in the Proposal or approved by the USFWS Program Officer.

XIII. SPECIAL PROVISIONS APPLICABLE TO REAL PROPERTY ACQUISITION

- A. Acquisition of Interest in Real Property: This section applies to interests in real property purchased or leased with NAWCF or matching dollars or committed to the Project as matching in-kind donations unless otherwise indicated.
1. Notice to Owner and Appraisals: As soon as feasible, a Recipient or subrecipient intending to acquire an interest in real property must notify the owner of its interest in acquiring the interest in real property. The Recipient or subrecipient must also notify the owner of the basic protections provided to the owner by law including the Recipient's or subrecipient's obligation to secure an appraisal. However, if the acquisition qualifies for an exception or waiver under Section XIII.A.6., such notices are not required.

The Recipient or subrecipient must secure appraisals for all interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations unless exempt from such requirement as indicated below. The Recipient or subrecipient must pay for the appraisal unless the landowner releases the Recipient or subrecipient from such obligation. Appraisals of interests in real property purchased or committed to the Project after the USFWS Contracting Officer signs the Agreement must comply with the most recent version of the Uniform Appraisal Standards for Federal Land Acquisition

(UASFLA) (Interagency Land Acquisition Conference, Washington, D.C., 1992, as subsequently revised or clarified). The period between the date of value of an appraisal and the date of issuance or reissuance of any Summary Statement of Just Compensation must not exceed one year. (See Section XIII.A.3.) The period between the date of value of any appraisal and the date that an owner commits the land to the Project as a matching in-kind donation also must not exceed one year.

The Recipient must ensure that the USFWS Program Officer receives a copy of each appraisal's summary page(s) and signature page or documentation that it is exempt from this requirement. The summary page(s) must include the appraised fair market value. The USFWS Program Officer must receive these copies:

- when the Recipient requests payment for the purchase from NAWCF; and
- as soon as feasible during the Project period for real property purchased with matching funds or committed as a matching in-kind donation.

The following acquisitions are exempt from the requirement for an appraisal:

- less-than-permanent easements;
- leases for 50 years or less including option(s) for extension;
- uncomplicated valuation problems where the fair market value is estimated at \$2,500 or less, based on a review of available data;
- a purchase of an interest in real property with NAWCF or matching funds for which all or part of the purchase price was incurred before the USFWS Contracting Officer signed the grant agreement; *[In such cases, the Recipient must provide the USFWS Program Officer with other documentation supporting the fair market value donation.]*
- a matching in-kind donation of an interest in real property that is committed to a Project before the USFWS Contracting Officer signs the grant agreement if a State, local, or Tribal government will hold title to the interest; *[In such cases, the State, local, or Tribal government Recipient must provide the USFWS Program Officer with other documentation supporting the fair market value of the matching in-kind donation]*
- an acquisition that qualifies for an exception or waiver under Section XIII.A.6. *[However, if a matching in-kind donation of an interest in real property is committed to a Project and an institution of higher education, other nonprofit organization, or a commercial organization will hold title to the interest, it will require an appraisal of the fair market value at the time of donation regardless of the exception or waiver and regardless of when the commitment was made or accepted.]*

2. **Appraisal Reviews:** The Recipient must obtain an appraisal review for all appraisals of interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations unless exempt as indicated below. The Recipient must request the appraisal review from a USFWS reviewing appraiser unless the Regional USFWS Realty Office delegates the responsibility to another Federal agency or to a State or Tribal agency or approves the use of a private reviewing appraiser. Such approvals must be obtained through the Joint Venture Coordinator responsible for the Project Area, or his or her designee. *[Alaska Recipients for projects outside all Joint Ventures' areas of responsibility must obtain approvals directly from the Division of Realty in the Anchorage Regional Office.]* The USFWS Program Officer, at his or her option, may obtain an appraisal review directly from a USFWS reviewing appraiser of any appraisal that has not been reviewed by a USFWS reviewing appraiser. A USFWS review appraisal will take precedence over a private appraisal review for the purpose of determining an appraisal's acceptability.

To obtain reviews by USFWS reviewing appraisers, the Recipient must send the appraisal to the Joint Venture Coordinator responsible for the Project Area or his or her designee. *[Alaska Recipients for projects outside all Joint Ventures' areas of responsibility must send appraisals directly to the Division of Realty in the Anchorage Regional Office.]* The Recipient must indicate whether the appraisal is for an interest in real property: (a) purchased with NAWCF funds, (b) purchased with matching funds, or (c) received as a matching in-kind donation. The Joint Venture Coordinator, or his or her designee, will then deliver it to the USFWS Realty Office or its designee with enough lead time for the reviewing appraiser to review it and resolve any problems. This will generally be three months before the anticipated date of purchase or three months before the anticipated date of requesting payment from USFWS for acquisition costs, whichever comes first. The reviewing appraiser must approve or recommend approval of each appraisal required under Section XIII.A.1. as an adequate basis for an offer of just compensation. The reviewing appraiser may request the Recipient or subrecipient to obtain a second appraisal if the reviewing appraiser finds the first appraisal to be technically insufficient.

Recipients and subrecipients must not use NAWCF or matching dollars to pay landowners any more than the valuation of the interest in real property as determined in an approved appraisal. Recipients and subrecipients also must not propose or accept as match any valuation of an in-kind donation of real property that is above the approved appraisal.

The Recipient must send a copy of the appraisal review to the USFWS Program Officer or documentation that it is exempt

from this requirement:

- when the Recipient requests payment for the purchase from NAWCF;
- as soon as feasible during the Project period for real property purchased with matching funds or received as a matching in-kind donation.

