

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ESTABLISHING THE)	RESOLUTION 92-1720
METROPOLITAN GREENSPACES)	
ENVIRONMENTAL EDUCATION SMALL)	
GRANTS PROGRAM GUIDELINES AND)	Introduced by Rena Cusma,
FUNDING CRITERIA)	Executive Officer

WHEREAS, on July 23, 1992, through Resolution No. 92-1637, the Council of the Metropolitan Service District adopted the Metropolitan Greenspaces Master Plan; and

WHEREAS, the Metropolitan Greenspaces Master Plan outlines a commitment to coordinating, interpreting and expanding community knowledge about urban natural resources and sites by working with local school districts, conservation and resource agencies, citizens groups and other providers of environmental education programs; and

WHEREAS, the U.S. Fish & Wildlife Service has awarded METRO grant funding to carry out programs in support of community education about urban natural areas; and

WHEREAS, METRO has the opportunity to make \$40,000 of these federal funds available in small grants in support of environmental education programs that encourage use of local natural areas as living laboratories and by doing so further the understanding of the goals and objectives of the Metropolitan Greenspaces System; and

WHEREAS, the federal funding available for this program spans two METRO fiscal years and the small grants funds will be contracted for expenditure from both the 1992-93 and the 1993-94 METRO budgets; and

WHEREAS, a small grants program will enable METRO to distribute funds through a competitive process that will challenge applicants to secure community partnerships in the delivery of a proposed environmental education project; and

WHEREAS, a small grants program will ensure a balanced rating of applicants that will

lead to a fair distribution of Metropolitan Greenspaces grant funding; and

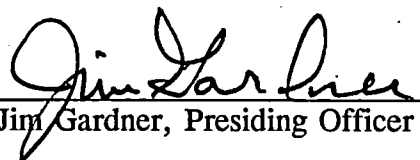
WHEREAS, the Metropolitan Greenspaces Environmental Education Small Grants Program will be used as a catalyst for pulling together cooperative efforts to understand, appreciate, and protect urban natural areas and thereby increase public awareness of the Metropolitan Greenspaces Program;

BE IT RESOLVED,

1) That the Council of the Metropolitan Service District hereby approves the establishment of the Metropolitan Greenspaces Environmental Education Small Grants Program Guidelines and Funding Criteria in Exhibit "B" attached; review committee membership in Exhibit "A" attached, and the form of intergovernmental agreement in Exhibit "C" attached or other form of agreement approved by General Counsel; and

2) That the Council hereby authorize the Executive Officer to execute agreements consistent with the Metropolitan Greenspaces Environmental Education Small Grants Program including any of the small grants with portions of the scope of work completed in FY 93-94.

Adopted by the Council of the Metropolitan Service District this 22nd day of December, 1992.



Jim Gardner, Presiding Officer

TRANSPORTATION AND PLANNING COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1720, ESTABLISHING THE METROPOLITAN GREENSPACES ENVIRONMENTAL EDUCATION SMALL GRANTS PROGRAM GUIDELINES AND FUNDING CRITERIA

Date: December 10, 1992

Presented by: Councilor Washington

Committee Recommendation: At the December 8 meeting, the Transportation and Planning Committee voted unanimously to recommend Council adoption of Resolution No. 92-1720. Voting in favor: Councilors Devlin, McLain, Buchanan, and Washington. Excused: Councilor Moore.

Committee Issues/Discussion: Ellen Lanier-Phelps, Senior Regional Planner, briefed the committee on the education portion of the Metropolitan Greenspaces Program. To acknowledge the community education component of the Master Plan, Metro, through a grant from U.S. Fish and Wildlife, has allocated \$60,000 dedicated to educational activities, under the Contract A designation. \$20,000 of these funds were previously earmarked to the GreenCity Data Project. Discussions are underway to determine the distribution of the remaining \$40,000 to allow the greatest impact on the community. The Smith and Bybee Lakes area educational interpretive center, so far, is the only site that could qualify.

In July, 1991 a report on "Environmental Education in the Metropolitan Area", was completed by Metro. This report is being used to help determine the use of the remaining funds. In addition, there is a Public Involvement and Education Committee that is providing assistance in moving ahead to the next phase of the program.

Finally, a small grants program that is competitively based was selected, to act as a catalyst to help fund programs based on urban natural sites that can be replicated by other groups. That is the purpose of this resolution.

This resolution establishes the program, outlines its guidelines, and authorizes the awarding of the grants, according to specified guidelines and criteria. Each proposal will be evaluated by a steering committee. Councilor Hanson will represent the Metro Council.

Each project being considered must be relevant to the Metropolitan Greenspaces Program, be creatively compiled, utilizing actual hands-on site use of a natural area. Grounds should be cooperative and interdisciplinary, reaching diverse audiences. The maximum size of grants will be \$8,000, but most grants will be considerably smaller. Eligible recipients will be government agencies, schools and non-profit groups. Each project must involve a minimum of two

cooperating community partners. Funds must be matched by the applicants and all projects must be completed by January 15, 1994.

Councilor McLain asked how we could assure that matching funds would be available in the present budget climate. Ms. Lanier-Phelps explained that this question will be asked during the selection process and evaluated according to the level of security of funds. Councilor McLain expressed her concern for school districts where the budgeting process is not complete until after February 1 of each year. She felt the timing would not coincide easily and that schools might be disadvantaged. Ms. Lanier-Phelps said in such cases schools would be encouraged to cooperate with a partner that was able to provide the financial guarantee that could be paid back following the budget cycle.

Councilor Devlin cited examples from the Greenspaces Restoration Grant process. Based on difficulties experienced with that process, he felt it important to expect some guarantees from applicants.

Ms. Lanier-Phelps continued that because this project will be dealing with federal funds within two fiscal years, the contracts to be signed will need to appear as multi-year contracts. Also, the project is scheduled to begin contracting in March, 1993. The solicitation will include the Environmental Education Association of Oregon, the Oregon Science Teachers Association, a mailing list of principals and administrators for all schools, and the FAUNA groups.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1720, TO ESTABLISH THE METROPOLITAN GREENSPACES ENVIRONMENTAL EDUCATION SMALL GRANTS PROGRAM GUIDELINES AND FUNDING CRITERIA

Date: 8 December 1992

Presented by: Ellen Lanier-Phelps

PROPOSED ACTION

Resolution No. 92-1720 establishes guidelines and selection criteria for a Metropolitan Greenspaces environmental education small grants program that will provide up to \$40,000 in competitive grant funding for educational programs in support of and relevant to the goals of the Greenspaces effort.

BACKGROUND AND ANALYSIS

Two of the eight goals in the Metropolitan Greenspaces Master Plan adopted by the METRO Council on July 23, 1992 through Resolution No. 92-1637, relate directly to education and community interaction:

- Encourage environmental awareness so that citizens will become active and involved stewards of natural areas.
- Educate citizens about the regional system of greenspaces through coordinated programs of information, technical advice, interpretation, and assistance.

Through the Greenspaces master plan, METRO is committed to coordinating, interpreting and expanding community knowledge about urban natural resources by working with local school districts, nonschool-based environmental education providers, neighborhood and citizen groups, and other resource agencies.

A maximum of \$40,000 is available to provide small grants for environmental education and community involvement. The purpose in awarding these small grants is to fund environmental education efforts that support the Metropolitan Greenspaces system, its goals and objectives. Proposals that have long-term potential for sustainability and/or transferability will be sought, so that groups not a part of the proposed grant projects may duplicate or benefit from these efforts.

The proposed grant period will end January 15, 1994. At its conclusion, a compilation of environmental education programs based on urban greenspaces will be created by METRO staff that will become the nucleus of a larger, more comprehensive environmental education program accessible by students of all ages throughout the region. Each funded project will become an important "chapter" in Metropolitan Greenspaces efforts to support and enhance environmental education programs in the metropolitan region.

Cities, counties, schools, and special districts within the boundaries of METRO's service district

or within Clark County, Washington will be eligible to apply for the grant funds. Within these same geographic boundaries, nonprofit organizations that are recognized by the Internal Revenue Service (IRS) as 501(c)3 tax-exempt charitable entities will also be eligible. Individuals will not be eligible.

Each application will be rated for the following:

- support of and relevance to goals of the Metropolitan Greenspaces program
- creativity and innovation in designing new approaches to environmental education related to urban greenspaces and ecosystems
- ecological concepts and focus of the project
- cooperative and/or interdisciplinary nature of the project
- the quality of the "hands-on" application of learning materials or processes at an urban greenspace site
- ability of program to reach diverse audiences
- long-term sustainability or transferability of project
- qualifications of partners to carry out the project
- cost-effectiveness of the project
- realistic budget
- ability to match grant funds
- ability to provide successful program within timeframe of grant period
- geographic location and focus of lead applicant.

METRO and federal contracting procedures and policies will be followed, and METRO will enter into contracts and/or intergovernmental agreements with nonprofit groups or agencies awarded grants. All potential grantees must plan and implement the proposed project with support from at least two (2) public or private community partners.

As many qualified projects as possible will be funded, including at least one project in each of the four metropolitan counties (Multnomah, Clackamas, Washington and Clark). The maximum grant size available will be \$8,000. Grant funds must be matched, on at least a 1:1 value ratio. A cash match will not be required. All grants will be paid on a reimbursement basis, and all projects that receive funds will be subject to METRO and federal performance standards and audits.

METRO staff will work with a committee of advisors, educators and other resource people in the review of applications, allocation of awards and project oversight. Members of the selection committee will represent METRO staff and council, Greenspaces advisory committees, local and federal agencies, citizens and the environmental community. A list of proposed committee members is Exhibit A.

The proposed Metropolitan Greenspaces Environmental Education Small Grants Program application packet is attached as Exhibit B.

An intergovernmental agreement proposed for use with agencies selected by the review committee to win small grant awards is attached as Exhibit C. A contract for use with

successful 501(c)3 applicants, if an award is recommended by the review committee, will be approved by METRO's General Counsel.

A list of projects recommended for funding will be submitted by the Executive Officer to the METRO council for final approval.

BUDGET IMPACT

Educational grant funds in the amount of \$60,000 were approved by the METRO council with a "A" contract designation in the FY '92-93 budget. The revenue source is the U.S. Fish & Wildlife Service Metropolitan Greenspaces grant. Via Resolution 92-1704A, \$20,000 of this amount has been allocated by the council toward the second year of the GreenCity Data Project. The remaining \$40,000 are recommended for allocation to this small grants program. Because the federal funding available for this program spans two METRO fiscal years, the small grants funds will be contracted for expenditure from both the 1992-93 and the 1993-94 METRO budgets.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 92-1720.

METRO

Planning Department
2000 S.W. First Avenue
Portland, OR 97201-5398
(503) 22-GREEN

Greenspaces

METROPOLITAN GREENSPACES ENVIRONMENTAL EDUCATION SMALL GRANTS PROGRAM

REVIEW COMMITTEE

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228-5512

Ellen Lanier-Phelps
Planning Department
METRO
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Portland, OR 97201
221-1646, ext 118

METRO

Planning Department
2000 S.W. First Avenue
Portland, OR 97201-5398
(503) 22-GREEN

Greenspaces

DATE:

TO: Potential Grant Applicants

FROM: Ellen Lanier-Phelps

SUB: Metropolitan Greenspaces Environmental Education Small Grants Program

Attached is information on small environmental education grants available from METRO. Included is information on:

- The Background of the Metropolitan Greenspaces program
- Purpose of the Environmental Education Small Grants Program
- Eligible applicants and projects
- Requirement that all projects be cooperative projects
- Allocation of funds
- Criteria and process for review
- Applicant proposal information.

Please note the following:

The maximum grant size through this program will be \$8,000; there is no minimum grant size. The maximum amount of funds available for this grant program are \$40,000.

The deadline for submission of grant proposal requests is February 15, 1993. Proposals sent by fax will not be accepted.

All project-related activities (including evaluation of the project) should be completed no later than January 15, 1994.

Funds for the Metropolitan Greenspaces Environmental Education Small Grants Program are part of a larger grant to METRO for the Greenspaces program by the US Fish and Wildlife Service. Support of METRO in coordinating environmental education and community involvement surrounding the Greenspaces program is meant to serve as a catalyst for cooperative efforts focused on expanding awareness, knowledge, and appreciation of this region's urban natural areas.

If you have any questions, please contact Ellen Lanier-Phelps by calling 221-1646, ext. 118 or at 22-GREEN.

**The Metropolitan Greenspaces
Environmental Education
Small Grants Program**

Background

The Metropolitan Greenspaces program is one of two national planning models focused on regional coordination of protection of natural areas in the urban environment. As coordinator of the program, METRO has developed a master plan for this four-county, bi-state effort, working cooperatively with multiple political jurisdictions, conservation organizations, neighborhood groups, businesses and citizens. Together, these groups and individuals are creating a regional system of natural areas, open space, trails and greenways for wildlife and for people.

Two of the eight Metropolitan Greenspaces master plan goals relate directly to education and community interaction:

- Encourage environmental awareness so that citizens will become active and involved stewards of natural areas.
- Educate citizens about the regional system of greenspaces through coordinated programs of information, technical advice, interpretation, and assistance.

