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WM Project 5
Docket No.
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James G. Hoyal, Jr.
Chief, Contract Negotiations Branch
U.S. Department of Energy
Post Office Box 5400
Albuquerque, New Mexico 87115

Dear Mr. Hoyal:

Enclosed are your three signed copies of Cooperative Agreement No. DE-FC04-85AL20533 per your September 13, 1985 request for concurrence.

Original signed by
Leo B. Higginbotham

Leo B. Higginbotham, Chief
Low-Level Waste and Uranium Recovery
Projects Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Enclosures:
As stated

*See previous concurrences

OFC	:WMLU	*	:WMLU	*	:ELD	*	:WMLU	:	:	:
NAME	:MHaisfield/j		:DMartin		:RFonner		:LHiggInbotham		:	: : :
DATE	:85/09/30		:85/10/3		:85/10/1		:85/10/3	:	:	:

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COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT, entered into between the UNITED STATES OF AMERICA (hereinafter called the "Government"), acting through the DEPARTMENT OF ENERGY (hereinafter called "DOE"), and the STATE OF NEW MEXICO (hereinafter called the "State"), acting through the ENVIRONMENTAL IMPROVEMENT DIVISION (hereinafter called "EID"),

WITNESSETH THAT:

WHEREAS, the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604 (hereinafter called the "Act"), approved November 8, 1978, authorizes the Secretary of DOE to enter into agreements with affected States to cooperatively perform and share the costs of remedial action at those inactive uranium mill tailings sites and associated vicinity properties which have been or will be designated processing sites by the Secretary of DOE; and

WHEREAS, pursuant to the Act, the Secretary of DOE, on November 8, 1979, designated a certain New Mexico inactive uranium mill tailings site as a processing site, thus making the site eligible for remedial action; and

WHEREAS, pursuant to the Act, the Secretary of DOE has assessed the potential health hazard to the public from the residual radioactive materials at the Ambrosia Lake, New Mexico inactive uranium mill tailings site and has established the relative priority for carrying out remedial action at such site; and

WHEREAS, the purposes of this Agreement are to establish a plan of assessment and remedial action at the Ambrosia Lake, New Mexico inactive uranium mill tailings site and any associated vicinity sites in order to stabilize and control such tailings in a safe and environmentally sound manner, to provide for acquisition of property by the State where determined appropriate by the Secretary, and to formally commit DOE and the State to the undertaking of their respective statutory responsibilities under the Act; and

WHEREAS, the parties hereto are mutually desirous of entering into this Agreement to establish the terms and conditions under which remedial action will be performed, property will be acquired, and each party will pay its share of the costs of such remedial action and acquisition.

NOW THEREFORE, the parties hereto mutually agree as follows:

I. DEFINITIONS

As used throughout this Agreement, the following terms shall have the meanings set forth below:

A. The term "Secretary" means the Secretary of Energy or any duly authorized representative thereof.

B. The term "DOE" means the United States Department of Energy or any duly authorized representative thereof, including the Secretary and the Contracting Officer.

C. The term "Contracting Officer" means the person executing this Agreement on behalf of the Government, and any other officer or civilian employee who is properly designated as a Contracting Officer; and the term includes, except as otherwise provided in this Agreement, the authorized representative of a Contracting Officer acting within the limits of his authority, when so designated in writing to the State.

D. The term "Commission" means the United States Nuclear Regulatory Commission or any duly authorized representative thereof.

E. The term "Administrator" means the Administrator of the United States Environmental Protection Agency or any duly authorized representative thereof.

F. The term "State" means the State of New Mexico or any duly authorized representative thereof.

G. The term "State Site Representative" means the Director of the EID or any duly authorized representative thereof.

H. The term "person" means any individual, association, partnership, corporation, firm, joint venture, trust, government entity, and any other entity, except that such term does not include any Indian or Indian tribe.

I. The term "millsite" means the inactive uranium mill tailings site located in Ambrosia Lake, New Mexico including any residual radioactive materials thereon, which the Secretary has designated (44 F.R. 74891) pursuant to Section 102(a) of the Act to be a "processing site" and which is further described in Appendix A to this Agreement.

J. The term "vicinity property" means any real property or improvement thereon which: (1) is in the vicinity of the millsite; (2) is determined by the Secretary, in consultation with the State and the Commission, to be contaminated with residual radioactive materials derived from a millsite; and (3) the Secretary designates, during the term of this Agreement and pursuant to Section 102(e) of the Act, to be a "processing site"; and includes any residual radioactive materials thereon.

K. The term "residual radioactive materials" means: (1) waste at a millsite or vicinity property, which DOE determines to be radioactive, in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (2) other waste, which DOE

determines to be radioactive, at a millsite or vicinity property which relates to such processing, including any residual stock of unprocessed ores or low-grade materials.

L. The term "tailings" means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

M. The term "EPA Standards" means those standards, promulgated as standards by rule of the Administrator at 40 CFR Part 192 pursuant to Section 275 of the Atomic Energy Act, as amended, of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials located at mill sites, vicinity properties and depository sites.

N. The term "depository site" means any site, which may include the mill site or vicinity property, used for the permanent disposition, stabilization and control of residual radioactive materials in accordance with and pursuant to this Agreement and Title I of the Act.