The following acquisitions with NAWCF or matching dollars are exempt from the requirement for an appraisal review:

- an acquisition for which an appraisal is not required under Section XIII.A.1.;
- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

3. Summary Statement of Just Compensation: The Recipient must give landowners a Summary Statement of Just Compensation for all interests in real property to be purchased with NAWCF or matching dollars unless exempt as indicated below. The Recipient or subrecipient intending to acquire an interest in real property must establish an amount that it believes to be just compensation. The Recipient or subrecipient must do this before delivery of the initial written offer to the owner or the owner's representative to purchase an interest in real property for the Project with NAWCF or matching funds. The amount must equal the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The Recipient or subrecipient must promptly make a written offer to the owner to acquire the property for the full amount believed to be the just compensation.

The owner must be given a written statement of the basis for the offer of just compensation along with the initial written purchase offer. The statement must include:

- the amount offered as just compensation; *[For a partial acquisition, the compensation for the real property to be acquired and the compensation for any damages to the remaining real property must be separately stated.]*
- description and location identification of the real property and the interest in real property to be acquired;
- identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) that are considered to be part of the real property for which the offer of just compensation is made; and *[See Section IX.F.]*
- the statement must identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

The Recipient or subrecipient must have the appraisal(s) updated or obtain a new appraisal(s):

- if the information presented by the owner indicates a need for new appraisal information;
- if a material change in the character or condition of the property indicates a need for new appraisal information; or
- if more than one year has elapsed since the date of value of the appraisal and the date of issuance (or any reissuance) of the Summary Statement of Just Compensation except in rapidly changing real estate markets where the USFWS Program Officer may determine that a shorter interval is significant.

If the latest appraisal information indicates that a change in the purchase offer is warranted, the Recipient or subrecipient must promptly reestablish just compensation and offer that amount to the owner in writing.

The Recipient must provide the USFWS Program Officer with a copy of the Summary Statement of Just Compensation or documentation that it is exempt from this requirement:

- when the Recipient requests payment for the purchase from NAWCF; and
- as soon as feasible in the Project period for real property purchased with matching funds.

The following acquisitions with NAWCF or matching dollars are exempt from the requirement for a Summary Statement of Just Compensation:

- an acquisition for which an appraisal is not required under Section XIII.A.1.;
- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

4. Relocation Assistance: A landowner and/or a tenant may be eligible for relocation assistance when a Recipient or subrecipient acquires an interest in real property with NAWCF or matching dollars or receives an interest in real property as a matching in-kind donation. Some of the potentially eligible expenses under certain conditions may include, but are not limited to: transportation of personal property (including livestock), storage of personal property for up to 12 months, direct loss of tangible personal property as a result of discontinuing a farm operation, searching for a replacement location, and purchase of substitute personal property. The Recipient or subrecipients must provide eligible landowners or tenants with relocation assistance unless exempt as indicated below.

The Recipient must request the assistance of a USFWS Realty specialist if a landowner or tenant must move from the real property or move his or her personal property from the real property as a result of a Project. The Recipient should contact the Joint Venture Coordinator responsible for the Project area. The Joint Venture Coordinator will contact a Realty specialist in the appropriate USFWS administrative region for the Project. *[Recipients for Alaska projects outside all Joint Ventures' areas of responsibility must contact the Division of Realty in the Alaska Regional Office directly.]*

The Recipient must provide written confirmation to the USFWS Program Officer that it and its subrecipients have complied with relocation assistance obligations (if any) or documentation that it is exempt from this requirement:

- when the Recipient requests reimbursement from NAWCF for the purchase of an interest in real property; or
- as soon as feasible during the Project period after the Recipient acquires the interest in real property when the Recipient is requesting an advance of funds (instead of a reimbursement) for the purchase of the real property, or is using matching funds for the purchase, or where the relocation benefits cannot be determined or paid until after the purchase.

The following acquisitions with NAWCF or matching dollars are exempt from relocation assistance obligations:

- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement. *[The exceptions under Section XIII.A.6. are not possible for relocation assistance due a tenant.]*

5. Expenses Incidental to Transfer of Title: Unless exempt as indicated below, the Recipient or subrecipients must pay the owner of the real property for all reasonable expenses the owner necessarily incurred for:

- recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Recipient or subrecipient *(The Recipient or subrecipient is not required to pay costs solely required to perfect the owner's title to the real property.);*
- penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
- the pro rata portion of any prepaid real property taxes which are allocable to the period after the agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Recipient or subrecipient must pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Recipient or subrecipient.

The following acquisitions with NAWCF or matching dollars are exempt from the requirement that the Recipient or subrecipients pay expenses incidental to transfer of title:

- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
- an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

6. Exceptions and Waivers: Some recipients and subrecipients may qualify for an exception to the requirements for appraisals, appraisal reviews, expenses incidental to transfer of title, just compensation, and relocation assistance to a landowner (but not to a tenant) if the transaction is voluntary and under certain conditions. The following two conditions are required of all recipients and subrecipients seeking an exception:

- (a) The Recipient or subrecipient must clearly advise the owner in writing prior to making an offer for the property that it is unable to acquire the property if negotiations fail to result in an amicable agreement.
- (b) The Recipient or subrecipient must clearly inform the owner in writing of what it believes to be the fair market value of the property. This value must be adequately supported in the Recipient's or subrecipient's file and copies of the file documentation must be acceptable to the USFWS Program Officer. It may consist of: (i) recent sale prices of specific identified comparable properties, (ii) the assessed value with documentation of how the assessed value is determined including its relationship to the fair market value, (iii) or other similar factual data. Such evidence in support of the fair market value must not be more than one year old unless the Recipient or subrecipient provides a justification acceptable to the USFWS Program Officer. An appraisal is not required if the acquisition qualifies for an exception. However, if the Recipient or subrecipient obtains an appraisal (even though it is not required) it must be used as the determinant of fair market value unless the Recipient can conclusively demonstrate that it is not accurate. Once the Recipient or subrecipient informs the owner in writing of what it believes to be the fair market value of the property, the owner may donate all or any lesser portion of the property's value to the Recipient or subrecipient. The Recipient's or subrecipient's records must contain a written document from the donor which confirms that the owner is donating a specific amount of the real property's fair market value.