METRO is committed to coordinating, interpreting and expanding community knowledge about urban natural resources by working with local school districts, nonschool-based environmental education providers, neighborhood and citizen groups, and other resource agencies. As a result, it is providing a small grants program that will fund environmental education models that can be used at greenspace sites by students of all ages and abilities in the Portland - Vancouver area. Funds are available to METRO for these public awareness and education activities through a grant from the U.S. Fish and Wildlife Services (USFWS).

Purpose of the Environmental Education Small Grants Program

The Metropolitan Greenspaces program has the opportunity to make \$40,000 available in small grants in support of environmental education programs. The purpose in providing these small grants is to fund environmental education excellence, not simply recognize need, and to:

- Support the Metropolitan Greenspaces system, its goals and objectives in meaningful ways that build a comprehensive environmental education effort around urban natural areas;
- Encourage field experiences and hands-on learning experiences for learners of all ages, using local greenspaces as examples and models of "living" laboratories;
- Teach about the ecological systems and watersheds that make up the urban environment;

- Develop a knowledgeable citizenry that has the tools to properly care for greenspaces on both public and private lands in the metropolitan area;
- Provide funding support for environmental education projects to organizations that may have a limited ability to carry these out on their own.

Proposals that have long-term potential for sustainability and/or transferability will be sought, so that other groups not a part of the proposed, original project may duplicate or benefit from these efforts. At the conclusion of this grant period (January 1994), a compilation of environmental education programs based on urban greenspaces will be created that will become the nucleus of a larger, more comprehensive environmental education program accessible by students of all ages throughout the region. Each funded project will become an important "chapter" in Metropolitan Greenspaces efforts to support and enhance environmental education programs in the metropolitan region.

Eligible applicants and projects

The following groups are eligible to apply:

- Cities, counties, schools, and special districts within the boundaries of METRO's service district or within Clark County, Washington.
- Nonprofit organizations that are recognized by the Internal Revenue Service (IRS) as 501(c)3 tax-exempt charitable entities.
- Organizations located in or providing services primarily within the boundaries of METRO's service district or within Clark County, Washington.

Funds must go through an agency in public ownership or a nonprofit group. METRO and federal contracting procedures and policies will be followed, and METRO will enter into contracts and/or intergovernmental agreements with nonprofit groups or agencies awarded grants. Individuals will not be eligible. Only one application per organization or school will be funded.

In the event that any subcontracts are to be utilized in the performance of the grant agreement, the applicant's attention is directed to the federal funding requirements included in this packet and to METRO Ordinance 92-466A, effective December 24, 1992, which establishes the language of METRO Code provision 2.04.300. Copies of the METRO document are available from the Procurement and Contracts Division of Regional Facilities.

METRO extends equal opportunity to all persons and specifically encourages Minority, Women-Owned and Disadvantaged Businesses to access and participate in this and all METRO projects, programs and services. METRO prohibits discrimination against any person or firm based upon race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

METRO reserves the right, at all times during the subsequent course of any awarded grant, to monitor compliance with the terms of this grant program, require additional written

documentation or proof of good faith efforts, and depend upon the grant contractor's immediate compliance.

Grant funds should be used as a catalyst for pulling together cooperative efforts to understand, appreciate, and protect urban greenspaces. In some way, projects should help teach the importance of stewardship of lands, along with sharing insights into the urban ecosystem, its plant, fish, and wildlife habitat characteristics, and its other ecological values. Interdisciplinary ecology programs that promote public responsibility, involvement, stewardship, and civic action are encouraged.

The development, testing and training for use of environmental education materials will be allowed. As an applicant, you may propose, for example, a written interpretive guide or site-specific curriculum materials, but the project must result in direct contact with a greenspace and hands-on applications that emphasize on-site activities as well as concepts. A balance of projects that are sensitive to learning styles, diverse in their activities, and good platforms for cooperative learning is a desirable outcome of this grant program.

Funds are intended to support small projects, not be a small part of ongoing or significantly larger, budgeted projects. The project must be realistic, and the budget must match staff and volunteer capabilities and skills. If the project cannot be carried out soon after the grant is made, the grant request will not be approved. Successful applicants will present a realistic timeline for implementation of the project, with completion (including the evaluation of the project) by January 15, 1994.

Requirement that all projects be cooperative projects

The Metropolitan Greenspaces Environmental Education Small Grants Program is based on challenging applicants to secure partnerships with other government agencies, schools, nonprofit organizations, "friends" and neighborhood groups, businesses, and the general public. All potential grantees must plan and implement the proposed project with support from at least two (2) public or private community partners. These cooperating partners may provide materials, cash, staff hours, training, outreach, public relations, fund raising, or any other appropriate kind of involvement on the applicant team. Cooperating partners must verify their support and intended participation in this project by providing a letter of commitment to the project with the application.

Allocation of funds

\$40,000 in grant funds are available. All projects that receive funds will be subject to METRO and federal performance standards and audits. The maximum grant size available is \$8,000. There is no average or minimum grant size established. While there is a relatively small amount of funds available, as many qualified projects as possible will be funded, including at least one project in each of the four metropolitan counties (Multnomah, Clackamas, Washington and Clark).

Grant funds must be matched, on at least a 1:1 value ratio. METRO encourages applicants to seek other sources of funds and donated services and materials to leverage the federal funds used for these grants. A cash match is not required. Allowable in-kind support includes staff time (wages) and volunteer efforts dedicated to the project. Volunteer hours should be computed at the rate of one hour times the federal hourly minimum wage of \$4.75. Direct costs of additional labor, materials, supplies, transportation, and equipment rental needed to develop and implement the project are also eligible as a part of the match. Applicants may begin accounting for their local match only after the grant is awarded.

NOTE: All grants will be paid on a reimbursement basis. No money will be advanced to projects. If this is a hardship, for example as a nonprofit or neighborhood group, it is hoped that coalitions might be formed with other interested parties to share this temporary burden. A billing procedure will be established on a bi-monthly, quarterly or project completion basis. METRO does not receive any advances from the USFWS; METRO must also apply for reimbursement of funds from the federal government.

Criteria and process for review

METRO staff, working with a committee of advisors, educators and other resource people, will be responsible for reviewing applications, as well as making the awards and carrying out project oversight. In carrying out the competitive review process, each applicant's ability to meet the grant criteria will be weighed and recorded on a standard evaluation form by each committee member. Members of the selection committee will be familiar with the Greenspaces program and represent METRO, its advisory committees, local and federal agencies, and the environmental community. Members will have experience in education, natural resources protection, project management, citizen advocacy, grants funding, and the business community.

Each application will be rated for the following:

- support of and relevance to goals of the Metropolitan Greenspaces program
- creativity and innovation in designing new approaches to environmental education related to urban greenspaces and ecosystems
- ecological concepts and focus of the project
- cooperative and/or interdisciplinary nature of the project
- the quality of the "hands-on" application of learning materials or processes at an urban greenspace site
- ability of program to reach diverse audiences
- long-term sustainability or transferability of project
- qualifications of partners to carry out the project
- cost-effectiveness of the project
- realistic budget
- ability to match grant funds
- ability to provide successful program within timeframe of grant period
- geographic location and focus of lead applicant.

Applicant proposal information

In addition to completing the application cover sheet found in this packet, please provide answers to these questions in no more than five pages of explanation:

- 1. What is the description of the project, its goals and intended results? Why is it important to undertake this effort at this time?**

What is the significance of the project? Who is the targeted audience? What is the need for the project? How do the proposed activities meet this need? What is the project's relationship to urban natural areas and the Metropolitan Greenspaces program? Describe the public - private partnership and why the committed cooperating partners are the appropriate ones to carry out this project?

- 2. How will the goals be accomplished? What methods and criteria will be used for measuring the project's effectiveness and success?**

Provide milestones and objectives that are measurable. How does this project relate to the mission and goals of the applicant's organization? Describe the significance of this project to the organization. What is its experience as an environmental education provider?

- 3. Are there any long-term outgrowths or community impacts that might come from successful completion of this project?**

How can other students, teachers, and other members of the general public be involved and learn from this project? How might public awareness of Greenspaces-related issues be developed from this project (for example, from knowledge gained about resources at a particular site)? Since the project is being built as a cooperative effort, can sustained public participation carry on some aspect of the project begun in this project?

In addition to the narrative responses to the above questions, please fill out the financial fact sheet and provide the following:

- 1. The implementation plan of action and timetable, the workplan and schedule, including specific tasks and dates.**

Is this reasonable and workable? Are there any additional approvals needed (and related dates) that might keep this project from happening? [Remember: Projects must be completed by January 15, 1994.]

2. Qualifications of key staff and/or volunteers.

Please provide the names, roles, qualifications and level of commitment of key people involved in implementing the project.

3. A detailed budget for the project.

How will the match of the grant amount be provided, in dollars or in kind? Include the commitment of the cooperating partners, the request to METRO, and the total cost of the project.

4. Letters of cooperation and support.

Evidence of support from at least two (2) public or private community partners is required. Letters should clearly state the commitments of the partner to the project and be signed by an individual authorized to make such a commitment on behalf of the organization.

Please attach a copy of the applicant's letter from the IRS determining 501(c)3 status for tax exemption.

All completed application materials must be in the Metropolitan Greenspaces office at METRO, 2000 SW First Ave., no later than 5 p.m. on February 15, 1993.

Metropolitan Greenspaces Education Grant Application Summary Sheet

This cover sheet, along with a proposal and the other items described in the grant application packet, should be sent to: Metropolitan Greenspaces Program, METRO, 2000 S.W. First Ave., Portland, Oregon 97201-5398.

Organization _____ Founding Date _____

Address _____

City, State, Zip _____

Project Contact Person _____ Phone _____

Chief Executive Officer _____ Phone _____

Chairperson of the Board _____ Phone _____

Mission of Organization _____

Objectives and description of project: _____

Total project cost _____ Amount requested from Metro _____

Specifically, how will Metropolitan Greenspaces funds be used: _____

Amount and sources of matching contributions committed to project to date: _____

Other funding sources from which support is requested _____

Project period: _____ (number of months) beginning _____

Why is the project important? _____

Who and how many will be served? _____

**Metropolitan Greenspaces
Education Grant Application Financial Fact Sheet**

Page 2

Information About Applicant Organization

Tax-exempt status (If exempt under another organization, send evidence from IRS of that exemption and explain the relationship between the exempt organization and the applicant organization.)

501(c)(3) Organization name on IRS letter _____

Other ? (explain) _____ Is tax-exempt status currently valid? _____

Organization financial information (Do not include in-kind contributions.)

Ending date of fiscal year _____

Budget for current fiscal year: Income _____ Expenditures _____

Major sources of support (and amounts):

Already committed: _____

Expected: _____

Financial statement for last fiscal year: Income _____ Expenditures _____

Major sources of support (and amounts): _____

If a grant is awarded, what is the organization name to which checks should be paid, if different from above?

I certify that the above information is correct and that I am authorized by the governing board of this organization to submit this grant application to the Metropolitan Greenspaces Program.

Signature of Chief Executive Officer: Name _____

Title _____

Date _____

FOR OFFICE USE ONLY

_____ Proof of 501(c)3 and IRS letter

_____ Narrative response

_____ qualification of key individuals

_____ Two (2) letters of cooperation

_____ Project Budget

Metropolitan Greenspaces Education Grant Application

Project Budget

	<u>Category</u>	<u>Request</u>	<u>Match</u>	<u>Total</u>
a)	Personnel			
b)	Material and Supplies			
c)	Rental Fees			
d)	Professional Services			
e)	Volunteer Labor Hours @\$4.75			
f)	Indirect Costs/Overhead (not grant eligible)			
g)	Contingency (not grant eligible)			
h)	Other			

TOTAL FUNDS

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FORM

Name of Metro Project _____

Name of Bidder _____

Address of Bidder _____

Phone Number (____) _____ - _____

THE ABOVE PARTICIPANT:

- A. _____ Has fully met the contract goals.
- B. _____ Has partially met the contract goals, but has made and documented good faith efforts prior to bid opening or proposal submission.
- C. _____ Does not anticipate any subcontracting or supplier relationships, but will utilize or make and document good faith efforts to utilize DBE/MBE/WBEs should any opportunities arise.