O. The term "remedial action" means the assessment, design, construction, excavation, renovation, restoration, decommissioning and decontamination activities of DOE, or such person as it designates, which: (1) are directly related to the stabilization and control of residual radioactive materials at a millsite, vicinity property or depository site in a safe and environmentally sound manner in accordance with the EPA Standards and consistent with applicable Federal and State law; (2) with respect to millsites, are conducted after execution of a Remedial Action Plan; and (3) with respect to vicinity properties, are conducted in the development and preparation of a Radiological and Engineering Assessments or Remedial Action Plan, as appropriate; PROVIDED, that remedial action shall not include any maintenance or monitoring performed at a depository site after the State has transferred to the Government title to the residual radioactive materials and the depository site in accordance with the article hereof entitled "Acquisition, Disposition and Use of Property."

P. The term "Remedial Action Plan" means the document developed pursuant to the article hereof entitled Description of Remedial Action Program, in order to define the remedial action to be performed at a millsite pursuant to this Agreement, including, where appropriate, removal of residual radioactive materials to a depository site, and which also includes a discussion of the proposed means of accomplishing such remedial action, a conceptual design of the remedial action,

the estimated costs of design and performance of remedial action, project status and technical information reporting requirements, and a schedule of activities for such remedial action. The Remedial Action Plan shall be prepared in accordance with the EPA Standards 40 CFR 192, including Section 192.20 (a)(3) which relates to characterization, assessment and remedial action of waterborne contaminants, and shall reflect a methodology consistent with that presented in the UMTRA Project Plan for Implementing EPA Standards for UMTRA Sites (UMTRA-DOE/AL-163), January 1984, including Section 3.3 Protection of Water Quality.

Q. The term "Radiological and Engineering Assessment" means the document developed pursuant to the article hereof entitled, Description of Remedial Action Program, in order to define the remedial action to be performed at a vicinity property pursuant to this Agreement, and which includes a detailed radiological and engineering assessment of that vicinity property, and an estimated cost of design and performance of the remedial action.

R. The term "environmental document" means a written public document, such as an environmental assessment or environmental impact statement, which contains an appropriate environmental analyses of the preferred remedial action and all reasonable alternatives, and which is prepared in such format and in accordance with such procedures as prescribed by the Council on Environmental Quality National Environmental Policy Act Regulations, 40 CFR Parts 1500-1508, and the DOE National Environmental Policy Act Guidelines, published at 45 FR20694- 20701 on March 28, 1980.

S. The term "advance by Treasury check" means a payment made by DOE to the State by Treasury check, in accordance with the provisions of Treasury Circular No. 1075, upon request by the State before cash outlays are made for allowable costs incurred or anticipated to be incurred by the State.

T. The term "reimbursement by Treasury check" means a payment made by DOE to the State by Treasury check upon request by the State for reimbursement for cash outlays made for allowable costs.

U. The term "program income" means the State's share of proceeds from the management or disposal by the State of a millsite or other property pursuant to the article hereof entitled, "Acquisition, Disposition and Use of Property." Program income does not include any interest earned on advances of Government funds pursuant to this Agreement.

V. The term "subcontractor" means any contractor to the State and all tiers of subcontractors thereunder.

W. Except as otherwise provided in this Agreement, the term "subcontracts" includes purchase orders under this Agreement.

II. DESCRIPTION OF REMEDIAL ACTION PROGRAM

A. The Secretary, pursuant to Section 102 of the Act, has designated a millsite located within the State of New Mexico and has established the relative priority for carrying out remedial action as follows:

Millsite	Priority
Ambrosia Lake	Medium

This millsite is further described in Appendix A to this Agreement.

In addition, from time to time during the term of this Agreement, the Secretary shall, pursuant to Section 102 of the Act, include vicinity properties within the designation of the millsite and establish relative priorities for carrying out remedial actions at such sites. In making a determination to so include a vicinity property, DOE shall coordinate its radiological measurements with the State such that copies of data resulting from such measurements are provided to the State once such data is verified and validated internally by DOE. Upon inclusion, DOE shall provide the State with a notice of such inclusion and a description of the vicinity property so included.

B. DOE, or such person as the Contracting Officer may designate, shall select and perform remedial actions at the mill sites, vicinity properties and depository sites in accordance with the EPA Standards and other applicable federal and State law. As further described herein, it is contemplated that the State will fully participate in the selection and performance of such remedial action. Remedial action shall be: (1) carried out, to the greatest extent practicable, in accordance with the priorities established by DOE pursuant to Section 102 of the Act, and published at 44 F.R. 74891, 7482 (1979); (2) performed using technology that will assure compliance with the EPA Standards and will assure the safe and environmentally sound stabilization of residual radioactive materials consistent with existing applicable law; and (3) performed in accordance with the applicable provisions of the Act, including the provisions of Section 108(b) regarding the remilling of residual radioactive materials.

C. Unless otherwise agreed by DOE and the State in writing, and except as provided in this Agreement, DOE shall procure, in

accordance with applicable DOE procurement policies and procedures and existing Federal law, all supplies, equipment, construction and services necessary for the performance of this Agreement. With respect to any authorized procurement by the State of supplies, equipment, construction, and services under this Agreement, the State shall comply with the Standards Governing State and Local Grantee Procurement set forth in Appendix C to this Agreement (Attachment O to Office of Management and Budget (OMB) Circular A-102, as that Attachment was revised by OMB on August 1, 1979, and published in the Federal Register, Volume 44, No. 159, August 15, 1979, pp. 47874-47878), and the applicable subcontract provisions for such procurement shall be those contained in Appendix D to this Agreement; Provided, That such standards shall not apply to the State's acquisition of property pursuant to the article hereof entitled Acquisition, Disposition and Use of Property.