The following additional conditions are required for a recipient or subrecipient that has eminent domain authority and is seeking an exception:

- No specific site or property needs to be acquired, although the Recipient or subrecipient may limit its search for alternative sites to a general geographic area. All owners are to be treated similarly where a Recipient or subrecipient wishes to purchase more than one site within a geographic area on this basis.
- The property to be acquired is not part of an intended, planned, or designated Project area where all or substantially all of the property within the area is to be acquired within specific time limits.

- A Recipient or subrecipient seeking to qualify for an exception must provide the USFWS Program Officer with:
- a copy of the written communications that demonstrate compliance with the first two conditions listed above;
 - documentation that supports the value of the interest in real property that the Recipient or subrecipient communicated to the landowner(s) as the fair market value of the property; and
 - a copy of any document from a landowner(s) which confirms that the owner is donating a specific amount of the real property's fair market value.

Recipients may request that the USFWS Program Officer grant a waiver from the requirements on appraisals, appraisal reviews, offers of just compensation, expenses incidental to transfer of title, and relocation assistance. To qualify for a waiver, the Recipient or subrecipient must provide a signed statement from the landowner (or tenant) whose property is being acquired. This written statement must confirm the following:

- (a) The landowner or tenant understands the assistance or protections provided under 49 CFR, part 24, that pertain to the subject of the waiver request. For waiver requests relating to relocation benefits, the written statement must also confirm that a USFWS Realty Specialist interviewed the landowner or tenant to explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance.
- (b) The requested waiver would not reduce any assistance or protection provided to the landowner or any tenant in 49 CFR, part 24.

7. **Closing Statement:** A closing statement is a written breakdown of the costs involved in the purchase of an interest in real property. It is usually prepared by a broker, escrow officer, lender, or attorney, showing all cash received, all charges and credits made, and all cash paid out. It may also be called a "settlement statement" or "adjustment sheet." Unless exempt as indicated below, the Recipient must send the USFWS Program Officer the closing statement:
- when it requests reimbursement for the purchase of an interest in real property;
 - no later than 90 days after closing if the Recipient requested an advance of funds for the purchase of an interest in real property or used only matching funds or other funds that are not reimbursable from the NAWCF.
- The following acquisitions are exempt from the requirement that the Recipient or subrecipients submit a closing statement:
- an acquisition that qualifies for an exception or waiver under Section XIII.A.6.;
 - an acquisition for which costs were incurred before the USFWS Contracting Officer signed the Agreement.

8. **Title:** The Recipient must ensure that title to any interest in real property purchased or donated for the Project is recorded in fee simple, free and clear of all easements, reservations, exceptions, restrictions, and encumbrances unless:
- the Proposal indicates that an easement or lease will be acquired instead of fee title;
 - the Proposal indicates that the title to the interest in real property is, or will be, subject to easements, reservations, exceptions, restrictions, and encumbrances and these are specified in the proposal; or
 - the USFWS Program Officer determines that any existing or newly recorded easements, reservations, exceptions, restrictions, and encumbrances do not jeopardize the purposes for which the land was purchased or donated for the Project.

The Recipient must send the USFWS Program Officer the following as soon as it is feasible to do so during the project period:

- a copy of the recorded deeds or other instruments conveying title to all interests in real property purchased with NAWCF or matching dollars or received as matching in-kind donations; and
- copies of any Notice of Grant [or Cooperative] Agreement recorded pursuant to Section XIII.B.2.

- B. **Long-term Conservation:** The Recipient must ensure that any interest in real property purchased or contributed as a matching in-kind donation for the Project is managed:
- to achieve the purpose(s) of the Project as stated in the Proposal and Section IV. of this Agreement;
 - consistent with any management plan, objectives, goals, or descriptions of desired habitat stated in the Proposal; and
 - for the long-term conservation and management of the affected wetland ecosystem and the fish and wildlife dependent thereon.

1. Federal, State, or Tribal Land Management Systems: In some projects, an interest in real property purchased or contributed for the project is included in a Federal, State, or Tribal system of lands managed for long-term conservation. In such projects, the Recipient must send the USFWS Program Officer copies of any statutes or other legal instruments that established and otherwise govern the system. The Recipient must send the USFWS Program Officer these items as soon as it is feasible to do so during the Project period. If, in the USFWS Program Officer's opinion, the applicable statutes or other instruments do not ensure that the interest in real property will be administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon, a recorded Notice of Grant [or Cooperative] Agreement as described in Section XIII.B.2. is required.

2. Notice of Grant [or Cooperative] Agreement: In some projects, an interest in real property acquired, in whole or in part, with grant or matching funds or as an in-kind matching donation will not be included in a Federal, State, or Tribal land management system managed for long-term conservation. This interest in real property may be either fee title, permanent easements, or leases where the lease term is 50 years or more including options for extension. For such interests in real property, Recipient or subrecipient titleholders must record a Notice of Grant [or Cooperative] Agreement in the local government office set up for that purpose, e.g., County Recorder or Registrar of Deeds. The Notice of Grant [or Cooperative] Agreement must:

- identify the interest in real property to which the Notice of Grant [or Cooperative] Agreement applies and attach a description;
- identify the name and address of the grant recipient or subrecipient;
- reference the grant agreement and the address where it is kept on file;
- state the purpose of the Project;
- state that the grant recipient or subrecipient titleholder confirms its obligation to manage the interest in real property pursuant to the grant agreement, its incorporated project proposal, and the purpose of the Project unless the USFWS relieves it of that responsibility; and
- state that the grant recipient or subrecipient titleholder will not convey or encumber the interest in real property, in whole or in part, to another party without USFWS's consent.