**BIDDER/PROPOSER INTENDS TO SUBCONTRACT WITH THE FOLLOWING
DISADVANTAGED BUSINESS ENTERPRISE(S) (DBES), SUBCONTRACTORS OR SUPPLIERS**

FIRM/ADDRESS	NATURE OF WORK (COMMODITY CODE)	DOLLAR VALUE OF PARTICIPATION

Amount of DBE Utilization _____

Authorized Signature

Total Bid/Proposal Amount _____

Percentage DBE Utilization _____

Date: _____

**THIS FORM MUST BE SUBMITTED WITH AND
AT THE TIME OF BID OPENING OR PROPOSAL SUBMISSION**

Copy of Original

Cooperative Agreement
14-16-0001-91551
TIDS # 10120-1-0235
10120-1120
\$567,000

COOPERATIVE AGREEMENT
between
FISH AND WILDLIFE SERVICE
UNITED STATES DEPARTMENT OF THE INTERIOR
and the
METROPOLITAN SERVICE DISTRICT

I. Introduction

Natural habitats within our nation's expanding metropolitan areas are rapidly disappearing. There is an urgent need to develop programs which can be quickly implemented to preserve wetlands, stream corridors and similar remaining natural areas within metropolitan settings. The Fish and Wildlife Service is the principal agency through which the Federal government carries out its responsibility to conserve, protect and enhance wildlife and their habitats in urban areas as well as throughout the United States. The Metropolitan Service District is initiating a Greenspaces Program which seeks to develop a regional plan for the preservation, protection, and public acquisition of natural areas, urban wetlands, and stream corridors. Most of the natural areas in the region have been inventoried by the Metropolitan Service District. Demonstration projects, challenge grants, public outreach, and education activities are important components of the Greenspaces Program. Technical and planning studies, and management and finance studies will also be included in the program. To date, the Metropolitan Service District has committed over \$300,000 in funding and in-kind services to development of the Greenspaces Program, and is expected to play a lead role in implementing the program upon completion of plan development.

II. Authorities

The Service enters this agreement pursuant to the authority provided by the Fish and Wildlife Coordination Act (FWCA) of 1958, as amended, 16 U.S.C. Section 661.

III. Purpose

The purpose of this agreement is to complete the inventory of natural resources remaining within the four county Portland Metropolitan area and develop a Regional Plan for the preservation, protection, enhancement, and (where appropriate) the public acquisition of these areas. It will include the development of a Public Outreach and Education Program, Management and Operation Plan for natural areas, and a Financing and Acquisition Plan for implementation. Opportunities will also be sought to cooperatively implement demonstration projects involving the restoration and/or enhancement of important wetland and wildlife habitat areas, streams and riparian corridors.

IV. Term of Agreement

This agreement is to cover the development of the Greenspace Program as described above, including demonstration projects, and restoration and enhancement grants from January 1, 1991 through September 30, 1992.

V. Specific Obligations of the Parties

A. Service's Obligations.

1. The Service will reimburse the Metropolitan Service District in the amount of \$567,000 for the accomplishment of the tasks identified herein as the responsibility of the Metropolitan Service District.
2. The Service will participate on technical and advisory committees, and will provide a staff biologist to participate in the identification of natural areas and the development of recommendations for the conservation, protection and enhancement of those natural areas.
3. The Service will actively seek opportunities to carry out actions in support of the Greenspaces Program through its ongoing activities, including the review of various Federal programs and plans, and the operation and management of the National Wildlife Refuge System.

B. Metropolitan Service District's Obligations.

1. Metropolitan Service District will furnish materials, equipment, supplies and labor necessary to complete the List of Projects and Activities to be funded as described in Attachment 1.
2. Furnish the Service with quarterly accomplishment reports describing major activities, proposed actions, and problems.
3. Metropolitan Service District may contract with other organizations to conduct specific studies, prepare brochures and maps, design signs, implement demonstration/restoration/enhancement projects, etc. as necessary to complete the tasks described in Attachment 1.

VI. Project Officers

Project Officer for the Service is:

Russell D. Peterson
 U.S. Fish and Wildlife Service
 2600 S.E. 98th Avenue, Suite 100
 Portland, Oregon 97266
 (503) 231-6179

Project Officer for the Metropolitan Service District is:

Mel Huie
Metropolitan Service District
2000 S.W. First Avenue
Portland, Oregon 97201-5398
(503) 220-1186

VII. Deliverables and Milestones

Provide quarterly reports and draft and final products to the Service.

VIII. Funding

A. The Service will reimburse Metro in the amount of \$567,000 for the work identified in this agreement in accordance with the budget attached hereto and identified as Attachment 1.

Monthly billings and reports should be submitted to the Fish and Wildlife Service as follows:

U.S. Fish and Wildlife Service
Portland Field Station
2600 S.E. 98th Avenue, Suite 100
Portland, Oregon 97266

Each billing must reference Agreement No. 14-16-0001-99551 and TID # 10120-1-0235

IX. Special Terms and Conditions

None

X. General Provisions

The U.S. Fish and Wildlife Service's General Provisions for Grants and Cooperative Agreements, dated August 1, 1985, are applicable to this agreement and are incorporated herein as Attachment 2.

XI. Amendments

Amendments to this agreement may be proposed by either party and shall become effective upon being reduced to a written instrument executed by both parties.

XII. Termination

This project may be terminated under the following conditions:

A. Termination for Cause

The Service may terminate this agreement in full, or in part, at any time before the date of completion, whenever it is determined that the other party has failed to comply with the conditions of this agreement. The Service shall promptly notify the other party in writing of this

determination and the reasons for the termination, together with the effective date. Payments made to any party, or recovery by the Service, under agreements terminated for cause shall be in accord with the legal rights and liabilities of the parties.

B. Termination for Convenience

This agreement may be terminated in whole, or in part, when all parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The parties shall agree upon the termination conditions including the effective date and, in the case of partial terminations, the portion to be terminated. The parties shall not incur new obligations after the effective date of termination, and shall cancel as many outstanding obligations as possible. The Service shall allow full credit to the other parties for the Federal share of non-cancellable obligations, properly incurred by the other parties prior to termination.

XIII. Certification Regarding A Drug-Free Workplace

(a) Definitions. As used in this provision,

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substance Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds \$25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will

(1) publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession,

or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- (2) establish a drug-free awareness program to inform such employees about -
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the Contractor's policy of maintaining a drug-free workplace;
 - (iii) any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) the penalties that may be imposed upon employees for drug abuse violation occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision:
- (4) Notify such employees in the statement required by subparagraph (b)(1) of this provision, that as a condition of continued employment on the contract resulting from this solicitation, the employee will --
 - (i) abide by the terms of the statement; and
 - (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- (5) Notify the Contracting Officer within ten (10) days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction; and
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, impose the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:
 - (i) Take appropriate personnel action against such employee, up to and including termination; or,
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this provision.

- (c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.
- (d) Failure of the offeror to provide the certification required by paragraphs (b) or (c) or this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104-1(g) and 19.602-1(a)(2)(i).).
- (e) In addition to other remedies available to the Government, the certification in paragraphs (b) and (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the make subject to prosecution under Title 18, United States Code, Section 1001.

XIV. Certification Regarding Lobbying Activities

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be

subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

IN WITNESS WHEREOF, each party hereto has caused this Cooperative Agreement to be executed by an authorized official on the day and year set forth opposite their signature.

FISH AND WILDLIFE SERVICE

By: Martin J. Olenik Date: March 22, 1991
Title: Regional Director

OTHER PARTY

By: Rona Curran Date: 4/22/91
Metropolitan Service District
Title: Executive Officer

SUFFICIENCY REVIEW

By: Lela J. Mannon Date: March 20, 1991
Title: Contracting Officer

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ATTACHMENT 1

List of Projects and Activities to be Funded

1. Restoration and Enhancement Challenge Grants
(Demonstration Projects) \$200,000

Fund at least five local demonstration projects to local jurisdictions and/or nonprofit organizations. Funds could be used for restoration and enhancement of urban wetlands, streams, riparian corridors, and wildlife habitat. The demonstration projects will leverage additional funds for enhancement and restoration of wetlands, streams, and riparian corridors. A 50 percent local match is required. The match may be in cash or in-kind. At least one project should be in each of the four metropolitan counties and the city of Portland.

While the amount of funds is not large, the demonstration projects will increase public awareness and generate support for the Greenspaces Program, as well as increase its credibility as a cooperative regional program.

Metro will develop funding guidelines and a complete selection process on how the funds would be expended. The advice of local park planners and Metro's Greenspaces Policy Advisory Committee of elected officials and citizens will be solicited prior to funding any demonstration projects. Final funding decisions will be made by the Metro Council.

2. Public Awareness/Environmental Education \$120,000

In cooperation with the Portland Audubon Society's Metropolitan Wildlife Refuge System, local jurisdictions, state and federal agencies, and other groups, Metro will carry-out an extensive public awareness and environmental education program to promote the Greenspaces Program and to protect and preserve urban wetlands and wildlife habitat.

Specific activities will include:

- o Development of an overall public awareness strategy
- o Brochures/Maps/Flyers/Fact Sheets
- o Advertisements in Newspapers about the program
- o Newsletter
- o Digitized Maps of Urban Wetlands
- o Telephone Hotline/Nature Network
- o 25 Things You Can Do to Preserve Natural Areas Brochure

- o Coordination activities with the Portland Audubon Society's Metropolitan Wildlife Refuge Project
- o Design and Fabricate Uniform Signs at Natural Areas throughout the region as approved by Metro and local jurisdictions
- o Greenspaces Tours
- o Slide Show
- o Video
- o Movie prepared by a high school biology class
- o Public Service Announcements
- o Speakers' Bureau
- o Local Workshops/Conferences
- o Special Outreach Efforts, Meetings and Workshops for the Business Community and Developers

o Develop a pilot environmental education program in the public schools related to urban natural areas, wetlands, wildlife habitat protection and preservation. The pilot developed should be transferable to any school in the region. Local educators, curriculum specialists, planners, parents and students, and outdoor education staff would help develop the program under Metro's coordination.

o Hire a person or consultant to coordinate and develop the program, a curriculum, and to carry-out the program in one school district. A curriculum guidebook will be developed. Funds may also be use for field trips and transportation for students.

o Develop and print a "Wildlife Habitat/Naturescaping in Your Backyard" booklet for the region. This innovative program would show how each individual and family can make a difference in protecting and increasing urban wildlife habitat.

Funds would be used for Metro staff, intergovernmental agreements with other local and state agencies, contracts with nonprofit organizations, and private consultants to carry-out the public awareness program. Funds would also be expended for production costs, printing/publication, purchase of supplies and materials, purchase of space in newspapers and air time on television and radio, and distribution/mailing costs.

3. Master Plan for the Greenspaces Program

\$90,000

Develop an overall plan for natural areas, urban wetlands and wildlife habitat, rivers and streams, and riparian corridors that addresses the need to identify, map, protect, preserve, and potentially acquire and manage these areas in a regional system. The plan will also incorporate the public awareness and environmental education aspects of the Greenspaces Program.

Specific activities will include:

- o Master Plan document which will be adopted as a functional plan by the Metro Council.
- o Determine values and significance of natural areas; conduct natural areas analysis;
- o Determine which natural areas are of regional significance and thus should be protected and/or acquired
- o Research existing conservation and protection mechanisms and recommend new ones which may be needed
- o Review existing local comprehensive plans and natural resource inventories
- o Management study to determine local, regional, state, federal and nonprofit organizational roles and responsibilities. Who should own and operate natural areas in the region?
- o Finance study to determine how lands and conservation easements can be purchased. Research financing options for the operations of natural areas. Develop a list of options to be reviewed by the local jurisdictions and the Metro Council. Impact of Ballot Measure 5 research.
- o Draft model ordinance for local jurisdictions which would enhance and protect urban wetlands, wildlife habitat, and natural areas prior to development of these lands or adjacent lands. Tree preservation ordinances may also be drafted.
- o Additional inventories and mapping of wetlands, stream and riparian corridors. Digitize National Wetlands Inventory (NWI)
- o Complete the in-depth natural areas analysis of areas within Metro's boundaries
- o Plan for a Regional Trails and Greenways System which would connect parks and natural areas
- o Produce maps and photo mosaics

4. Complete Natural Areas Inventory & Mapping Project

\$50,000

Provide challenge grants to Clackamas and Washington counties to complete the natural areas inventory in the geographic areas outside of the Metro boundary. Provide a challenge grant to Multnomah County to conduct a natural areas management plan.

5. Staff Planners at Metro \$102,000

Fund one senior level planner at Metro from Feb. 16, 1991 through June 30, 1991 to work on the Greenspaces Program. The staff person will work primarily on public awareness and environmental education aspects, and urban wetlands and wildlife habitat protection. This cost includes salary and fringe benefits. The position is currently being filled by a planner on loan from Portland. Funds would be contracted with the city of Portland Parks Bureau to retain the planner's time through June 30, 1991.

Hire one senior planner (including fringe and overhead costs) from July 1, 1991 through September 30, 1992. Planner would work on the Greenspaces Master Plan and work activities listed above.