DOE and the State agree that, in connection with the performance of their respective responsibilities under this Agreement, it is desirable, within the limits of the law, to encourage the employment of New Mexico residents. DOE and the State acknowledge that: (1) DOE has established a Uranium Mill Tailings Remedial Action (UMTRA) Project Office at its Albuquerque Operations Office; (2) the UMTRA Project Office is supported by two prime contractors, a Technical Assistance Contractor (TAC) and a Remedial Actions Contractor (RAC), which have each established project offices in Albuquerque; (3) DOE has required, in its contract with the RAC, that the RAC carry out remedial actions utilizing, to the maximum extent practicable, competitively award firm fixed-price construction subcontracts; and (4) neither DOE nor the State can require that New Mexico residents be employed by DOE, the TAC, the RAC, or DOE subcontractors performing UMTRA work in New Mexico. The Contracting Officer's Representative and the State Site Representative shall mutually develop and implement a written monitoring and statistical reporting program in connection with the TAC, RAC and DOE subcontractors performing UMTRA work in New Mexico, which will provide to the State information regarding the number of New Mexico residents hired, the number of New Mexico firms awarded subcontracts, and the steps taken to fully and effectively publicize the availability of UMTRA-related job and subcontract opportunities.

D. Except as specifically provided elsewhere in this Agreement, it is contemplated that the general sequence of activities by DOE and the State under this Agreement will be as set forth below. The activities that are cost-shared in accordance with the article hereof entitled Payments and Allowable Costs are specifically identified; otherwise, the costs incurred by either DOE or the State in connection with such activities will

be borne by the party incurring the cost. A flow chart of the general sequence of activities set forth below is included herein as Exhibit 1 of Appendix E.

1. Cooperative Agreement. DOE and the State have executed this Agreement in good faith as the first step of the cooperative remedial action process.

2. NEPA.

   a. Environmental Assessment - DOE shall prepare and submit to the State and the Commission an Environmental Assessment (EA) in draft form for the millsite and associated vicinity properties. The Draft EA shall be utilized to coordinate initial planning of remedial action with the State and the Commission. The Draft EA shall include a brief evaluation of all reasonable remedial action options, a proposed remedial action conceptual design, a schedule for completion of remedial actions, a brief discussion of environmental, health and safety concerns, and a preliminary cost estimate. The State and the Commission shall promptly review the Draft EA and submit any comments to DOE. DOE shall use its best efforts to reconcile any such comments to the satisfaction of the State prior to its finalization by DOE.

   b. Candidate Depository Sites - In the development of the EA, DOE and the State may initiate site characterization of potential depository sites. In such event, DOE shall evaluate at least three candidate depository sites selected by DOE and the State in a Draft EA. If, after such evaluation or analysis, DOE determines that any candidate depository site is inadequate, then DOE and the State, by mutual agreement, shall select a replacement candidate depository site. If either party performs on-site evaluation of a site, then that party shall obtain a prior authorization from the site owner for access onto the property.

   c. Environmental Impact Statement - In the event the preparation of an EIS is necessary to fulfill the requirements of NEPA, DOE shall prepare and submit to the State and the Commission an EIS in draft form. The State and the Commission shall promptly review the Draft EIS and submit any comments to DOE. DOE shall use its best efforts to reconcile any such comments to the satisfaction of the State prior to its finalization by DOE.

d. Full Execution of NEPA - DOE and the State acknowledge that, as a result of fully executing the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), remedial action options may be analyzed and a proposed option may ultimately be chosen different from the options analyzed in the Draft EA. The State shall assist DOE, to the extent agreed upon by DOE and the State, in scoping, scoping meetings, Draft EA or EIS, public meetings or hearings, and in connection with other NEPA process matters.

3. Engineering. DOE shall prepare, for State concurrence, a draft Remedial Action Plan for the millsite which is premised upon the environmental document. The State shall review the draft Remedial Action Plan and shall concur with such plan prior to DOE finalization. Upon concurrence by the State, DOE shall obtain Commission concurrence. Upon concurrence by the Commission, the Remedial Action Plan shall be incorporated into Appendix B to this Agreement. Either DOE or the State may at any time request in writing that such Remedial Action Plan be revised and both DOE and the State agree to negotiate in good faith concerning any requested revision. Any such revision shall be reflected in a modification in writing by DOE and the State to the Remedial Action Plan, and such modification shall be concurred with by the Commission.

4. Obligation of Funds. Pursuant to the article, hereof entitled Cost Limitation and Obligation of Funds, DOE and the State shall obligate funds for not less than the first fiscal year of property acquisition or remedial actions based upon preliminary cost estimates by DOE and the State. In the case of millsites, such estimates shall be based upon the Remedial Action Plans. For vicinity properties, such estimates shall be by mutual agreement of the parties. Thereafter, DOE and the State will obligate funds as necessary in advance of remedial actions. A current schedule of projected funding and cost-sharing under this Agreement is attached as Exhibit 2 of Appendix E to this Agreement, for use by the State prior to its obligation of funds under the article hereof entitled Cost Limitation and Obligation of Funds. Such schedule shall be updated by DOE each fiscal year up to and including the Fiscal Year in which a Remedial Action Plan is executed by DOE and the State under this Agreement. As contemplated by other provisions of this Agreement, the schedule of funding for remedial action costs shall be identified in the Remedial Action Plan and

the article hereof entitled Cost Limitation and Obligation of Funds. Costs actually to be shared under this Agreement shall be as provided in the RAP or REA and the articles hereof entitled Payments and Allowable Costs and Cost Limitation and Obligations.