The Notice of Grant [or Cooperative] Agreement does not give any property rights to the USFWS. It merely provides a public record of the contractual obligations of the Recipient or subrecipient. These contractual obligations do not apply to any other individuals or entities that may own part of the property rights on the parcel of real property described in the Notice of Grant [or Cooperative] Agreement. In lieu of a Notice of Grant [or Cooperative] Agreement, the Recipient or subrecipient may include the required elements of a Notice of Grant [or Cooperative] Agreement in the terms of any recorded easement, deed, or lease in which the Recipient or subrecipient acquires an interest in real property for the purposes of the Project.

C. Real Property Disposal: Title to an interest in real property shall vest in the Recipient or subrecipient subject to the condition that the Recipient must use the interest in real property for the Project's authorized purpose as long as it is needed. The USFWS will be the final arbiter of when an interest in real property will be no longer needed for the Project's authorized purpose. The Recipient or subrecipient may not:

- encumber the interest in real property without the approval of USFWS or its successor;
- dispose of or cease administering the interest in real property for its authorized purpose without requesting the approval of USFWS or its successor or without requesting disposition instructions from USFWS or its successor as explained below.

1. Authorized Conveyance: In some cases, a Recipient or subrecipient will determine during or after the Project period that:

- it is no longer able or willing to retain title to or administer an interest in real property acquired in this Project for the Project's authorized purpose; or
- the interest in real property acquired in this Project is no longer needed for the Project's authorized purpose.

If such a Recipient or subrecipient is a State, local, or Tribal government, it must request disposition instructions from USFWS or its successor. USFWS will give (at its option) one or more of the following three instructions:

- (a) Retain title without further obligation to the Federal government after it compensates USFWS for that percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project.
- (b) Sell the interest in real property under guidelines provided by USFWS and pay USFWS for that percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project (after deducting actual and reasonable selling or fix-up expenses, if any, from the sales proceeds). When USFWS authorizes or requires the Recipient or subrecipient to sell the interest in real property, the Recipient or subrecipient must establish proper sales procedures that provide for competition to the extent practicable and result in the highest possible return.
- (c) Transfer title to the interest in real property to the Federal Government or to an eligible third party provided that,

in such cases, the Recipient or subrecipient shall be entitled to compensation for its attributable percentage of the current fair market value of the interest in real property. (USFWS or its successor will direct the Recipient or subrecipient to transfer the interest in real property to a specific Federal, State, or Tribal agency for long-term conservation if such transfer was specified in the Proposal. The Recipient or subrecipient, at its option, may waive its right to compensation on any transfer of an interest in real property that is directed by USFWS.)

If such a Recipient or subrecipient is an institution of higher education, other nonprofit organization, or a commercial organization, it must first obtain USFWS's written approval for the use of the interest in real property in other federally sponsored projects. Use in other projects shall be limited to those under federally sponsored projects that have purposes consistent with those authorized for support by the United States Department of the Interior. If use in other federally sponsored projects is not possible or appropriate, the Recipient or subrecipient institution of higher education, other nonprofit organization, or commercial organization it must request disposition instructions from USFWS or its successor. USFWS will give (at its option) one or more of instructions (a) through (c) as listed above.

2. Unauthorized Conveyance or Administration Inconsistent with Project Purpose: The Recipient agrees to be bound by the alternative for redress that USFWS chooses from those listed below if the Recipient or its subrecipient:
- sells, transfers, encumbers, pledges as security or collateral for a debt, or otherwise disposes of any interest in real property acquired in whole or in part with NAWCF or matching funds or as a matching in-kind donation without the permission of USFWS; or
 - ceases administering the interest in real property interest in whole or in part for the authorized purpose of this Project in the opinion of USFWS and without USFWS's approval.

The following are alternatives for redress for (i) an unauthorized conveyance of an interest in real property or (ii) administration of an interest in real property in a manner inconsistent with the Project Purpose:

- USFWS may direct a Recipient or subrecipient to convey to the USFWS or its designee an interest in real property that has a value equal to the percentage of the current fair market value of the interest in real property attributable to the Federal participation in the Project and that will serve the same purpose of long-term conservation and management of the affected wetland ecosystem and the fish and wildlife dependent thereon.
- USFWS may direct a Recipient or subrecipient to pay USFWS that percentage of the fair market value of the interest in real property attributable to the Federal participation in the Project.

In the case of alternatives (a) and (b) above, the USFWS, at its option, may require the Recipient or subrecipient to obtain at the Recipient's or subrecipient's expense an appraisal conforming to the most recent version of the Uniform Appraisal Standards of Federal Land Acquisition or their equivalent. A USFWS or other Federal reviewing appraiser must review and approve the appraisal before the amount of compensation is established.

3. Duration of Authorized and Unauthorized Conveyance Provisions: Sections XIII.C.1. & 2. of this Agreement will be in force in perpetuity for any interest in real property purchased with NAWCF or matching dollars or received as a matching in-kind donation unless limited to shorter periods by less-than-perpetual easements, leases, or other legal instruments. Any exception to the application of Section XIII.C. in perpetuity must be supported by the Proposal or the written permission of the USFWS Program Officer.

XIV. MODIFICATIONS The Recipient must request prior written approval of the USFWS Program Officer and, only where indicated parenthetically below, the prior approval of the USFWS Contracting Officer for any change of a provision of this Agreement and any of the following changes of the Proposal:

- changes in the scope and objective of the Project (regardless of whether there is an associated budget revision requiring prior approval) including but not necessarily limited to, changes in the Project Purpose (USFWS Contracting Officer), extension of the Project period except as provided below (USFWS Contracting Officer), changes in the Project area, a change in the proposed titleholder of any interests in real property purchased or donated for the Project, a cumulative decrease of any acreage category or subcategory in the responses to Technical Assessment Questions 4 and 5 of the Proposal (USFWS Contracting Officer), and changes in the matching contributions;
- a change of the Recipient's Project Officer;
- the transfer of amounts budgeted for the direct costs of Acquisition, Restoration, or Enhancement to indirect costs, administrative overhead, or its equivalent (USFWS Contracting Officer);
- the inclusion of costs that are not allowed in accordance with the Federal Cost Principles (USFWS Contracting Officer) or the policy of the NAWCA Grants Program;
- the inclusion of costs that require prior approval in accordance with the applicable Federal Cost Principles, including (i) changes in the specific parcels or interests in real property to be acquired, and (ii) identification of the specific parcels or interests in real property to be acquired for projects where such parcels or interests were not identified in the original proposal.