6. Travel/Workshops/Conferences \$ 5,000

TOTAL BUDGET **\$567,000**

BUDGET SUMMARY

1.	RESTORATION & ENHANCEMENT GRANTS (Demonstration Projects)	\$200,000
2.	PUBLIC AWARENESS/ ENVIRONMENTAL EDUCATION	\$120,000
3.	MASTER PLAN	\$ 90,000
4.	COMPLETE NATURAL AREAS INVENTORY/ SPECIAL STUDIES	\$ 50,000
5.	STAFF PLANNERS AT METRO to work on the Master Plan	\$102,000
6.	TRAVEL/WORKSHOPS/CONFERENCES	\$ 5,000
	TOTAL	\$567,000

Attachment 2

**U.S. FISH AND WILDLIFE SERVICE
GENERAL PROVISIONS
FOR
GRANTS AND COOPERATIVE AGREEMENTS**

1. Definitions
2. Allowable Costs
3. Payment Requirements
4. Bonding and Insurance
5. Cash Depositories
6. Retention and Custodial Requirements for Records
7. Program Income
8. Cost Sharing and Matching
9. Standards for Financial Management Systems
10. Financial Reporting Requirements
11. Monitoring and Reporting Program Performance
12. Revision of Financial Plans
13. Closeout Procedures
14. Suspension and Termination Procedures
15. Property Management Standards
16. Procurement Standards
- 17A. Audit Requirements - [Educational Institutions, Hospitals and Other
Non-Profit Organizations]
- 17B. Audit Requirements - [State and Local Governments]
- 17C. Audit Requirements - [Commercial Organizations]
18. Standard Patent Rights
19. Data Collection
20. Rights in Technical Data and Computer Software
21. Restrictions on Printing
22. Other Administrative Provisions and Assurances
23. Order of Precedence

AUG 1 1985

GENERAL PROVISIONS

1. DEFINITIONS

Throughout the assistance agreement, the following terms, in so far as they are used, shall have the meanings set forth below:

a. The term "Head of the Agency" or "Secretary" means the Secretary, or any Assistant Secretary of the United States Department of the Interior; and the term "his duly authorized representative" means any person or persons or Board authorized to act for the head of the Agency or the Secretary.

b. The term "Department" means the United States Department of the Interior (USDI).

c. The terms "Agency" or "Service" means the U.S. Fish and Wildlife Service (FWS).

d. The term "Signing Official" or "SO" means any person authorized to execute the agreement on behalf of the Service and includes, except as otherwise provided in the agreement, the authorized representative of the Signing Official acting within the limits of his authority.

e. The term "FWS Project Officer" means the SO's authorized representative responsible for the technical administration of the agreement, the evaluation of performance under the agreement, the acceptance of technical reports, and for such other specific responsibilities as may be stipulated in various provisions of the agreement.

f. The term "Recipient" includes the following:

(1) States, local governments or Federally recognized Indian tribal governments as defined in OMB Circular A-102.

(2) Nonprofit organizations including public and private institutions of higher education, public and private hospitals and other quasi public and private nonprofit organizations as further described in OMB Circular A-110.

(3) Commercial organizations are organizations which are not otherwise included among those specified in OMB Circulars A-102 or A-110; international organizations; or businesses organized for profit.

g. The term "Grant Agreement" means the legal instrument between the Service and the recipient which provides for the transfer of Federal resources to the recipient to accomplish a public purpose activity for which no substantial involvement between the parties is anticipated during performance.

h. The term "Cooperative Agreement" means the legal instrument between the Service and the recipient which provides for the transfer of Federal resources to the recipient to accomplish a public purpose activity for which substantial involvement between the parties is anticipated during performance.

i. The acronym "OMB" means Office of Management and Budget.

j. The acronym "FAR" means Federal Acquisition Regulations.

2. ALLOWABLE COSTS - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. Payments up to the amount specified in the assistance agreement shall be made only for costs determined by the SO to be allowable, allocable and reasonable in conducting the work under the agreement in accordance with its terms and with the following cost principles:

(1) OMB Circular A-21 shall be applicable to educational institutions.

(2) OMB Circular A-87 shall be applicable to state and local governments and federally recognized Indian tribal governments.

(3) OMB Circular A-122 shall be applicable to other non-profit organizations.

(4) Federal Acquisition Regulations (FAR) 31.2 shall be applicable to all other recipients.

b. Expenditures requiring prior written approval from the SO are found in the applicable Federal cost principles c FWS policy and are summarized below:

(1) Purchase or rental of any item of general purpose equipment having a unit cost of \$300 or more; and all items of office equipment, regardless of cost, if not itemized in the approved budget.

- (2) Purchase or rental of any item of special purpose equipment having a unit cost of \$1,000 or more if not itemized in the approved budget.
- (3) Insurance on Federal government-owned equipment unless required or approved and maintained under the terms of the agreement.
- (4) Personnel movement of a special or mass nature not itemized in the approved budget.
- (5) Foreign travel (each separate trip).
- (6) Domestic travel when not included in the approved budget and when the cumulative travel expenditures will exceed the approved travel budget by \$500 or 25 percent, whichever is greater.
- (7) Expenditures for consultant services not itemized in the approved budget.
- (8) Subcontracts not itemized in the approved budget.
- (9) Expenditures for the purchase or lease of any interest in real property.

c. The FWS may provide in advance for scheduled apparent allowable costs to be incurred or will reimburse apparent allowable costs accrued by the recipient up to the maximum amount of the Federal assistance payable for the period of performance. However, such provision of any cost pursuant to the clause shall not constitute a final determination by FWS of the allowability of such cost and shall not constitute a waiver of any violation of the terms of the assistance agreement committed by the recipient. FWS shall make a final determination as to allowability only after final audit is completed, if required, or at the time of final payment.

3. PAYMENT REQUIREMENTS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. Payments can be made to recipients through a letter-of-credit, an advance by Treasury check, or a reimbursement by Treasury check. The following definitions apply for the purpose of this clause:

(1) Letter-of-Credit - A letter-of-credit is an instrument certified by an authorized official of a Federal sponsoring agency that authorizes a recipient to draw funds when needed from the Treasury, through a Federal Reserve bank and the recipient's commercial bank, in accordance with the provisions of Treasury Circular No. 1075, as revised.

(2) Advance by Treasury check - An advance by Treasury check is a payment made by a Treasury check to a recipient upon its request before outlays are made by the recipient, or through the use of predetermined payment schedules.

(3) Reimbursement by Treasury check - A reimbursement by Treasury check is a Treasury check paid to a recipient upon request for reimbursement from the recipient.

b. Except for construction grants and other construction agreements for which optional payment methods are authorized, as described in paragraph d, the letter-of-credit method shall be used by FWS if all of the following conditions exist:

(1) If there is or will be a continuing relationship between a recipient and FWS for at least a 12-month period and the total amount of advance payments expected to be received within that period from FWS is \$120,000 or more as prescribed by Treasury Circular No. 1075.

(2) If the recipient has established or demonstrated to FWS the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the recipient.

(3) If the recipient's financial management system meets the prescribed standards for fund control and accountability.

c. The method of advancing funds by Treasury check shall be used in accordance with the provisions of Treasury Circular No. 1075, when the recipient meets all of the requirements specified in paragraph b, above, except those in subparagraph b.1.

d. The reimbursement by Treasury check method shall be the preferred method if the recipient does not meet the requirements specified in subparagraphs b.2. and b.3. above. FWS may require that this method be used on any construction project, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, FWS shall make payment within 30 days after receipt of the billing, unless the billing is improper. With respect to subcontractors, recipients shall not be reimbursed for amounts that are to be withheld to assure satisfactory completion of the work. These amounts will be paid when recipients make final payment including amounts withheld.

e. When the letter-of-credit procedure is used, the recipient shall be issued one consolidated letter-of-credit whenever possible to cover anticipated cash needs for all grants and other agreements awarded by FWS. Likewise, to the extent possible, when the advance by Treasury check method is used, advances should be consolidated (pooled) for all grants and other agreements made by FWS.

f. FWS shall not withhold payments for proper charges made by recipients at any time during the project or program period unless (a) a recipient has failed to comply with the program objectives, award conditions, or Federal reporting requirements; or (b) the recipient is indebted to the United States, and collection of the indebtedness will not impair accomplishment of the objectives of a project or program sponsored by the United States.

Under such conditions, FWS may, upon reasonable notice, inform the recipient that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

4. BONDING AND INSURANCE - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the performance of construction or facility improvements]

a. Except as otherwise required by law, a grant or other agreement that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, FWS may accept the bonding policy and requirements of the grantee provided FWS has made a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to the percent of the bid price - The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price - A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price - A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

b. Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, FWS, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

c. FWS may require adequate fidelity bond coverage where the recipient has no coverage and the bond is needed to protect the Government's interest.

d. Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

5. CASH DEPOSITORIES - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the advancement of Federal funds]

a. If funds are to be advanced under a letter-of-credit agreement with the recipient which provides that draw downs will be made when the recipient's checks are presented to the bank for payment, the recipient shall establish a separate bank account as the depository for such funds.

b. Any moneys advanced to a recipient which are subject to the control or regulation of the United States or any of its officers, agents or employees (public moneys as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.

c. Consistent with the national goal of expanding the opportunities for minority business enterprises, recipients and subrecipients are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members).

6. RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements with primary recipients and to grants or other agreements awarded by the primary recipients to subrecipients performing substantive work].

a. Financial records, supporting documents, statistical records, and all other records pertinent to an agreement shall be retained for a period of 3 years, with the following qualifications:

(1) If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(2) Records for nonexpendable property, acquired with Federal funds shall be retained for 3 years after its final disposition.

(3) When records are transferred to or maintained by FWS, the 3-year retention requirement is not applicable to the recipient.

b. The retention period starts from the date of the submission of the final expenditure report or final payment, whichever occurs last.

c. Recipient organizations may be authorized by FWS, to substitute microfilm copies in lieu of original records.

d. FWS shall request transfer of certain records to its custody from recipient organizations when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, FWS may make arrangements with recipient organizations to retain any records that are continuously needed for joint use.

e. The Director of FWS and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the recipient organization and their subrecipients to make audits, examinations, excerpts and transcripts.

7. PROGRAM INCOME - (OMB Circulars A-102/A110) - [This clause is applicable if program income, as defined below, is anticipated from projects financed in whole or in part with Federal funds]

a. Recipient organizations shall account for program income resulting from projects financed in whole or in part with Federal funds. Program income represents gross income earned by the recipient from the federally supported activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

b. Interest earned on advances of Federal funds shall be remitted to FWS except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Public Law 90-577) and tribal organizations pursuant to sections 102, 103, or 104 of the Indian Self Determination Act (Public Law 93-638).

c. Proceeds from the sale of real and personal property either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with the clause entitled Property Management Standards.

d. Unless the agreement provides otherwise, recipients shall have no obligation to the Federal Government with respect to royalties received as a result of copyrights or patents produced under the grant or other agreement.

e. All other program income earned during the project period shall be retained by the recipient and, in accordance with the grant or other agreement, shall be:

(1) Added to funds committed to the project by FWS and recipient organization and be used to further eligible program objectives;

(2) Used to finance the non-Federal share of the project when approved by FWS; or

(3) Deducted from the total project costs in determining the net costs on which the Federal share of costs will be based.

f. State, local or Federally recognized Indian tribal governments shall record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of project transactions when such revenues are specifically earmarked for a project in accordance with assistance agreements.

8. COST SHARING AND MATCHING - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements if the recipient, subrecipient or third parties are required to make cash or in-kind contributions to satisfy cost sharing and matching requirements of the FWS]

a. The following definitions apply for the purpose of this clause:

(1) Project costs - Project costs are all allowable costs (as set forth in the applicable Federal cost principles) incurred by a recipient and the value of the in-kind contributions made by the recipient or third parties in accomplishing the objectives of the grant or other agreement during the project or program period.

(2) Cost sharing and matching - In general, cost sharing and matching represent that portion of project or program costs not borne by the Federal Government. Any minimum percentage for matching share provided by program legislation and matching share requirements are included in the assistance agreement.

(3) Cash contributions - Cash contributions represent the recipient's cash outlay, including the outlay of money contributed to the recipient by non-Federal third parties. When authorized by Federal legislation, Federal funds received from other grants or other agreements may be considered as grantees' cash contributions.

(4) In-kind contributions - In-kind contributions represent the value of noncash contributions provided by the recipient and non-Federal third parties. Only when authorized by Federal legislation, may property purchased with Federal funds be considered as the recipient's in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

b. General guidelines for computing cost sharing or matching are as follows:

(1) Cost sharing or matching may consist of:

- (a) Charges incurred by the recipient as project costs. (Not all charges require cash outlays by the recipient during the project period; examples are depreciation and use charges for buildings and equipment.)
- (b) Project costs financed with cash contributed or donated to the recipient by other non-Federal public agencies and institutions, and private organizations and individuals, and
- (c) Project costs represented by services and real and personal property, or use thereof, donated by other non-Federal public agencies and institutions, and private organizations and individuals.

(2) All contributions, both cash and in-kind shall be accepted as part of the recipient's cost sharing and matching when such contributions meet all of the following criteria:

- (a) Are verifiable from the recipient's records;
- (b) Are not included as contributions for any other Federally-assisted program;
- (c) Are necessary and reasonable for proper and efficient accomplishment of project objectives;
- (d) Are types of charges that would be allowable under the applicable cost principles;
- (e) Are not paid by the Federal Government under another assistance agreement (unless the agreement is authorized by Federal law to be used for cost sharing or matching);
- (f) Are provided for in the approved budget when required by the Federal agency; and
- (g) Conform to other provisions of this clause.

c. Values for recipient in-kind contributions will be established in accordance with the applicable cost principles.

d. Specific procedures for the recipients in establishing the value of in-kind contributions from non-Federal third parties are set forth below.