5. Acquisition of Property (Cost-Shared). Remedial action at a millsite, vicinity property or depository site shall not be implemented until any necessary acquisition of that millsite, vicinity property or depository site, or any interest therein, has been made pursuant to the article hereof entitled Acquisition, Disposition and Use of Property.

6. Design (Cost-Shared)

a. Millsite - Upon concurrence by the State and the Commission with the Remedial Action Plan for the millsite, DOE shall prepare a preliminary design for the remedial action specified in the Remedial Action Plan. DOE shall provide the State and the Commission the preliminary design documents for prompt review and comment. DOE shall then prepare a final design.

b. Vicinity Property.

(1) Radiological and Engineering Assessments - For each vicinity property:

(a) DOE shall prepare and submit to the State a draft Radiological and Engineering Assessment.

(b) The State shall review the draft Radiological and Engineering Assessment and shall concur with the proposed remedial action prior to DOE finalization of the Radiological and Engineering Assessment and preparation of plans and specifications for the vicinity property. DOE and the State agree to negotiate in good faith concerning any revisions of the Radiological and Engineering Assessment.

(c) The Commission shall concur with the Radiological and Engineering Assessment only in those instances of an unusually significant vicinity property which may

warrant, in the opinion of DOE, the State, or the Commission, an individual Remedial Action Plan or environmental document, or both, because of size, location, cost, remedial action feasibility, or schedule considerations.

(2) Remedial Action Plan - In the event a Remedial Action Plan is warranted, DOE shall prepare a Draft Remedial Action Plan for State review and concurrence prior to DOE finalization of such Plan and preparation of plans and specifications for the vicinity property. Either DOE or the State may at any time request in writing that such Plan be revised and both DOE and the State agree to negotiate in good faith concerning any requested revision. Significant revisions to this Plan, as determined by DOE and the Commission, shall be concurred with by the Commission.

7. Remedial Actions (Cost-Shared). After preparation of the final design in the case of a millsite or a Radiological and Engineering Assessment in the case of a vicinity property, DOE shall carry out the remedial action activities as necessary to ensure compliance with the EPA Standards and other applicable federal and State law. During the course of remedial action the State Site Representative, at the sole risk of the State, may accompany DOE during its inspections of remedial action activities. A current schedule of projected remedial actions is attached to this Agreement as Exhibit 3 of Appendix E to this Agreement, for informational purposes only. The remedial actions schedule agreed upon by the parties shall be as set forth in the Remedial Action Plan or Radiological and Engineering Assessment as appropriate. DOE, with the concurrence of NRC and the State, shall certify that the remedial actions at each millsite, vicinity property and depository site are in accordance with the Remedial Action Plan or Radiological and Engineering Assessment as appropriate.

8. Federal Custody of Depository Site.

a. Transfer of Title - Upon completion of remedial actions, the State shall transfer title to any depository site and residual radioactive materials to the Government; Provided, that in any event such property shall be transferred to the Government no

later than upon closeout of this Agreement pursuant to the article hereof entitled Closeout Procedures.

b. Custody - Custody of property title to which the State transfers to the Government under this Agreement, shall be assumed by DOE or such other federal agency as the President may designate. Any depository site to which title is so transferred shall be maintained by DOE or such other federal agency pursuant to the license issued by the Commission in such manner as will protect the public health, safety, and the environment. DOE shall perform such maintenance and surveillance of the depository site as deemed appropriate by DOE pending issuance of a license by the Commission for the long-term maintenance and monitoring of such site.

c. License - Upon certification by DOE that remedial actions have been completed in accordance with the EPA Standards, the Commission shall issue a license to DOE, or such other federal agency as the President may designate for the long-term maintenance and monitoring of the depository site. The Commission may, pursuant to such license or by rule or order, require DOE or such other federal agency to undertake monitoring, maintenance and emergency measures necessary to protect public health, safety, and the environment.

9. Closeout of Cooperative Agreement - Upon the completion of remedial actions and after State transfer to DOE of title to the depository site, DOE and the State shall close out this Agreement in accordance with the terms and conditions of the article hereof entitled Closeout Procedures.

III. ACQUISITION, DISPOSITION, AND USE OF PROPERTY

A. The State shall assure that DOE, the Commission, the Administrator, and the State, in furtherance of the provisions of Title I of the Act and to carry out this Agreement and to enforce the provisions of the Act and any rules prescribed thereunder shall have: (1) a permanent right of entry to inspect the millsite at any time; (2) if the State acquires the depository site, a right of entry to inspect the depository site at any time from the time the State acquires the depository site until the time the State transfers title to the site to the Government; and (3) a right of entry until completion of remedial action to inspect at any time any vicinity property.

B. Except where the State has acquired unencumbered fee title to the millsite or a vicinity property pursuant to this article, the State and DOE shall, prior to any remedial action performed pursuant to this Agreement, obtain from any person holding any outstanding interest in the designated millsite or vicinity property, execution of a Remedial Action Agreement, in a form prescribed by the Contracting Officer, which provides for the State and DOE to perform remedial action at the millsite or vicinity property. Such agreement shall: (1) include a waiver by each such person on behalf of himself, his heirs, successors and assigns (i) releasing the Government and State of any liability or claim thereof by such person, his heirs, successors and assigns concerning such remedial action, and (ii) holding the Government and State harmless against any claim by such person on behalf of himself, his heirs, successors, or assigns arising out of the performance of any such remedial action; (2) specify the remedial action to be performed; (3) provide that the remedial action shall be performed only by the DOE or such person as the Contracting Officer designates; and (4) include a consent to the remedial action by such person; (5) include as parties the State, DOE, and each such person holding any record interest in the millsite or vicinity property; (6) provide for the appropriate right of entry as required by paragraph A. of this article; and (7) in the case of vicinity properties, provide for transfer of title to the residual radioactive materials thereon to the Government. Whenever the State and DOE are unable to obtain a Remedial Action Agreement, DOE and the State shall determine how to proceed in connection with the site, which may include, but is not limited to, a determination that the State is to acquire the subject site in accordance with the terms of this article or that no remedial action shall be performed at the subject site.