Written notification
be given of changes

The Recipient must send all requests for prior approval to the USFWS Program Officer at least 30 days in advance of the desired implementation. When the concurrence of the USFWS Contracting Officer is required, the USFWS Program Officer will make a recommendation to the Contracting Officer who will make the final determination and notify the Recipient in writing. The Recipient must include a narrative justification with any request for changes in the Agreement or Proposal. A request for prior approval of any budget revision must be accompanied by a revised budget table in the same format as in the original Proposal. Any proposal for changes in parcels of real property to be acquired will require a determination by the Secretary of the Interior that the interests in real property should not be included in the National Wildlife Refuge System as required by Section 6 of NAWCA. Neither the USFWS Contracting or Program Officer has the authority to increase the Federal funding awarded to this Project.

Recipients may initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the conditions listed below apply. For one-time extensions, the Recipient must notify the USFWS Project Officer in writing, with the supporting reasons and revised expiration date, at least 10 days before the expiration date, specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. The conditions that prevent issuance of a one-time extension are:

- the extension requires additional Federal funds; or
- the extension involves any change in the approved objectives, scope, or purpose of the Project.

Any extension after this one-time Recipient-initiated extension will require the USFWS Contracting Officer's prior written approval.

Except as required or authorized above, USFWS waives all other cost-related or administrative prior approvals authorized in 43 CFR 12.70 and 43 CFR 12.925. In addition to the above potential modifications of the grant agreement, the Recipient may request that the USFWS Program Officer and Contracting Officer grant, in unusual situations, an exception to any requirement of the grant agreement that is derived from the Federal grant regulations in 43 CFR, part 12. The need for such exceptions must be convincingly demonstrated in an accompanying narrative justification. The USFWS Program and Contracting Officers will only approve such exceptions on a case-by-case basis and when the request is supported by a persuasive justification. To ensure that consistent criteria are applied to all subsequent requests for exceptions and modifications, the USFWS Program Officer must develop decision criteria before approving or disapproving any request.

The USFWS requires written confirmation from USFWS Regional Offices that NAWCA projects are in compliance with the National Environmental Policy Act of 1969 (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) before the USFWS Contracting Officer signs the grant agreement. USFWS also requires that Regional Offices submit, before the USFWS Contracting Officer signs the grant agreement, documentation that a contaminants survey has been completed for any interest in real property acquired with NAWCF or matching dollars or donated as a matching in-kind donation if the USFWS will be the owner. After the USFWS Contracting Officer signs the grant agreement, the Recipient may: (a) propose a change in a parcel or interest in real property to be acquired; (b) propose a change in the location or boundaries of the habitat to be restored, enhanced, or created; or (c) identify a specific parcel or interest in real property to be acquired for projects where such parcels or interests were not identified in the original proposal. In response to such a proposal or identification, the USFWS Program Officer will review the previous Regional Office confirmation of compliance with NEPA or NHPA and its documentation of a contaminants survey. If indicated by this review, the USFWS Program Officer will request from the USFWS Regional Office a new or supplemental confirmation of compliance with NEPA or NHPA and, if applicable, documentation of a contaminants survey specific to the newly proposed or identified parcel or interest in real property or to the new location or boundaries of the habitat to be restored, enhanced or created. The Recipient may have to bear any costs associated with obtaining such new or supplemental confirmation or documentation from USFWS Regional Offices.

Pursuant to Section 6 of NAWCA and before the USFWS Contracting Officer signs the grant agreement, the USFWS requests confirmation from the USFWS Divisions of Refuges and Realty and the appropriate Regional Office that all interests in real property proposed for acquisition in a NAWCA proposal should not be included in the National Wildlife Refuge System. If the Recipient proposes a change in a parcel or interest in real property to be acquired, or if it identifies a specific parcel or interest in real property to be acquired for projects where such parcels or interests were not identified in the original proposal, the USFWS Program Officer will review the previous USFWS Regional Office confirmation. If indicated by this review, the USFWS Program Officer will request from the Regional Office a new or supplemental confirmation that the newly proposed or identified parcel or interest in real property should not be included in the National Wildlife Refuge System.

XV. TERMINATION USFWS may terminate this award in whole or in part if a Recipient materially fails to comply with the terms and conditions of an award. The USFWS may also terminate this award with the consent of the Recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Recipient may terminate the award upon sending to USFWS 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 USFWS determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety. Since encouraging partnerships is part of the purpose of NAWCA, USFWS may terminate the award in its entirety if a partial termination will reduce the ratio of Partners' matching commitments to NAWCF funds. In any termination of an award, USFWS must consider the Recipient's responsibilities for property management (if any) and to submit financial, performance, and other reports required by this Agreement.

XVI. AUDIT REQUIREMENTS Recipients that expend \$300,000 or more in a year in Federal awards must have a single or program-specific audit conducted for that year in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" (<http://www.whitehouse.gov/OMB/grants/index.html>).


XVII. GENERAL PROVISIONS General provisions applicable to this Agreement are in 43 CFR, part 12, entitled, "Administrative and Audit Requirements and Cost Principles for Assistance Programs." General provisions for acquisition of interests in real property and relocation assistance are in 49 CFR, part 24, entitled "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs." These regulations are available at <http://www.nara.gov/nara/cfr/index.html> and are incorporated by reference.

XVIII. CERTIFICATIONS AND ASSURANCES Certifications and Assurances applicable to Federal Grant and Cooperative Agreements executed by the Recipient are a part of this Agreement.