(1) Valuation of volunteer services - Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteer services may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(a) Rates for volunteer services - Rates for volunteers should be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates should be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved.

(b) Volunteers employed by other organizations - When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead costs) provided these services are in the same skill for which the employee is normally paid.

(2) Valuation of donated, expendable personal property - Donated, expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the market value of the property at the time of the donation.

(3) Valuation of donated, nonexpendable personal property, buildings, and land or use thereof.

(a) The method used for charging cost sharing or matching for donated nonexpendable personal property, buildings and land may differ according to the purpose of the grant or other agreement as follows:

(i) If the purpose of the grant or other agreement is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(ii) If the purpose of the agreement is to support activities that require the use of equipment, buildings or land, depreciation or use charges to charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be allowed provided that the FWS has approved the charges.

(b) The value of donated property will be determined in accordance with the usual accounting policies of the recipient with the following qualifications:

- (i) Land and buildings - The value of donated land and buildings may not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the recipient.
- (ii) Nonexpendable personal property - The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.
- (iii) Use of space - The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal or comparable space and facilities in a privately-owned building in the same locality.
- (iv) Loaned equipment - The value of loaned equipment shall not exceed its fair rental value.

e. The following requirements pertain to the recipient's supporting records for in-kind contributions from non-Federal third parties:

- (1) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its employees.
- (2) The basis for determining the valuation for personal services, material, equipment, buildings and land must be documented.

9. STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. Recipient's financial management systems shall provide for:

- (1) Accurate, current and complete disclosure of the financial results of each Federally sponsored project or program in accordance with the reporting requirements set forth in the clause entitled Financial Reporting Requirements.
- (2) Records that identify adequately the source and application of funds for Federally sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays and income.
- (3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
- (4) Comparison of actual outlays with budget amounts for each grant or other agreement.
- (5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient, whenever funds are advanced by FMS. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Advances made by primary recipient organizations (those which receive payments directly from FMS) to subrecipients shall conform substantially to the same standards of timing and amount as apply to advances by FMS to primary recipient organizations.
- (6) Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant or other agreement.
- (7) Accounting records that are supported by source documentation.
- (8) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

b. Primary recipients shall require subrecipients to adopt the standards in paragraph a. above except for the requirement in paragraph a.(1) regarding reporting forms and frequencies prescribed in the clause entitled Financial Reporting Requirements.

10. FINANCIAL REPORTING REQUIREMENT - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

a. The following definitions apply for purposes of this clause:

- (1) Accrued expenditures - Accrued expenditures are the charges incurred by the recipient during a given period requiring the provision of funds for: (a) goods and other tangible property received; (b) services performed by employees, contractors, subrecipients, and other payees; and (c) other amounts becoming owed under programs for which no current services or performance is required.

(2) Accrued income - Accrued income is the sum of (a) earnings during a given period from (i) services performed by the recipient; and (ii) goods and other tangible property delivered to purchasers; and (b) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(3) Federal funds authorized - Federal funds authorized are the total amount of Federal funds obligated by FWS for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior fiscal years when permitted by law or FWS regulation.

(4) In-kind contributions - In-kind contributions are defined in the clause entitled Cost Sharing and Matching.

(5) Obligations - Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period that will require payment by the recipient during the same or a future period.

(6) Outlays - Outlays or expenditures represent charges made to the project or program. They are to be reported on an accrual basis. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(7) Program income - Program income is defined in the clause entitled Program Income. It is to be reported on an accrual basis.

(8) Unobligated balance - The unobligated balance is the portion of the funds authorized by FWS that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(9) Unliquidated obligations - For reports prepared on an accrued expenditure basis, unliquidated obligations represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

b. The recipient shall utilize the following forms for reporting financial information:

(1) Financial Status Report (SF-269) - For all non-construction projects, the recipient shall submit an original and two copies of this report 30 days after the completion of each quarter of the project with the exception that the final Financial Status Report shall be due 90 days after project completion. Extensions to reporting due dates may be granted upon request. The report shall be on an accrual basis; however, if the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such information through best estimates based on an analysis of the documentation on hand.

(2) Federal Transactions Report (SF-272) - In the event funds are advanced to recipients, the recipient shall submit an original and two copies of a Federal Cash Transaction Report 15 days following the end of each quarter.

c. The recipient shall utilize the following forms for requesting advances and reimbursements:

(1) Request for Advance or Reimbursement (SF-270) - For all non-construction projects when a letter of credit is not used, the recipient shall submit an original and two copies of this form on a monthly basis.

(2) Outlay Report and Request for Reimbursement for Construction Programs (SF-271) - For all construction projects when a letter of credit has not been authorized, the recipient shall submit an original and two copies of this form on a monthly basis.

d. When the FWS needs additional information in using these forms or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, FWS shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When necessary to meet specific program needs, FWS shall submit the proposed reporting requirements to the Financial Management Branch, Budget Review Division, Office of Management and Budget for approval prior to submission of the reports for clearance under the provisions of 5 CFR Part 1320.

(3) When FWS has determined that a recipient's accounting system does not meet the requirements contained in the clause entitled Standards for Financial Management Systems, additional pertinent information to further monitor grants and other agreements may be obtained upon written notice to the recipient until such time as the system is brought up to standard.

e. FWS shall reserve the option of shading out any line item on any report that is unnecessary for decision-making purposes.

- f. FWS shall accept the identical information from the recipients in machine useable format or computer printouts in lieu of prescribed formats.
- g. FWS may provide computer outputs to recipients when it will expedite or contribute to the accuracy of reporting.

11. MONITORING AND REPORTING PROGRAM PERFORMANCE - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements]

- a. Recipients shall monitor the performance under grants and other agreements and, where appropriate, ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each agreement as set forth in the approved application or award document.
- b. Recipients shall submit a performance report (technical report) for each agreement that briefly presents the following information for each program, function, or activity involved:
 - (1) A comparison of actual accomplishments with the goals established for the period, the findings of the investigator, or both. If the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.
 - (2) Reasons why established goals were not met.
 - (3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- c. Recipients shall submit the performance or technical reports quarterly with the Financial Status Report (or Request for Advance or Reimbursement if used in lieu of the Financial Status Report); the final technical or performance report shall be submitted 90 days after completion of the project.
- d. Between the required performance reporting dates, events may occur that have significant impact upon the project or program. In such instances, the recipient shall inform the SO as soon as the following types of conditions become known:
 - (1) Problems, delays, or adverse conditions that will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.
 - (2) Favorable developments or events that enable time schedules to be met sooner than anticipated or more work units to be produced than originally projected.
- e. If any performance review conducted by the recipient discloses the need for change in the budget estimates, the recipient shall submit a request for budget revision.

12. REVISION OF FINANCIAL PLANS (OMB Circulars A-102/A-110) [This clause is applicable to all assistance agreements involving the transfer of Federal funds]

- a. The financial plan is the financial expression of the project or program as approved during the application and/or award process. It may include both the Federal and non-Federal share. It should be related to performance for program evaluation purposes whenever appropriate and required.
- b. For nonconstruction awards, recipients shall immediately request approvals from Federal sponsoring agencies when there is reason to believe that a revision will be necessary for the following reasons:
 - (1) Changes in the scope or the objective of the project or program.
 - (2) The need for additional Federal funding.
 - (3) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs or vice versa.
 - (4) The expenditures require approval in accordance with the applicable provisions of OMB Circular A-21, "Cost Principles for Educational Institutions;" OMB Circular A-87, "Cost Principles for State and Local Governments;" OMB Circular A-122, "Cost Principles for Non-Profit Organizations;" or Federal Acquisition Regulations (FAR), 31.2, "Cost Principles...with Commercial Organizations."
 - (5) Recipients plan to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.

c. None of the substantive programmatic work under a grant or other agreement may be subcontracted or transferred without prior approval of FWS. This provision does not apply to the purchase of supplies, material, equipment, or general support services.

d. The recipient may not transfer funds among direct cost categories for awards in which the Federal share exceeds \$100,000 when the cumulative amount of such transfers exceeds or is expected to exceed 5 percent of the total budget as last approved. The same criteria shall apply to the cumulative amount of transfer among programs, functions, and activities when budgeted separately for an award, except that the FWS shall permit no transfer that would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

e. For construction awards, recipients shall request prior approvals promptly from FWS for budget revisions wherever:

- (1) The revision results from changes in the scope or the objective of the project or program, and
- (2) The revision increases the budget amounts of Federal funds needed to complete the project.

f. When a grant or other agreement provides support for both construction and nonconstruction work, the recipient shall request approval from FWS prior to making any fund or budget transfers between the two types of work supported.

g. For both construction and nonconstruction awards, the recipients shall notify the FWS promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient by more than \$5,000 or 5 percent of the Federal award, whichever is greater.

h. When requesting approval for budget revisions, recipients shall use either the budget forms that were used in the application or a letter detailing the revisions.

i. Within 30 calendar days from the date of receipt of the request for budget revisions, FWS shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, FWS shall inform the recipient in writing of the date when the recipient may expect the decision.

j. FWS shall not be obligated to reimburse the recipient for outlays (costs) in excess of the Federally funded amount of the assistance agreement unless and until the SO executes a modification which increases the Federally funded amount. The Federally funded amount is the amount obligated under the agreement which may be less than or equal to the budgeted Federal share of the agreement.

13. CLOSEOUT PROCEDURES - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements]

a. The following definitions shall apply for the purpose of this clause.

(1) Closeout - The closeout of a grant or other agreement is the process by which a FWS determines that all applicable administrative actions and all required work of the agreement have been completed by the recipient and the FWS.

(2) Date of completion - The date of completion is the date on which all work under the grant or other agreement is completed or the date on the award document, or any supplement or amendment thereto, on which FWS sponsorship ends.

(3) Disallowed costs - Disallowed costs are those charges to a grant or other agreement that the FWS or its representative determines to be unallowable, in accordance with the applicable Federal cost principles or other conditions contained in the agreements.

b. The parties shall close out assistance agreements in accordance with the following procedures:

(1) Upon request, FWS shall make prompt payments to a recipient for allowable reimbursable costs under the grant or other agreement being closed out.

(2) The recipient shall immediately refund any balance of unobligated (unencumbered) cash that FWS advanced or paid and that is not authorized to be retained by the recipient.

(3) The FWS shall obtain from the recipient within 90 calendar days after the date of completion of the agreement all financial, performance, and other reports required as the condition of the agreement. The agency may grant extensions when requested by the recipient.

(4) When authorized by the grant or other agreement, FWS shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

(5) The recipient shall account for any property acquired with Federal funds, or received from the Government in accordance with the provisions of the clause entitled Property Management Standards.

(6) In the event a final audit has not been performed prior to the closeout of the grant or other agreement, FWS shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(7) The recipient shall complete and submit a final report in compliance with the clause entitled Standard Patent Rights within 90 calendar days after the date of completion. The form used shall be Department of the Interior (OI) Form 1216, entitled "Summary Report of Inventions and Subcontracts".

14. SUSPENSION AND TERMINATION PROCEDURES - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements.]

a. The following definitions shall apply for the purpose of this clause.

(1) Termination - The termination of a grant or other agreement means the cancellation of Federal sponsorship, in whole or in part under an agreement at any time prior to the date of completion.

(2) Suspension - The suspension of a grant or other agreement is an action by FWS that temporarily suspends Federal sponsorship, pending corrective action by the recipient or pending a decision to terminate the grant or other agreement by FWS.

b. If the recipient fails to comply with the terms of the grant or other agreement, the SO may, on reasonable notice to the recipient, suspend the grant or other agreement, and withhold further payments and prohibit the recipient from incurring additional obligations of funds, pending corrective action by the recipient; or decide to terminate in accordance with paragraph c. All necessary and proper costs that the recipient could not reasonably avoid during the period of suspension shall be allowed provided that they meet the provisions of the applicable cost principles.

c. This grant or other agreement may be terminated as follows:

(1) Termination for cause - The SO may terminate any grant or other agreement in whole or in part at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the conditions of the agreement. The SO shall promptly notify the recipient in writing of the determination and the reasons for the termination, together with the effective date. The recipient shall not incur new obligations after the effective date of the termination notice and shall cancel as many outstanding obligations as possible. Payments made to recipients or recoveries by FWS under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

(2) Termination for convenience - Grants and other agreements may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. In the event that both parties cannot agree, the SO reserves the right to unilaterally terminate the assistance agreement for the Government's convenience. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The SO shall allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

d. The parties shall promptly settle the terminated agreement in accordance with the applicable requirements of the clause entitled Close Out Procedures. In addition, the parties shall execute a modification setting forth the terms and conditions of the final settlement as a result of the termination of the agreement.