C. From time to time DOE and the State may determine that acquisition of a millsite, depository site, vicinity property, or residual radioactive materials at a millsite or vicinity property should be considered. In such cases DOE shall prepare, collect and develop any or all of the documentation described in Appendix F in connection with a millsite, vicinity site, or depository site. In the event DOE is unable to prepare, collect and develop said Appendix F documentation, DOE shall so notify the State and in writing the State shall prepare, collect and develop the Appendix F documentation in connection with such millsite, vicinity property, residual radioactive materials or depository site. The State Site Representative, within such reasonable time as mutually agreed by the State Site Representative and the Contracting Officer, shall furnish to the Contracting Officer two copies of the documentation developed pursuant to this paragraph.

D. The Appendix F documentation, including the appraisal report, shall be prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (hereinafter referred to as the "Appraisal Standards") issued by the Interagency Land Acquisition Conference, and "A Procedural Guide for the Acquisition of Real Property by Government Agencies" (hereinafter referred to as the "DOJ Procedural Guide") issued by the Department of Justice. In the event the State prepares the Appendix F documentation as provided in Paragraph C. of this article, the State shall take such action as is necessary to cure any inadequacies in the documentation and appraisal report of which the State Site Representative has been notified by the Contracting Officer.

E. After consideration of the Appendix F documentation, DOE, with the concurrence of the Commission, shall determine whether acquisition of such property is necessary, and DOE shall establish an amount which it determines to be a just maximum compensation (hereinafter referred to as the "Maximum Amount") for the property, and if DOE determines that the State should acquire such property, the Contracting Officer shall request the State to make such acquisition by written notice which informs the State of: (1) the acquisition required; (2) the legal description or location of the property to be acquired; (3) the estate or interest in the property to be acquired; (4) the date by which such property is to be acquired; and (5) the Maximum Amount. The State shall not be required to acquire: (1) any depository site selected pursuant to this Agreement located on land controlled by the Secretary, made available to DOE by the Secretary of Interior, or otherwise provided by DOE pursuant to Section 106 of the Act; (2) any vicinity property, unless the State first gives to the Contracting Officer the State's written consent to so acquire such site; or (3) any millsite, vicinity property, or residual radioactive materials directly acquired by DOE.

F. Upon receipt of the written notice provided for in Paragraph E. of this Article, the State shall promptly make every reasonable effort to negotiate a purchase price and agreement to purchase the property. Notwithstanding any other provision of this Agreement, the State shall not be required to commence acquisition of any property under this Agreement unless and until DOE has provided the written notice required under Paragraph E. of this Article and: (1) the Remedial Action Plan or Radiological and Engineering Assessment concerning the subject property has been executed by DOE and the State; or (2) the State consents to the commencement of such acquisition absent a Remedial Action Plan or Radiological and Engineering Assessment. The State shall not negotiate a price in excess of the Maximum Amount. The negotiation process shall include the following:

1. Negotiator's Report. A written report of negotiations on each parcel must be prepared by the negotiator. The report should be a chronological history of the negotiations, factors considered in evaluating the owner's offer and justification for acceptance or rejection of offer. The State shall submit two copies of such report to the Contracting Officer at the conclusion of negotiations.

2. Time Limits. Negotiations should be completed as quickly as possible.

3. Subsurface Rights. In each instance, DOE, after consultation with the State, shall determine whether it may be necessary to obtain all subsurface rights to minerals, coal, oil, or gas. Under circumstances where these rights need not be obtained, provisions must be made in the offer and the deed to subordinate such rights to protect DOE use. This may be done by restricting these rights so that there will be no interference with DOE and State operations on the property.

4. Interim Occupancy. Under certain circumstances, and with the prior approval of the Contracting Officer, the owner(s) or tenant(s) may be permitted to continue to occupy the property for a limited time under a rental agreement. This should be determined during negotiations and made a part of the formal settlement package.

5. Improvements. Upon a determination by DOE, after consultation with the State, that any buildings, structures, improvements, or machinery and equipment located upon the site must be acquired by the State, DOE shall so inform the State, and the State shall acquire an interest in all such buildings, structures, improvements or machinery and equipment.

6. Fees, Taxes and Other Costs. The State, as soon as practicable and to the extent allowed under State law, shall reimburse the owner of the site for: (i) recording fees, transfer taxes, and similar expenses incidental to conveying title to the site and improvements thereon; (ii) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the site; and (iii) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date that title is vested in the State, or the effective date of possession by the state, whichever is the earlier.

The State, if unsuccessful in negotiating a purchase price at or below the Maximum Amount, shall then consult with the Contracting Officer for further direction. DOE shall then either: (1) establish a higher Maximum Amount for continued negotiations; or (2) request that the State institute formal condemnation proceedings for acquisition of the property, in which case the State shall institute condemnation proceedings if authorized by State law.