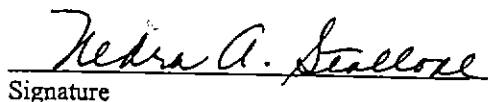
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

DUCKS UNLIMITED, INC.

U.S. FISH & WILDLIFE SERVICE



Signature



Signature

JAMES L. WARE

Nedra A. Stallone

Typed or Printed Name

Typed or Printed Name
SENIOR GROUP MANAGER

Contracting Officer

Title

Title

4/19/01

Date

5-4-01

Date

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EXHIBIT C
CERTIFICATIONS AND ASSURANCES

Cooperator agrees to enter into and be bound by the following Certifications and Assurances:

- A. **Nondiscrimination.**
The Cooperator agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq.; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.; Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq.
- B. **Debarment and Suspension.**
The Cooperator certifies to the best of its knowledge and belief that it is not presently debarred, suspended, or proposed for debarment or declared ineligible for the award of subawards, by any federal agency, in accordance with OMB guidelines.
- C. **Certification of Non-Delinquency on Federal Debt.**
The Cooperator certifies that it is in compliance with the Non-Delinquency on Federal Debt criteria, in accordance with OMB-129.
- D. **Certification of Drug-Free Workplace.**
The Cooperator certifies that it has implemented appropriate policy in accordance with Drug-Free Workplace Act of 1988, 45 C.F.R. Part 76, Subpart F.
- E. **Certification Regarding Lobbying.**
The Cooperator certifies to the best of its knowledge and belief that no Federally appropriated funds have been paid or will be paid, by or on behalf of the Cooperator, to any person for influencing or attempting to influence a Federal officer or Federal employee of any agency in connection with the awarding of any Federal award. (Section 1352, Title 31, 45 U.S. Code.)

**METROPOLITAN SERVICE DISTRICT
OF OREGON**

By: _____

Signature

Title: _____

Date: _____

NATURAL RESOURCES COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 02-3235A FOR THE PURPOSE OF AUTHORIZING METRO'S PRESENT AND FUTURE PARTICIPATION IN THE NORTH AMERICAN WETLAND CONSERVATION ACT GRANT PROGRAM WITH DUCKS UNLIMITED AND THE US FISH AND WILDLIFE SERVICE

Date: October 25, 2002

Presented by: Councilor McLain

Committee Action: At its October 16 meeting, the Natural Resources Committee voted 4-0 to recommend Council adoption of Resolution 02-3235A. Voting in favor: Councilors Atherton, Hosticka, Park and McLain.

Background: Resolution 02-3235A permits Metro to participate in a joint site-specific wetland acquisitions, restoration and enhancement agreement with Ducks Unlimited and the US Fish and Wildlife Service. The sites are in the Wilsonville area, and include areas purchased with Open Spaces Bond Measure funds. The agreement allows Metro to receive \$345,000 in federal grant funds. A key condition for receiving these funds is a commitment to protect and maintain (not sell or encumber) the properties for a 30- year period. The resolution also authorizes Metro to enter agreements in the future, upon similar terms, subject to review and approval by the Metro Council.

Committee Issues/Discussion: Jim Morgan, naturalist with the Parks and Greenspaces Department made the staff presentation. The committee discussed the breadth of possible future commitments and concluded that future agreements should be subject to review and approval by the council.

- **Known Opposition:** None
- **Existing Law:** Provisions of the Open Spaces bond measure 26-26. Resolution 02-3150 authorizing the Steele Foundation Acquisition.
- **Budget Impact:** Receipt of \$345,000 for acquisition, enhancement and restoration activities.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3235A, FOR THE PURPOSE OF AUTHORIZING METRO'S PRESENT AND FUTURE PARTICIPATION IN THE NORTH AMERICAN WETLAND CONSERVATION ACT (NAWCA) GRANT PROGRAM WITH DUCKS UNLIMITED AND THE U.S. FISH AND WILDLIFE SERVICE

Date: October 3, 2002

Prepared by: Jim Morgan
Jim Desmond

BACKGROUND

- *Tonquin and Gotter Bottom Floodplain Restoration Funds.*

Metro Regional Parks and Greenspaces Department has developed restoration plans for properties owned and managed by Metro at two sites. Acquired by Metro with funds from the Open Spaces Bond Measure, the two sites are (1) the Steele Foundation Property, a part of Coffee Lake in the Tonquin Geologic Target Area, and (2) Gotter Bottom in the Tualatin River Access Target Area. Restoration of these floodplain properties will provide improvements in wildlife habitat quality while allowing for passive recreational and educational opportunities.

Metro has benefited from earlier restoration projects conducted in cooperation with Ducks Unlimited (DU), a not-for-profit conservation organization. As part of larger scale lower Columbia River estuary and Willamette Valley wetland restoration initiatives, Metro joined with Ducks Unlimited in applying for restoration grant funds appropriated by the federal North American Wetland Conservation Act (NAWCA). In an earlier application phase with DU, Metro received \$160,000 from NAWCA for restoration activities in the Multnomah Channel Target Area. In the last application phase, Metro was determined to be eligible to receive \$141,000 in NAWCA acquisition funds for the Steele Foundation Property, \$45,000 in NAWCA wetland restoration and enhancement funds to perform Gotter Bottom restoration projects, and \$163,000 in NAWCA funds to perform wetland restoration on the Steele Foundation Property. In addition, DU is contributing an additional \$20,000 toward the Gotter Bottom project with federal and private funds. Metro is working with DU to identify other Metro sites that may be eligible for NAWCA grant funds, and is seeking approval from the Council to enter into NAWCA grant agreements with DU for the subject sites and other yet to be identified sites in the future under substantially similar terms as those set forth herein.