15. PROPERTY MANAGEMENT STANDARDS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving government-furnished property or recipient-acquired property for which the costs will be reimbursed by the FWS.]

a. The recipient and approved subrecipients shall observe the standards governing the management of property prescribed by this clause. The recipient may use its own property management standards and procedures provided it observes the provisions of this clause.

b. The following definitions apply for the purpose of this clause:

(1) Real property - Real property means land, including land improvements, structures, and appurtenances thereto, but excluding movable machinery and equipment.

(2) Personal property - Personal property of any kind except real property. It may be tangible--having physical existence, or intangible--having no physical existence, such as patents, inventions and copyrights.

(3) Nonexpendable personal property - Nonexpendable personal property means tangible personal property having a useful life of more than 1 year and an acquisition cost of \$300 or more per unit except that recipients subject

to Cost Accounting Standards Board regulations may use the CASB standard of \$500 per unit and useful life of 2 years. A recipient may use its own definition of nonexpendable personal property provided that the definition would at least include all tangible personal property as defined above.

(4) Expendable personal property - Expendable personal property refers to all tangible personal property other than nonexpendable property.

(5) Excess property - Excess property means property under the control of an Federal agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(6) Acquisition cost of purchased nonexpendable personal property - Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property useable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(7) Exempt property - Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in subparagraph f.(1) below. Such unconditional vesting of title will be pursuant to any Federal legislation that provides FWS with adequate authority.

c. If real property is acquired as a requirement of this grant or other agreement, the following shall apply:

(1) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project, as long as it is needed.

(2) The recipient shall obtain FWS approval for the use of real property in other projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under other Federally sponsored projects (i.e., grants or other agreements) or programs that have purposes consistent with those authorized for support by FWS.

(3) When the real property is no longer needed as provided in (1) and (2) above, the recipient shall request disposition instructions from FWS or its successor Federal sponsoring agency.

d. Federally-owned nonexpendable personal property - Title to Federally-owned property remains vested in the Federal government. Recipients shall submit annually an inventory listing of Federally-owned property in their custody to FWS. Upon completion of the agreement or when the property is no longer needed, the recipient shall report the property to FWS for further agency utilization.

e. Exempt property - When statutory authority exists, (e.g., P.L. 95-224) title to nonexpendable personal property acquired with project funds, shall be vested in the recipient upon acquisition unless it is determined that to do so is not in furtherance of the objectives of the FWS. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal government for its use or disposition except as provided in f.(1) below.

f. Other nonexpendable property - When other nonexpendable tangible personal property is acquired by a recipient with project funds, title shall not be taken by the Federal government but shall vest in the recipient subject to the following conditions:

(1) Right to transfer title - For items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, FWS reserves the right to transfer the title to the Federal government or to a third party.

(2) Use of other tangible nonexpendable property for which the recipient has title.

(a) The recipient shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the property in connection with its other Federally sponsored activities, in the following order of priority: (i) activities sponsored by the FWS; and (ii) activities sponsored by other Federal agencies.

(b) Shared use - During the time that nonexempt nonexpendable personal property is held for use on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other-use shall be given to other projects or programs sponsored by FWS; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal government, use on other activities not sponsored by the Federal government shall be permissible if authorized by FWS. User charges shall be considered if appropriate.

(3) Disposition of other nonexpendable property - When the recipient no longer needs the property as provided in f(2) above, the property may be used for other activities in accordance with the following standards:

(a) Nonexpendable property with a unit acquisition cost of less than \$1,000 - The recipient may use the property for other activities without reimbursement to the Federal government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more - The recipient may retain the property for other uses provided that compensation is made to FWS. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the recipient has no need for the property and the property has further use value, the recipient shall request disposition instructions from FWS.

(4) Property management standards for nonexpendable property - The recipient's property management standards for nonexpendable personal property shall include the following procedural requirements:

(a) Property records shall be maintained accurately and shall include:

- (i) A description of the property.
- (ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
- (iii) Source of the property, including grant or other agreement number.
- (iv) Whether title vests in the recipient or the FWS;
- (v) Acquisition date (or date received, if the property was furnished by the FWS) and cost.
- (vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the FWS).
- (vii) Location, use and condition of the property and the date the information was reported.
- (viii) Unit acquisition cost.
- (ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the FWS for its share.

(b) Property owned by the FWS must be marked to indicate Federal ownership.

(c) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(d) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify FWS.

(e) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(f) Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

g. Expendable personal property - Title to expendable personal property shall vest in the recipient upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the grant or other agreement, and the property is not needed for any other Federally sponsored project or program, the recipient shall retain the property for use on non Federally sponsored activities, or sell it, but must in either case, compensate FWS for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

h. Intangible property.

(1) Inventions and patents - If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal government, such fact shall be promptly and fully reported to FWS. Unless there is a prior agreement between the recipient and FWS on disposition of such items, the FWS shall determine whether protection on the invention or discovery shall be sought. FWS will also determine how the rights in the invention or discovery--including rights under any patent issued thereon--shall be allocated and administered in order to protect the public interest consistent with current Government Patent Policy.

(2) Copyrights - Except as otherwise provided in the terms and conditions of the agreement, the author or the recipient organization is free to copyright any books, publications, or other copyrightable materials developed in the course of, or under a Federal agreement, but FWS shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

i. Excess personal property - When title to excess property is vested in recipients, such property shall be accounted for and disposed of in accordance with disposition instructions from FWS.

16. PROCUREMENT STANDARDS - (OMB Circulars A-102/A-110) - [This clause is applicable to all assistance agreements involving recipient procurement of supplies, equipment, construction or other services and reimbursement with Federal funds]

a. The standards contained in this clause do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to FWS regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant or other agreement. These include disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have property jurisdiction.

b. Recipients may use their own procurement policies and procedures. However, all recipients shall adhere to the standards set forth in this clause and applicable Federal law.

c. Code of conduct - The recipient shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using Federal funds. No employee, officer or agent shall participate in the selection, award or administration of a contract in which Federal funds are used, where, to his knowledge, he or his immediate family, partners, or organization in which he or his immediate family or partner has a financial interest or with whom he is negotiating or has any arrangement concerning prospective employment. The recipients' officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

d. Procurement transactions - All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals should be excluded from competing for such procurements. Awards shall be made to the bidder/offeree whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeree must fulfill in order for his bid/offer to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.

e. Procurement procedures - All recipients shall establish procurement procedures that provide for, at a minimum, the following procedural requirements.

(1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which would be the most economical, practical procurement.

(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerees shall be clearly specified.

(3) Positive efforts shall be made by the recipients to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing Federal funds.

(4) The type of procuring instruments used, e.g., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(6) Review and approval by the SO of the recipient's proposed contracts and related procurement documents is required when the procurement is: (a) expected to exceed \$10,000 and is to be awarded without competition or only one offer is received, (b) expected to exceed \$10,000 and specifies a "brand name" product, or (c) the recipient's procurement procedures or operations fail to comply with this clause. The provisions of this subparagraph are waived in the event the recipient's procurement system has been certified in accordance with the Office of Federal Procurement Policy.

(7) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. Costs or prices based on estimated costs for subcontract under the grant or other agreement shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with applicable cost principles.

(8) Procurement records and files for purchases in excess of \$10,000 shall include the following:

- (a) Basis for contractor selection;
- (b) Justification for lack of competition when competitive bids or offers are not obtained;
- (c) Basis for award cost or price.

(9) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

f. Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms.

(1) It is national policy to award a fair share of contracts to small and minority business firms, women-owned businesses and labor surplus area firms. The recipient agrees to use its best efforts to carry out this policy in the award of subcontracts or other agreements to the fullest extent consistent with the efficient performance of this assistance agreement.

(2) Definitions

(a) The term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and in relevant regulations promulgated pursuant thereto.

(b) The term minority firm ("small business concern owned and controlled by socially and economically disadvantaged individuals") shall mean a small business concern:

- (i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially or economically disadvantaged individuals; and
- (ii) whose management and daily business operations are controlled by one or more of such individuals.

The recipient shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

(c) A "woman-owned business" concern means a business that is at least 51 percent owned by a woman or women that also control and operate it. "Control" in this context means being actively involved in the day-to-day management. "Women" mean all women business owners.

(d) The term "labor surplus area concern" means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

(3) Accordingly, recipients shall take steps to assure that such preference firms are utilized when possible as sources of suppliers, equipment, construction and services. Affirmative steps shall include the following:

(a) Including qualified small and minority businesses on solicitation lists.

(b) Assuring that small and minority businesses are solicited whenever they are potential sources.

(c) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum small and minority business participation.

(d) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(e) Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, the Community Services Administration, the Office of Small and Disadvantaged Business Utilization of the Department of the Interior, and Business Utilization and Development Specialists of the U.S. Fish and Wildlife Service.

If any subcontracts are to be let, requiring the prime contractor to also take the affirmative steps in a through e above.

- (4) Recipients shall take similar appropriate affirmative action in support of women's business enterprises.
- (5) Recipients are encouraged to procure goods and services from labor surplus areas.
- (6) Where opportunities for subcontracting or other subagreements exist, the recipient shall submit a completed Department of the Interior (OI-1925) Minority Business Utilization Report within 10 days after the end of each fiscal year quarter. One copy shall be provided to each of the following addresses:

Business Utilization Development Specialist
Division of Contracting and General Services (CGS)
U.S. Fish and Wildlife Service
Room 821, Riddell Building
18th & C Streets, NW
Washington, D. C. 20240

Director, Office of Small and Disadvantaged Business Utilization
Office of the Secretary
U.S. Department of the Interior
18th & C Streets, NW
Washington, D. C. 20240

The requirement for submission of this form is a result of the U.S. Department of the Interior's implementation of Executive Order 12432, dated July 14, 1983, entitled "Minority Business Enterprise Development."

9. Contract provisions - The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts.

(1) Contracts in excess of \$10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the recipient including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded for more than \$100,000, recipients shall observe the bonding requirements provided in the clause entitled Bonding and Insurance.

(4) All contracts awarded by recipients and their contractors or subgrantees having a value of more than \$10,000, shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60).

(5) All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to FWS.

(6) When required by the Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the SO.

(7) When required by the Federal program legislation, recipients in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers, shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work, and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous

or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields that directly concern public health, safety or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the regulations issued by FWS and the recipient.

(9) All negotiated contracts (except those of \$10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, FWS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. Recipients shall require contractors to maintain all required records for 3 years after the recipient makes final payment and all pending matters are closed.

(10) Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported to FWS and the regional office of the Environmental Protection Agency.

(11) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

h. If the recipient is a State or local government or other entity as defined in OMB Circular A-102, it shall adhere to the following additional provisions:

In order to foster greater economy and efficiency, recipients are encouraged to enter into State and local intergovernmental agreements for procurements or use of common goods and services.

Procurements shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) competitive sealed bids (formal advertising); (c) competitive negotiation; (d) noncompetitive negotiation.

(1) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. Recipients shall comply with State or local small purchase dollar limits under \$10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(a) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

(i) A complete, adequate and realistic specification or purchase description is available.

(ii) Two or more responsible suppliers are willing and able to compete effectively for the recipient's business.

(iii) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(b) If formal advertising is used for a procurement under a grant or other agreement, the following requirements shall apply:

(i) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(v) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

(3) In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant or other agreement, the following requirements shall apply:

(a) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(b) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(c) The recipient shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(d) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(e) Recipients may utilize competitive negotiation procedures for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

(4) Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising), or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(a) The item is available only from a single source;

(b) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(c) FWS authorizes noncompetitive negotiation; or

(d) After solicitation of a number of sources, competition is determined inadequate.

17A. AUDIT REQUIREMENTS - (OMB Circular A-110) - [This clause is applicable to all assistance agreements with institutions of higher education, hospitals and other nonprofit organizations involving the transfer of Federal funds]

a. Recipients' financial management systems shall provide for examinations in the form of audits or internal audits. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting Office publication, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the agreements. It is not intended that each agreement awarded to the recipient be examined. Generally, examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance, with the terms and conditions of the Federal grants and other agreements. Such tests would include an appropriate sampling of Federal agreements. Examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than every 2 years. The frequency of these examinations shall depend upon the nature, size and the complexity of the activity. These examinations do not relieve Federal agencies of their audit responsibilities, but may affect the frequency and scope of such audits.

b. The primary recipient shall require its subrecipients to adapt the above standards.

17B. AUDIT REQUIREMENTS - (OMB Circular A-128) - [This clause is applicable to all assistance agreements with State and local governments and Federally recognized Indian tribal governments]

a. Definitions - For the purposes of this clause the following definitions from the Single Audit Act apply:

(1) "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out their audit responsibilities.

(2) "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

(3) "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

(4) "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

(5) "Generally accepted government auditing standards" means the Standards for Audit of Government Organizations, Program, Activities, and Functions, developed by the Comptroller General dated February 27, 1981.

(6) "Independent auditor" means:

- (a) An external State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or
- (b) A public accountant who meets such independence standards.

(7) "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

- (a) Resource use is consistent with laws, regulations, and policies;
- (b) Resources are safeguarded against waste, loss, and misuse; and
- (c) Reliable data are obtained, maintained and fairly disclosed in reports.