Notwithstanding any provision herein, nothing in this Agreement shall preclude the State from acquiring property by a method other than direct purchase so long as such method is approved in writing, prior to its use, by the Contracting Officer.

G. In the event of condemnation by the State:

1. No owner of a site shall be required to surrender possession before the State pays, to the extent required under State law, the agreed purchase price or deposits with the appropriate State court, for the benefit of the owner, such amounts as are required to authorize the State to take title pending outcome of a condemnation proceeding.

2. In no event shall the State: (1) defer negotiations or condemnation and the deposit of funds in State court for the use of the owner; or (2) take any other action coercive in nature; in order to compel an agreement on the price to be paid for the site.

H. The State, upon acquisition of a site pursuant to this Article, shall forward to the Contracting Officer: (i) two copies of any accepted sales, donation, or exchange agreement; (ii) two copies of the deed, easement, right of entry, license or other temporary interest conveyance to the State; and (iii) two copies of any declaration of taking or judgment. The State, immediately upon acquisition of a site, must file and record such agreements, deeds, declarations of taking, or judgments in accordance with the requirements of State law.

I. The State, when determined appropriate by DOE, shall pay relocation expenses to all persons relocated in connection with acquisition of property pursuant to this article. Such payment of relocation expenses shall be pursuant to applicable State law of eminent domain; Provided, That such State law substantially conforms with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, Sections 201 through 204, inclusive, and the Federal Property Management Regulations, Section 101-18.3; Provided Further, That should there be no applicable State law,

any payment of relocation expenses by the State shall be in compliance with the provisions of said Public Law 91-646 and said Federal Property Management Regulations.

J. In the case of any property acquired by the State pursuant to this article, the State, after the completion of the remedial action and with the concurrence of the Secretary and the Commission, may: (1) sell such property or (2) permanently retain such property, or donate such property to another governmental entity within such State, for permanent use by the State or entity solely for park, recreational, or other public purposes; Provided, That the State shall transfer to the Government, in accordance with the provisions of this Agreement, title to: (1) the residual radioactive materials acquired by the State pursuant to this article, and (2) any depository site acquired by the State pursuant to this article. The Government shall, after such transfer, be responsible for maintenance, monitoring, and control of such property; Provided Further, That upon the request of the Contracting Officer, the State shall transfer title to the residual radioactive materials prior to completion of the remedial action in the event DOE determines that such residual radioactive materials shall be remilled pursuant to Section 108(b) of the Act.

In the event the State sells any lands and interests it acquires, the State shall promptly pay to the Secretary from the proceeds of any such sale an amount equal to the lesser of: (1) that portion of the fair market value of the property which bears the same ratio to such fair market value as the Federal share of the costs of acquisition by the State of such property bears to the total cost of such acquisition; or (2) the total amount paid by DOE with respect to such acquisition. Prior to the sale of the property, DOE shall determine the fair market value of such property based upon an appraisal of the property which DOE shall obtain and which meets the appraisal requirements set forth in Appendix F. The costs associated with such appraisal shall not be cost shared under this Agreement. The Contracting Officer shall thereafter notify the State in writing of DOE's determination of fair market value. Before offering for sale any lands and interests therein which comprise the millsite or a vicinity site, the State shall offer to sell such lands and interests at their then fair market value to the person or persons from whom the State acquired them.

K. When the State transfe s title to the Government to a depository site pursuant to this Article, the State shall forward to the Contracting Officer a deed which conforms to applicable State law and the "Standards for the Preparation of Title

Evidence in Land Aquisitions by the United States" (hereinafter referred to as the "Federal Title Standards") issued by the Department of Justice, and which:

1. Shows the name of the State as grantor in the body of the deed and its acknowledgment.

2. Conveys the land to the "United States of America and its assigns."

3. Contains a proper description of the land.

4. Conveys all the right, title and interest of the State as grantor in and to any alleys, streets, ways, strips, or gores abutting or adjcining the land.

5. Contains no reservations or exceptions not approved by the Contracting Officer; however, when land is to be conveyed subject to certain rights, such as easements or mineral rights thought to be outstanding in third parties, they must not be excepted from the conveyance, but the deed shall be framed to convey all the State's right, title, and interest subject to the outstanding rights.

6. Refers to the deed(s) to the State, or other source of the State's title, by book, page, and place of record, wherever customary or required by statute.

7. Contains a reference to DOE as the Government agency for which the lands are being acquired. This statement should follow the description of the land and in no instance should it be included in the granting, habendum or warranty provisions of the deed.

8. Is signed, sealed, attested, and acknowledged by the State as grantor as required by applicable State law.

9. If executed by an attorney in fact, is signed in the name of the principal by the attorney, properly acknowledged by the attorney as the free act and deed of the principal, and is accompanied by the original or a certified copy of the power of attorney and satisfactory proof that the principal was living and the power in force at the time of its exercise.

Upon the request of the Contracting Officer, the State shall provide such additional documentation or information that will assist DOE in preparing title evidence and otherwise complying with the Federal Title Standards.

L. The State shall take such action as may be necessary, pursuant to regulations of the Secretary and with the consent of the person who owns the property at the time remedial action is performed, to assure that any person who purchases a millsite or vicinity property after the removal of radioactive materials from such site shall be notified prior to purchase of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place, and the condition of such site after such action. If the State is the owner of such site, the State shall so notify any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of such site.