- *Agreement to Receive NAWCA Funds for Steele Foundation Property Purchase.*

Via Resolution No. 02-3150, the Metro Council, on January 10, 2002, approved the use of Open Space Bond measure funds to purchase the Steele Foundation Property in the Tonquin Geologic Area. The staff report that accompanied that Resolution stated that Ducks Unlimited agreed to contribute 33% of the purchase price of the Steele Foundation property. DU's contribution will be from NAWCA grant funds, and Metro's prior acquisition of the Boeckman, Keys and Steele Foundation Properties in the Tonquin Geologic Area will serve as Metro's \$1.5 million grant match (Exhibit A). A condition of the NAWCA acquisition funding is a 30-year commitment not to sell or encumber Boeckman, Keys, and part of the Steele Foundation Property without U.S. Fish and Wildlife Service permission, and to use said properties for conservation and protection of the wetland ecosystem. If Metro sells or encumbers the properties without permission, the U.S. and Fish and Wildlife Service may choose to: 1) charge Metro the fair market value of the federal contribution

to the acquisition, or 2) require Metro to deed to U.S. Fish and Wildlife Service another parcel of Metro property equal in market value and serving the same long-term conservation goals as the affected property. This commitment bears many of the characteristics of a grant of easement and potentially commits Metro to the conveyance of a real property interest in the future. As such, it constitutes an "Unusual Circumstance" as that term is defined in the Metro Open Spaces Workplan and requires Metro Council approval.

- *Agreement To Receive NAWCA Funds For Wetland Restoration and Enhancement.*

The proposed agreements between Metro and DU to fund wetland restoration and enhancement projects (Exhibits B and C) will require Metro to manage, maintain and protect the project improvements and restored wetlands for a period of 30 years. Metro would also jointly approve site development plans, obtain all construction permits, cooperate with DU to install the improvements, and be liable for any costs or damages incurred due to errors in the plans or construction delays that arise due to events beyond DU's control. DU would design, engineer, bid and construct the project, and participate with the U.S. Fish and Wildlife Service in periodic site inspections to assure the continuing viability of the project. The roles and responsibilities set forth in these wetland restoration and enhancement agreements with DU bear many of the characteristics of both professional services agreements and public improvement contracts. However, because the improvements would be designed and jointly constructed by DU and Metro with donated funds and not Metro money, the DU proposal falls outside the scope of Metro's approved contracting procedure. As a result, these Agreements warrant Metro Council consideration.

It is an unlikely event that Metro would default on these Agreements. The wetland properties to which the DU Agreements would apply are very unlikely to be managed for any other objective, nor would the DU Agreements preclude passive uses such as wildlife viewing. Therefore, the DU Agreements do not appear to pose significant restrictions to Metro's long-term management objectives for the properties to which they are being applied.

ANALYSIS/INFORMATION

Known Opposition

No opposition to the proposed Agreement with Ducks Unlimited is anticipated.

Legal Antecedents

Resolution No. 02-3150, which authorized the Steele Foundation acquisition

Anticipated Effects

If adopted, this Resolution will acknowledge the provisions inherent in current NAWCA funding and allow Metro to accept additional funds from NAWCA in the future, subject to review and approval by Metro Council, as long as such associated provisions do not substantially change.

Budget Impacts

Current and future grant funds originating from NAWCA for restoration of Metro properties will significantly expand Metro's capabilities of meeting its policy objectives of restoration, enhancement, and protection of the region's natural resources. A separate ordinance regarding budgetary impacts of the restoration project at Gotter Bottom has been submitted for review and consideration by Council.

RECOMMENDED ACTION

The Executive Office recommends adoption of Resolution No. 02-3235A.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING) RESOLUTION NO. 02 3235
METRO'S PRESENT AND FUTURE)
PARTICIPATION IN THE NORTH AMERICAN) Introduced by Mike Burton, Executive Officer
WETLAND CONSERVATION ACT (NAWCA))
GRANT PROGRAM WITH DUCKS UNLIMITED)
AND THE U.S. FISH AND WILDLIFE SERVICE)

WHEREAS, a stated goals of the Metro Greenspaces Master Plan is to protect and manage significant natural areas through partnerships with governments, non-profit organizations and others; and

WHEREAS, Metro's Regional Parks and Greenspaces Department has developed restoration plans for two Open Spaces Bond Measure sites - (1) the Steele Foundation Property, a part of Coffee Lake in the Tonquin Geologic Target Area and (2) Gotter Bottom in the Tualatin River Access Target Area, and restoration of these floodplain properties will provide improvements in wildlife habitat quality while allowing for passive recreational and educational opportunities; and.

WHEREAS, Metro and Ducks Unlimited (DU) applied to receive wetlands acquisition and restoration grant funds appropriated by the federal North American Wetland Conservation Act (NAWCA) available through the U.S. Fish and Wildlife Service (USFWS); and

WHEREAS, Metro has been determined to be eligible to receive \$ 141,000 in NAWCA acquisition funds for the Steele Foundation Property, \$45,000 in NAWCA wetland restoration and enhancement funds to perform Gotter Bottom restoration projects, and \$163,000 in NAWCA funds to perform wetland restoration on the Steele Foundation Property upon entry into a Site Specific Agreement with Ducks Unlimited and the USFWS; and

WHEREAS, the terms of the Site Specific Agreement (Exhibit A) required by Ducks Unlimited and the USFWS for acquisition grant funds constitute an "Unusual Circumstance," and requires Metro Council approval; and

WHEREAS, Metro's entry into the Site Specific Agreements (Exhibits B and C) required by Ducks Unlimited and the USFWS for said wetlands restoration and enhancement projects requires Metro Council approval; and

WHEREAS other opportunities to participate upon the same terms and conditions with DU to receive NAWCA grant funds for acquisition, restoration and enhancement of wetlands upon Metro Open Space Bond Measure sites are likely to become available in the future; now therefore,

BE IT RESOLVED that the Metro Council approves Metro's entry into the attached Site Specific Wetlands Acquisition, Restoration and Enhancement Agreements with Ducks Unlimited and the U.S. Fish and Wildlife Service for Metro's Steele Foundation and Gotter Bottom Properties, and authorizes Metro to enter into future NAWCA grant agreements with Ducks Unlimited upon substantially similar terms without additional review by Metro Council.