(8) "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(9) "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

(10) "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

(11) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State regional, or interstate entity that has governmental functions and any Indian tribe.

(12) "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal Financial Assistance.

b. Scope of audit - The Single Audit Act provides that:

(1) The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(2) Each audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives over \$25,000 in General Revenue Sharing funds in a fiscal year, it shall have an audit of the entire organization. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

(3) Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this clause. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of OMB Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospital(s) and Other Nonprofit Organizations."

(4) The auditor shall determine whether:

- (a) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;
- (b) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and
- (c) The organization has complied with laws and regulations that may have a material effect upon each major Federal assistance program.

c. Frequency of audit - Audits shall be made annually unless the State or local government has by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, concerning both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

d. Internal control and compliance reviews. The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

(1) Internal control review. In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

- (a) Test whether these internal control systems are functioning in accordance with prescribed procedures.
- (b) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

(2) Compliance review - The law also requires the auditor to determine whether the organization has complied with laws and regulations that have a material effect upon each major Federal assistance program.

(a) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(b) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(i) In making these tests of transactions, the auditor shall determine whether:

--the amounts reported as expenditures were for allowable services, and

--the records show that those who received services or benefits were eligible to receive them.

(ii) In addition to transaction testing, the auditor shall determine whether:

--matching requirements, levels of effort and earmarking limitations were met,

--Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

--amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost Principles for State and Local Governments" and OMB Circular A-102, "Uniform Requirements for Grants and Agreements with State and Local Governments."

(iii) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the Compliance Supplement for Single Audits of State and Local Governments, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(c) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

e. Subrecipients - State or local governments that receive Federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subrecipient shall:

(1) Determine whether State or local subrecipients have met the audit requirements of this clause and whether subrecipients covered by OMB Circular A-110, "Uniform Requirements for Grants and Agreements with Universities, Hospitals, and Other Non-Profit Organizations," have met that requirement;

- (2) Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this clause, OMB Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not had such an audit;
- (3) Ensure that appropriate corrective action is taken within six months after issuance of the audit report in instances of noncompliance with laws and regulations;
- (4) Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and
- (5) Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this clause.

f. Relation to other audit requirements.

- (1) The provisions of this clause do not limit the authority of FWS to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.
- (2) FWS shall make any additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this clause do not authorize any State or local government (or subrecipient thereof) to constrain, in any manner, FWS from carrying out such additional audits.
- (3) If FWS makes or contracts for audits in addition to the audits made by recipients pursuant to this clause, it shall, consistent with other applicable laws and regulations, provide for the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

g. Illegal acts or irregularities - If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

h. Audit Reports - Audit reports must be prepared at the completion of the audit and shall include the following:

- (1) The audit report shall state that the audit was made in accordance with the provisions of this clause. The report shall be made up of at least:

- (a) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance showing the total expenditures for each Federal assistance program as identified in the Catalog of Federal Domestic Assistance. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal Assistance."

- (b) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

- (c) The auditor's report on compliance containing:

- (i) A statement of positive assurance with respect to those items tested for compliance including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
- (ii) Negative assurance on those items not tested;
- (iii) A summary of all instances of noncompliance; and
- (iv) An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

- (2) The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

- (3) All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report.

- (4) In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report including a plan for corrective actions taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

(5) The reports shall be made available by the State or local government for public inspection within 30 days after completion of the audit.

(6) In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

(7) Recipients of more than \$100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

(8) Recipients shall keep audit reports on file for three years from their issuance.

i. Audit Resolution - The cognizant agency shall be responsible for overseeing the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate solely to the programs of FWS will be the responsibility of the recipient and FWS. Alternate arrangements may be made on a case-by-case basis by agreement between the agencies concerned.

Resolution shall be made within six months after receipt of the report by the departments and agencies. Corrective action should proceed as rapidly as possible.

j. Audit workpaper and reports - Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

k. Audit Costs - The cost of audits made in accordance with the provisions of this clause are allowable charges to Federal assistance programs.

(1) The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A-87, "Cost Principles for State and Local Governments."

(2) Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds represent of total expenditures of the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

l. Sanctions - No cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this clause. In cases of continued inability or unwillingness to have a proper audit, FWS may consider other appropriate sanctions including:

(1) withholding a percentage of assistance payments until the audit is completed satisfactorily,

(2) withholding or disallowing overhead costs, or

(3) suspending the Federal assistance agreement until the audit is made.

m. Auditor Selection - In arranging for audit services State and local governments shall follow the procurement standards prescribed in Clause 16. The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

n. Small and Minority Audit Firms - Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of this clause. Recipients of Federal assistance shall take the following steps to further this goal:

(1) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned by socially and economically disadvantaged individuals.

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

(5) Encourage contracting with consortiums of small audit firms as described in paragraph (1) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

17C. AUDIT REQUIREMENTS - (April 1984, Deviations, FAR 52.215.2) - [This clause is applicable to all assistance agreements with commercial organizations involving the transfer of Federal funds]

a. Examination of Costs - The recipient shall maintain--and the SO or representatives of the SO shall have the right to examine and audit--books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this agreement. This right of examination shall include inspection at all reasonable times of the recipient's facilities or parts of them, engaged in the performance of the agreement.

b. Cost or Pricing Data - The SO or representatives of the SO shall have the right to examine and audit all books, records, documents and other data of the recipient (including computations and projections) related to pricing or performing the initial agreement or subsequent modifications in order to evaluate the accuracy, completeness and currency of the cost or pricing data.

c. Reports - If the recipient is required to furnish cost, funding, or performance reports, the SO or representatives of the SO shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the recipient's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

d. Availability - The recipient shall make available at its office at all reasonable times the materials described in paragraphs a and b above, for examination, audit, or reproduction, as specified in the clause entitled Retention and Custodial Requirements for Records.

In addition, the recipient shall insert a clause containing all the terms of this clause, including this paragraph, in all subcontracts over \$100,000 under this agreement, altering the clause only as necessary to identify properly the contracting parties and the SO under the Government prime agreement.

18. STANDARD PATENTS RIGHTS - (OMB Circular A-124) - [This clause is applicable to all assistance agreements for the performance of research and development work unless otherwise superceded in the Special Provisions of the individual assistance agreement.]

a. Definitions

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) "Subject Invention" means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this agreement.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a domestic small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size, standards for small business concerns, involved in Government procurement and subcontracting at 13 CFR 121.3-12, respectively, shall be used.

(6) "Nonprofit Organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

b. Allocation of Principal Rights - The recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

c. Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient

(1) The recipient shall disclose each subject invention to FWS within 2 months after the inventor discloses it in writing to recipient personnel responsible for patent matters. The disclosure to FWS shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the FWS, the recipient shall promptly notify FWS of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the recipient.

(2) The recipient shall elect in writing whether or not to retain title to any such invention by notifying the FWS within 12 months of disclosure to the recipient, provided that in any case where publication, on sale, or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by FWS to a date that is no more than 60 days prior to the end of the statutory period.

(3) The recipient shall file its initial patent application on an elected invention within 2 years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The recipient shall file patent applications in additional countries within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to FWS, election, and filing may, at the discretion of FWS, be granted.

d. Conditions When the Government May Obtain Title - The recipient shall convey to FWS, upon written request, title to any subject invention:

(1) If the recipient fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title. FWS may only request title within 60 days after learning of the recipient's failure to report or elect within the specified times.

(2) In those countries in which the recipient fails to file patent applications with the times specified in c. above; provided, however, that if the recipient has filed a patent application in a country after the times specified in c. above, but prior to its receipt of the written request of FWS, the recipient shall continue to retain title in that country.

(3) In any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding, on a patent on a subject invention.

e. Minimum Rights to Recipient

(1) The recipient shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the recipient fails to disclose the subject invention within the times specified in c. above. The recipient's license extends to its domestic subsidiaries and affiliates, if any, within the organizational structure of which the recipient is a party and includes the right to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of FWS except when transferred to the successor of that party of the recipient's business to which the invention pertains.

(2) The recipient's domestic license may be revoked or modified by FWS to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and FWS licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of FWS to the extent the recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in the foreign country.

(3) Before revocation or modification of the license, FWS shall furnish the recipient a written notice of its intention to revoke or modify the license, and the recipient shall be allowed 30 days (or such other time as may be authorized by the FWS for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable FWS licensing regulations (if any) and the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Recipient Action to Protect the Government's Interest

(1) The recipient agrees to execute or to have executed and promptly deliver to FWS all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the recipient elects to retain title, and (ii) convey title to FWS when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the recipient each subject invention made under agreement in order that the recipient can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by c.(1) above. The recipient shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The recipient shall notify FWS of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The recipient agrees to include, within the specification any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the agreement awarded by the U.S. Fish and Wildlife Service). The Government has certain rights in this invention."

g. Subcontracts - The recipient shall include this clause suitably modified to identify the parties, in all subagreements, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subrecipient shall retain all rights provided for the recipient in this clause, and the recipient shall not, as part of the consideration for awarding the subagreement obtain rights in the subrecipient's subject inventions.

h. Reporting Utilization of Subject Inventions - The recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the recipient, and such other data and information as the agency may reasonably specify. The recipient also agrees to provide additional reports as may be requested by FWS in connection with any march-in proceedings undertaken by FWS in accordance with paragraph j. of this clause. To the extent data or information supplied under this section is considered by the recipient, its licensee or assignee to be privileged and confidential and is so marked, FWS agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

i. Preference for United States Industry - Notwithstanding any other provision of this clause, the recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the FWS upon a showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in-Rights - The recipient agrees that with respect to any subject invention in which it has acquired title, FWS has the right in accordance with the procedures in OMB Circular A-124 to require the recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the recipient, assignee, or exclusive licensee refuses such a request, FWS has the right to grant such a license itself if FWS determines that:

(1) Such action is necessary because the recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by paragraph 1. of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special Provisions for Agreements with Nonprofit Organizations - If the recipient is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of FWS, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee shall be subject to the same provisions as the recipient;
- (2) The recipient may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:
 - (i) Five years from first commercial sale or use of the invention; or
 - (ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, FWS approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use shall not be deemed commercial sale or use with respect to a product of the invention shall not be deemed to end the exclusive period to different subsequent products covered by the invention.
- (3) The recipient shall share royalties collected on a subject invention with the inventor; and
- (4) The balance of any royalties or income earned by the recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, shall be utilized for the support of scientific research or education.

19. DATA COLLECTION - (Paperwork Reduction Act of 1980) - [This clause shall be applicable to all assistance agreements through which FWS sponsors the collection of information as defined in 5 CFR §1320.7]

a. OMB requires review and approval of plans and reports used to collect identical information from 10 or more persons (other than Federal employees) under assistance agreements sponsored by FWS. A collection of information undertaken by a recipient is considered to be "sponsored" by FWS only if:

- (1) The recipient is collecting information at the specific request of FWS; or
- (2) The terms and conditions of the agreement require specific approval by FWS of the collection of information or the collection procedures.

b. Unless otherwise specified, data collection conducted under the assistance agreement is the responsibility of the recipient, and FWS support of the project does not constitute FWS approval of the survey design, questionnaire content, or data collection procedures. The recipient shall not represent to respondents that such data is being collected for, or in association with, the FWS or any Federal agency without the specific written approval of such data collection plan or device by the FWS. However, this requirement is not intended to preclude mention of FWS support of the project in response to any inquiry or acknowledgement of such support in any publication of this data.

20. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE - [This clause shall be applicable to all assistance agreements involving the accumulation of technical data or the development of computer software financed in whole or in part with Federal funds]

a. Definitions

(1) The term "technical data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. Technical data does not include computer software, and it does not include financial, administrative, cost pricing, and management data, or other information incidental to contract administration.

(2) Computer Software - Computer programs and computer data bases.

(3) Computer Software Documentation - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(4) Unlimited Rights means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(5) Limited Rights means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for emergency repairs or release to a foreign government as the interest of the United States may require.

(6) Restricted Rights apply only to computer software and include, as a minimum, the right to: (i) use computer software with the computer (or if inoperative, a backup) for which it was acquired at any Government installation; (ii) copy computer programs for safekeeping (archives) or backup purposes; (iii) modify computer software or combine it with other software, subject to continuation of the existing restricted rights provisions.

b. Government Rights

(1) Unlimited Rights - The Government shall have unlimited rights in:

- (a) Technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government assistance agreement or contract, at any tier;
- (b) Computer software required to be originated or developed or generated as a necessary part performance under this or any other Government assistance agreement or contract, at any tier;
- (c) Computer data bases prepared under this or any other Government assistance agreement or contract at any tier consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;
- (d) Technical data or computer software, constituting corrections or changes to Government-furnished data or computer software, prepared or required to be delivered under this or any other Government assistance agreement or contract at any tier;
- (e) Technical data or computer software which is in the public domain or has been or is normally released or disclosed by the recipient or subrecipients without restriction or further disclosure;
- (f) Technical data or computer software listed or described elsewhere in this assistance agreement which the parties have predetermined and agreed will be furnished with unlimited rights.