M. DOE and the State acknowledge that the State may currently own or may acquire real estate, at its own expense and on its own accord, and prior to the development of a Remedial Action Plan and prior to the written notice to be provided to the State by the Contracting Officer pursuant to Paragraph E. of this article, which DOE and the State may select and use as a depository site. The State agrees to convey to the Government title to such real estate or such portion thereof which is used as a depository site at such time that DOE, with the concurrence of the Commission, determines that remedial action at the depository site is completed. The real estate used as a depository site pursuant to the terms of this Paragraph shall be considered an in-kind contribution by the State to be offset against the State's share of allowable costs under this Agreement. The amount of such offset shall be equal to ninety percent (90%) of the fair market value of such real estate on the effective date of the Remedial Action Plan which reflects the DOE-State decision to use such real estate as a depository site. The fair market value of such real estate shall be determined on the basis of an appraisal which complies with the Appraisal Standards. The State's transfer of title to real estate under this paragraph shall be in accordance with Paragraph K. of this Article. The Government, after any transfer of title under this Paragraph, shall be responsible for the maintenance, monitoring and control of the depository site.

IV. ALLOWABLE COSTS

A. Subject to Paragraph C. of this article, allowable costs incurred by the State shall be those direct costs incurred to:

1. perform any State responsibility under the articles hereof entitled Acquisition, Disposition and Use of Property and State Performance of Remedial Action Activities;

2. design and perform remedial action pursuant to and in accordance with the terms and conditions of this Agreement; and

3. reimburse, in accordance with the terms and conditions of Section 103(f) of the Act, property owners for remedial action performed at vicinity properties prior to passage of the Act.

Allowable costs incurred by the State shall also include such other costs in connection with performance of the remedial action as may be approved by the Contracting Officer in writing or as otherwise mutually agreed to in writing by DOE and the State. Allowable costs shall not include the administrative costs incurred by the State to develop, prepare, and carry out this Agreement, but shall include the administrative costs associated with the performance by the State of its responsibilities under the article, hereof entitled Acquisition, Disposition, and Use of Real Property, including costs of "compensation for personal services," "legal expenses," "travel," and "communications," as those categories are described in OMB Circular No. A-87.

B. Allowable costs incurred by DOE shall be those costs incurred to:

1. design and perform remedial action pursuant to and in accordance with the terms and conditions of this Agreement;

2. reimburse, in accordance with the terms and conditions of Section 103(f) of the Act, property owners for remedial action performed at vicinity sites;

3. appraise and acquire property, or any interest therein, pursuant to Section 106 of the Act; and

4. prepare, collect and develop, in accordance with the article hereof entitled Acquisition, Disposition, and Use of Property any or all of the documentation described in Appendix F in connection with a millsite, vicinity site, or depository site.

C. The Contracting Officer shall determine allowability of State-incurred costs under this Agreement, utilizing the cost principles contained in Appendix G to this Agreement (Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State and Local Government"), and consistent with the following:

1. The State shall specify in any cost-reimbursement subcontract that applicable cost principles are those contained in OMB Circular A-87.

2. Interest penalties for late payment under a State subcontract shall not be an allowable cost.

3. The Contracting Officer may request and the State shall submit the minimum information necessary to evaluate the allowability of costs.

4. No increment above cost shall be paid to the State; Provided, that a fee or profit may be paid to State subcontractors under this Agreement.

D. Costs incurred by DOE for the design and performance of remedial action under this Agreement shall be deemed allowable costs by the Contracting Officer under this Agreement to the same extent that such costs are deemed to be allowable by the Government under the terms and conditions of DOE Contract DE-AC04-83AL18796 between DOE and Morrison-Knudsen Company, Inc. and under the provisions of applicable Government procurement regulations. The Contracting Officer shall make determinations of allowability in connection with other categories of allowable costs described in Paragraph B. of this article to the extent that such costs are reasonable and allocable to DOE's performance of this Agreement. DOE shall provide to the State available supporting documentation of allowable costs in accordance with Paragraph B. of the article entitled Payments or otherwise upon request of the State Site Representative.

E. Any issue raised by DOE or the State regarding the allowability of costs under this Agreement shall be considered appropriate for resolution under the article entitled Disputes.

F. Program income earned during the term of this Agreement may, at the State's option, be retained by the State, or used to finance the State's share of the allowable costs.

V. PAYMENTS

A. DOE shall make payment for its share of allowable costs by advance payment as provided for in this article or by reimbursement by Treasury check. The State shall make payment for its share of allowable costs by cash contribution, or as provided in the article hereof entitled, Acquisition, Disposition and Use of Property, by in-kind contributions. The term "cash contribution" means the State's cash payment from nonGovernment funds for its share of allowable costs. Such cash payments: (i) shall not be included as contributions for any other

Government assistance program; (ii) shall not be made from funds paid by the Government under any other Government assistance program; and (iii) shall otherwise conform to the provisions of this Agreement and the Act.

B. DOE shall submit quarterly, or at more frequent intervals by mutual agreement between the State Site Representative and the Contracting Officer, Standard Form 1114, "Bill for Collection," supported by a statement of allowable costs incurred by DOE. DOE shall submit the Standard Form 1114, original and two copies, to the State Site Representative. Prompt payment shall be made by the State for the State share of the total allowable costs, i.e., ten percent (10%).