ADOPTED by the Metro Council this _____ day of _____ 2002

Carl Hosticka, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 02-3235, FOR THE PURPOSE OF AUTHORIZING METRO'S PRESENT AND FUTURE PARTICIPATION IN THE NORTH AMERICAN WETLAND CONSERVATION ACT (NAWCA) GRANT PROGRAM WITH DUCKS UNLIMITED AND THE U.S. FISH AND WILDLIFE SERVICE

Date: October 3, 2002

Prepared by: Jim Morgan
Jim Desmond

BACKGROUND

- *Tonquin and Gotter Bottom Floodplain Restoration Funds.*

Metro Regional Parks and Greenspaces Department has developed restoration plans for properties owned and managed by Metro at two sites. Acquired by Metro with funds from the Open Spaces Bond Measure, the two sites are (1) the Steele Foundation Property, a part of Coffee Lake in the Tonquin Geologic Target Area, and (2) Gotter Bottom in the Tualatin River Access Target Area. Restoration of these floodplain properties will provide improvements in wildlife habitat quality while allowing for passive recreational and educational opportunities.

Metro has benefited from earlier restoration projects conducted in cooperation with Ducks Unlimited (DU), a not-for-profit conservation organization. As part of larger scale lower Columbia River estuary and Willamette Valley wetland restoration initiatives, Metro joined with Ducks Unlimited in applying for restoration grant funds appropriated by the federal North American Wetland Conservation Act (NAWCA). In an earlier application phase with DU, Metro received \$160,000 from NAWCA for restoration activities in the Multnomah Channel Target Area. In the last application phase, Metro was determined to be eligible to receive \$141,000 in NAWCA acquisition funds for the Steele Foundation Property, \$45,000 in NAWCA wetland restoration and enhancement funds to perform Gotter Bottom restoration projects, and \$163,000 in NAWCA funds to perform wetland restoration on the Steele Foundation Property. In addition, DU is contributing an additional \$20,000 toward the Gotter Bottom project with federal and private funds. Metro is working with DU to identify other Metro sites that may be eligible for NAWCA grant funds, and is seeking approval from the Council to enter into NAWCA grant agreements with DU for the subject sites and other yet to be identified sites in the future under substantially similar terms as those set forth herein.

- *Agreement to Receive NAWCA Funds for Steele Foundation Property Purchase.*

Via Resolution No. 02-3150, the Metro Council, on January 10, 2002, approved the use of Open Space Bond measure funds to purchase the Steele Foundation Property in the Tonquin Geologic Area. The staff report that accompanied that Resolution stated that Ducks Unlimited agreed to contribute 33% of the purchase price of the Steele Foundation property. DU's contribution will be from NAWCA grant funds, and Metro's prior acquisition of the Boeckman, Keys and Steele Foundation Properties in the Tonquin Geologic Area will serve as Metro's \$1.5 million grant match (Exhibit A). A condition of the NAWCA acquisition funding is a 30-year commitment not to sell or encumber Boeckman, Keys, and part of the Steele Foundation Property without U.S. Fish and Wildlife Service permission, and to use said properties for conservation and protection of the wetland ecosystem. If Metro sells or encumbers the properties without permission, the U.S. and Fish and Wildlife Service may choose to: 1) charge Metro the fair market value of the federal contribution

to the acquisition, or 2) require Metro to deed to U.S. Fish and Wildlife Service another parcel of Metro property equal in market value and serving the same long-term conservation goals as the affected property. This commitment bears many of the characteristics of a grant of easement and potentially commits Metro to the conveyance of a real property interest in the future. As such, it constitutes an "Unusual Circumstance" as that term is defined in the Metro Open Spaces Workplan and requires Metro Council approval.

- *Agreement To Receive NAWCA Funds For Wetland Restoration and Enhancement.*

The proposed agreements between Metro and DU to fund wetland restoration and enhancement projects (Exhibits B and C) will require Metro to manage, maintain and protect the project improvements and restored wetlands for a period of 30 years. Metro would also jointly approve site development plans, obtain all construction permits, cooperate with DU to install the improvements, and be liable for any costs or damages incurred due to errors in the plans or construction delays that arise due to events beyond DU's control. DU would design, engineer, bid and construct the project, and participate with the U.S. Fish and Wildlife Service in periodic site inspections to assure the continuing viability of the project. The roles and responsibilities set forth in these wetland restoration and enhancement agreements with DU bear many of the characteristics of both professional services agreements and public improvement contracts. However, because the improvements would be designed and jointly constructed by DU and Metro with donated funds and not Metro money, the DU proposal falls outside the scope of Metro's approved contracting procedure. As a result, these Agreements warrant Metro Council consideration.

It is an unlikely event that Metro would default on these Agreements. The wetland properties to which the DU Agreements would apply are very unlikely to be managed for any other objective, nor would the DU Agreements preclude passive uses such as wildlife viewing. Therefore, the DU Agreements do not appear to pose significant restrictions to Metro's long-term management objectives for the properties to which they are being applied.

ANALYSIS/INFORMATION

Known Opposition

No opposition to the proposed Agreement with Ducks Unlimited is anticipated.

Legal Antecedents

Resolution No. 02-3150, which authorized the Steele Foundation acquisition

Anticipated Effects

If adopted, this Resolution will acknowledge the provisions inherent in current NAWCA funding and allow Metro to accept additional funds from NAWCA in the future without additional review by Metro Council as long as such associated provisions do not substantially change.

Budget Impacts

Current and future grant funds originating from NAWCA for restoration of Metro properties will significantly expand Metro's capabilities of meeting its policy objectives of restoration, enhancement, and protection of the region's natural resources. A separate ordinance regarding budgetary impacts of the restoration project at Gotter Bottom has been submitted for review and consideration by Council.

RECOMMENDED ACTION

The Executive Office recommends adoption of Resolution No. 02-3235.