(2) Limited Rights - The Government shall have limited rights in:

- (a) Technical data, listed or described elsewhere in this assistance agreement which the parties have agreed will be furnished with limited rights;
- (b) Unpublished technical data developed at private expense and unpublished computer software, documentation related to computer software that is acquired with restricted rights provided that the data to which the Government's rights are limited is identified.

(3) Restricted Rights - The Government shall have restricted rights in computer software, listed or described elsewhere in this assistance agreement, which the parties have agreed will be furnished with restricted rights, provided further that:

- (a) The recipient clearly marks the computer software with a restricted rights legend and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. Failure of the recipient to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.
- (b) The recipient may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth elsewhere in this assistance agreement and agreed to by the parties prior to the delivery data of the software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use to any data or computer software which the recipient has previously delivered to the Government, without restriction. The limited or restricted rights provided for by this clause shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

c. Indemnification - The recipient shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the recipient of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this assistance agreement.

d. Acquisition of Technical Data and Computer Software from Subcontractors

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this agreement, the recipient shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the recipient's rights in that subcontractor data or computer software which is required for the Government.

(2) The recipient and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

e. Relation to Patents - Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

21. RESTRICTIONS ON PRINTING - (Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States) - [This clause is applicable to all assistance agreements, except those in which the entire cost of printing is not borne by the FWS or the printing is not exclusively for the FWS' use]

a. This assistance agreement is not made primarily or substantially for the purpose of typesetting or having material printed for FWS use.

b. Recipients may reproduce without further authorization, reports, data, or other written material required under the terms of the agreement for the use of FWS, provided that the material duplicated does not exceed 5,000 units of only one page, or that items consisting of multiple pages do not exceed 25,000 units in the aggregate. Recipients must advise the SO if the estimated quantities will exceed these ceilings so that Departmental/Committee approval can be obtained.

c. These restrictions do not preclude the writing, editing, preparation of manuscript copy and related illustrative material, or the publication of findings by recipients; or the administrative printing requirements of the recipient required for its own use to respond to the terms of the agreement.

22. OTHER ADMINISTRATIVE PROVISIONS AND ASSURANCES - [The following provisions and assurances are applicable to all assistance agreements]

The recipient hereby assures and certifies that:

a. It possesses legal authority to apply for and accept this Agreement; that any necessary resolution, motion or similar action has been duly adopted or passed as an official act of its governing body, authorizing the filing of any application, including all understandings and assurances contained therein and directing and authorizing any person identified as its official representative to act in connection with any application or acceptance and to provide such information as may be required.

b. It shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which recipient receives Federal financial assistance and shall immediately take any measures necessary to effectuate this Agreement.

c. It shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (i) the primary purpose of an agreement is to provide employment or (ii) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the assistance-aided activity.

d. It shall comply with the provisions of the Age Discrimination Act of 1975 (P.L. 94-135; 42 U.S.C. 6101, et. seq.) and in accordance with that Act, shall prohibit discrimination on the basis of age.

e. It shall comply, to the extent applicable, with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et. seq.) which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

- f. It shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794, P.L. 93-112), and all requirements imposed by or pursuant to the regulations of the Department of Health, Education and Welfare (45 CFR Parts 80, 81 and 84), promulgated under the foregoing statute. It agrees that, in accordance with the foregoing requirements, no otherwise qualified handicapped person, by reason of handicap, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and that it shall take any measures necessary to effectuate this Agreement.
- g. It shall comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646; 42 U.S.C. 4601, et. seq.) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.
- h. It shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 500, et. seq.) requiring the payment of the minimum wage for all covered employees and the payment of overtime.
- i. It shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- j. It shall assure that no member of or delegate to Congress, or resident Commissioner, will be admitted to any share or part of this assistance agreement, or to any benefit that may arise from it. And further, it shall comply with the provisions of 18 U.S.C. 1913 which prohibits the direct or indirect use of any funds appropriated by Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence a member of Congress, to favor or oppose, any legislation or appropriation, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation. Finally, it warrants that it has not paid and agrees not to pay any bonus, commission or fee for the purpose of obtaining approval of its application for the financial assistance agreement.
- k. It shall comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234, 87 Stat. 975, approved December 13, 1975) which call for the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
- l. It shall ensure, pursuant to Executive Order 11738, that the facilities under its ownership, lease, or supervision, which shall be utilized in the accomplishment of the agreement are not listed on the Environmental Protection Agency (EPA) list of violating facilities and that it shall notify FWS of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
- m. It shall comply with the provisions of the National Environmental Policy Act of 1969, (P.L. 91-190) and Executive Order 11514, as amended by Executive Order 11991, which promotes efforts to prevent or eliminate damage to the environment and biosphere and requires an Environmental Impact Statement when plans and programs may affect the quality of the environment.
- n. It shall comply, to the extent applicable, with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et. seq., as amended by P.L. 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq., as amended by P.L. 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder.
- o. It will comply with the provisions of Executive Order 11288, relating to the prevention, control and abatement of water pollution.
- p. It shall assist FWS in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et. seq.) by (1) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying FWS of the existence of any such properties, and by (b) complying with all requirements established by FWS to avoid or mitigate adverse effects upon such properties.
- q. It shall comply with the provisions of the Cargo Preference Act of 1958 (46 U.S.C. 1241(b)(1)) as it relates to ensuring fair and reasonable participation by privately owned U.S. Flag commercial vessels in transporting cargos and the requirements of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 11596) for preferential use of U.S. Flag air carriers for the international transportation of persons, personal effects and other cargo.
- r. It shall comply with the provisions of Section 176 (c) of the Clean Air Act (42 U.S.C. 7401, et. seq.) to assure that Federal assistance activities do not detrimentally affect State efforts to attain and maintain the national ambient air quality standards and protect air quality cleaner than the standards.

s. It shall comply with the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et. seq.) to assure that Federal assistance activities are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species.

t. It shall comply with the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, et. seq.) as it relates to restriction on the taking and use of marine mammals.

u. It shall comply with the requirements of the Laboratory Animal Welfare Act of 1966, as amended (7 U.S.C. 2131, et. seq.) and the regulations promulgated by the U.S. Department of Agriculture pertaining to the care, handling and treatment of warm-blooded animals held or used for research, teaching or other activities supported by Federal funds.

v. It shall comply with the requirements of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, et. seq.) as it relates to the application of any pesticide.

w. It shall comply with the requirements of the National Research Act of 1974, as amended, [42 U.S.C. 289 (1)(3)] and regulations issued by the U.S. Department of Health and Human Services (45 CFR, Part 46) as they relate to safeguarding the rights and welfare of any human subjects involved in research, development and related activities supported by Federal assistance funding.

x. It shall comply with the requirements of the Privacy Act of 1984 [5 U.S.C. 552(a)], OMB Circular A-108 and the Freedom of Information Act (5 U.S.C. 552) as amended, as they relate to the design, development or operation of any system of records on individuals performed by the Federal assistance recipient or subrecipient involving the performance of the government function, including the collection, use, and dissemination of records.

y. It shall comply with the provisions of Executive Order 12372, as implemented by Department of the Interior regulations [43 CFR Part 9; 48 FR 29224, June 24, 1983] as they relate to Intergovernmental Review of Federal Programs.

z. It shall comply with all requirements imposed by a Federal agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with applicable OMB Circulars.

[The following additional administrative provisions and recipient assurances are applicable to assistance agreements with State and local governments.]

aa. It shall comply with the provisions of the Hatch Political Act of 1940 (5 U.S.C. 1501) which limits the political activity of State and local government employees whose salaries are paid from Federal assistance funds.

bb. It shall comply with the requirements of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et. seq.) to assure that Federal assistance activities are consistent with Federally-approved State coastal management programs designed to preserve, protect, develop and, where possible, restore or enhance the nation's coastal resources.

[The following additional administrative provisions and recipient assurances are applicable to assistance agreements involving construction and improvements.]

cc. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.

dd. It will require the facility to be designed to comply with the "American Standard Specializations for making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified, (41 CFR 101-19.603). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

ee. It will obtain approval by FWS of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to FWS for prior approval changes that alter the costs of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.

ff. It will cause work on the project to be commenced within a reasonable time after receipt of notification from FWS that funds have been approved and that the project will be prosecuted to completion with reasonable diligence.

gg. It will dispose of or encumber its title or other interests in the site and facilitate during the period of Federal interest or while the Government holds bonds, whichever is the longer.

hh. It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as FWS may require.

ii. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.

jj. It shall assist in compliance with Executive Order 11988, Flood Plain Management which requires avoidance, to the extent possible, of the long- and short-term adverse impacts associated with the occupancy and modification of flood plains and to avoid the direct or indirect support of flood plain development whenever there is a practicable alternative.

kk. It shall assist in compliance with Executive Order 11990, "Protection of Wetlands" which requires minimizing the destruction, loss or degradation of wetlands and efforts to preserve and enhance their natural and beneficial values.

23. ORDER OF PRECEDENCE - [This clause shall be applicable to all assistance agreements]

In the event of any inconsistency between any provisions of this agreement, the following order of precedence shall apply:

- a. Statement of Work (excluding the recipient's proposal, if incorporated).
- b. Special Provisions.
- c. General Provisions.
- d. Recipient's Proposal (if incorporated).

INTERGOVERNMENTAL AGREEMENT

This Agreement is made between the Metropolitan Service District (hereinafter referred to as "METRO") and _____ (hereinafter referred to as "RECIPIENT") this ____ day of _____ 199_, for the period _____ to _____.

W I T N E S S E T H:

WHEREAS, METRO and RECIPIENT have mutual interest in accomplishment of an environmental education project related to the Metropolitan Greenspaces Program (hereinafter referred to as "PROJECT"), and desire to jointly participate in the PROJECT. The Scope of Work of said PROJECT is listed in Exhibit "A" attached hereto; and

WHEREAS, METRO has received a grant from the U.S. Fish and Wildlife Service and a portion of said grant was set aside for environmental education grants. This PROJECT will be funded by no more than fifty percent (50%) by METRO from these funds and at least fifty percent (50%) funded by the recipient, either in cash or in-kind donations; and

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the parties hereto as follows:

1. METRO hereby approves the project proposal and authorizes RECIPIENT to proceed with the PROJECT in accordance with the Scope of Work attached as Exhibit "A."
2. The estimated total cost of the PROJECT is \$ _____ DOLLARS. The RECIPIENT shall in the first instance, pay all the costs of the PROJECT and then request reimbursement upon completion of the PROJECT. Upon receipt of an invoice from RECIPIENT, METRO shall submit said costs to U.S. Fish and Wildlife Service for reimbursement. Upon receipt of said funds, METRO will issue payment to RECIPIENT. Detailed terms of arrangements are set forth in Attachment "B" of this Agreement.
3. Upon completion of the PROJECT, there will be no further obligations on the part of METRO and U.S. Fish and Wildlife Service.

4. RECIPIENT agrees to comply at all times with provisions of the Cooperative Agreement between Fish and Wildlife Service, U.S. Department of the Interior and METRO, which appear as Attachment "C" of this Agreement and by this reference made a part hereof.
5. This contract is entered into within the State of Oregon, and the law of said state, whether substantive or procedural, shall apply to this contract, and that all statutory, charter and ordinance provisions that are applicable to the public contracts in the City of Portland, Multnomah, Washington and Clackamas Counties, and the State of Oregon shall be followed with respect to this contract.
6. RECIPIENT will document on final products and/or visual presentations that partial funding came from the Greenspaces Program of METRO and the U.S. Fish and Wildlife Service.
7. RECIPIENT shall indemnify, protect, defend and hold harmless METRO and its officers, agents, employees and members from any and all claims, suits or actions of any nature, including, but not limited to, costs and attorney fees, arising out of or related to the activities of RECIPIENT, its officers, subcontractors, agents or employees under this contract. If RECIPIENT fails to defend or indemnify, METRO may, at its option, bring an action to compel same or undertake its own defense. In either event, RECIPIENT shall be responsible for all of METRO's costs, expenses and attorney fees including the reasonable market value of any services provided by METRO's employees.
8. Termination for Cause: METRO may terminate this Agreement in full, or in part, at any time before the date of completion, whenever METRO determines, in its sole discretion, that the other party has failed to comply with the conditions of this Agreement. METRO shall promptly notify RECIPIENT in writing of this determination and the reasons for the termination, together with the effective date. METRO shall only be responsible to RECIPIENT to the extent, if any, of federal reimbursement.
9. Termination for Convenience: This Agreement may be terminated in whole, or in part, when all parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The parties shall agree upon the termination conditions including the effective date and, in the case of partial terminations, the portion or portions to be terminated. The parties shall not incur new obligations after the effective date of termination, and shall cancel as many outstanding obligations as possible. METRO shall only be responsible to RECIPIENT to the extent, if any, of federal reimbursement.
10. This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. RECIPIENT, by the signature below of its authorized representative, hereby

acknowledges that RECIPIENT has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year set forth below.

RECIPIENT

METROPOLITAN SERVICE DISTRICT

Date

Date

APPROVED AS TO FORM

APPROVED AS TO FORM

Date

Date

s:\pd\contlelp