C. Unless DOE and the State, by mutual agreement, implement a letter of credit method of advance payment, the State shall submit quarterly, or at more frequent intervals by mutual agreement between the State Site Representative and the Contracting Officer, an original and two copies of OMB Standard Form 270, "Request for Advance or Reimbursement," to request payment for the DOE share of allowable costs incurred by the State. DOE shall promptly make: (1) an advance by Treasury check or electronic funds transfer; or (2) reimbursement by Treasury check; or (3) a combination thereof, as payment to the State for the appropriate DOE share of the total allowable costs, i.e., ninety percent (90%). In lieu of payment by such advance or reimbursement, the State may submit an OMB Standard Form 270, or such other form of request acceptable to DOE and the State, showing allowable costs incurred by the State and requesting that the Contracting Officer offset such costs against the State share of the total allowable costs. The following terms and conditions shall apply to any advance payment by Treasury check or electronic funds transfer under this Agreement:

1. No such advance payment shall be made: (1) without the approval of the Contracting Officer as to the financial necessity therefor; and (2) without the submission by the State of OMB Standard Form 270 and properly certified invoice or invoices.

2. Funds so advanced to the State by DOE under this Agreement may be used by the State solely for the purposes of making payments for items of allowable cost as defined in the article hereof entitled, Allowable Costs, or to reimburse the State for such items of allowable costs, and for such other purposes as the Contracting Officer may approve in writing. Any interpretation required as to the proper use of such funds shall be made in writing by the Contracting Officer.

3. The State may at any time repay all or part of the funds so advanced hereunder. Whenever so requested in writing by the Contracting Officer, the State shall repay to the Government such part of the unliquidated balance of advance payments as shall, in the opinion of the Contracting Officer, be in excess of current requirements.

4. If upon completion or termination of this Agreement all such advance payments have not been fully liquidated, the balance thereof shall be deducted from any sums otherwise due or which may become due to the State from the Government, and any deficiency shall be paid by the State to the Government upon demand.

5. Any interest earned by the State on such advances of Government funds shall be remitted to the Contracting Officer when earned.

6. Funds so advanced must be deposited in a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264).

D. In the event DOE and the State implement a letter of credit method of advance payment, all Government funds for the payment of DOE's share of the total allowable costs under this Agreement shall be disbursed in accordance with the "Checks-Paid Technique" of the U.S. Treasury Department's Fiscal Requirements Manual, or in the option of the Government, shall be made by Treasury check or electronic funds transfer to the State. The following terms and conditions shall apply to the utilization of the letter of credit method of advance payment:

1. Government funds for DOE's share of allowable costs shall be disbursed through the Special Bank Account Agreement to be established by DOE and the State in the form and containing the provisions prescribed by the Contracting Officer.

2. The State agrees to provide the Contracting Officer with such information and documentation as is required by the Contracting Officer for the implementation of the letter of credit method of advance payment.

3. No part of the funds in the Special Bank Account shall be: (a) mingled with any funds of the State; or (b) used for a purpose other than that of making payments for allowable costs under this Agreement or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer shall at

any time determine that the balance in the Special Bank Account exceeds the State's current needs, the State shall promptly make such disposition of the excess as the Contracting Officer may direct.

4. The State shall initiate disbursements only when actually needed for the performance of remedial action or acquisition of real estate.

5. Title to the unexpended balance of the bank account established pursuant to this article shall remain in the Government and be superior to any claim or lien of the bank of deposit or others. It is understood that an advance to the State hereunder is not a loan to the State, and will not require the payment of interest by the State, and that the State acquires no right, title, or interest in or to such advance other than the right to make expenditures therefrom as provided in this clause.

6. The State shall, on a monthly basis, submit to the Contracting Officer: (a) an original and two copies of the OMB Standard Form 272, "Federal Cash Transaction Report"; and (b) copies of invoices, vouchers, or supporting data as required by the Contracting Officer in written instructions to the State Site Representative.

7. The State shall provide to DOE the monthly letter of credit drawdowns and the monthly accrued costs incurred by the State under this Agreement by calling such data to Gerald Fleenor, Financial Management Division, Albuquerque Operations Office, DOE, phone (505) 846-4105, by noon of the first workday of the month. The State, on a quarterly basis, shall also provide to DOE a reconciliation of the letter of credit drawdowns to accrued cost by the fifteenth day of the month following the end of the quarter by submitting such data to the Financial Management Division, Attention: Gerald Fleenor, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87115.

E. Upon a finding by the Contracting Officer that the State has failed to observe any of the conditions of this article or has failed to comply with any material provision of this Agreement; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the State, withhold further payments on this Agreement. Upon the continuance of any such failure for a period of thirty (30) days after such written notice to the State, the Government may, in its discretion, and without limiting any other rights which the Government may have, demand immediate repayment of the unliquidated balance of advance payments hereunder.

F. Notwithstanding any other provision of this Agreement, the State shall not transfer, pledge, or otherwise assign this Agreement, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

G. The terms of this Agreement shall be considered adequate security for advance payments hereunder, except that if at any time the Contracting Officer deems the security furnished by the State to be inadequate, the State shall furnish such additional security as may be satisfactory to the Contracting Officer, to the extent that such additional security is available.

VI. COST LIMITATION AND OBLIGATION OF FUNDS

A. From time to time in performing responsibilities under this Agreement, DOE and the State shall each incur costs which are allowable costs to be cost-shared under this Agreement. Prior to the beginning of each Government fiscal year or such other period of time agreed to by DOE and the State (hereinafter referred to as the "Cost Estimate Period"), DOE and the State shall use their best efforts to estimate the costs each will incur during the forthcoming Cost Estimate Period. It is contemplated by DOE and the State that each will obligate funds at such times and in such amounts as will insure payment by each of its appropriate share of the total estimated allowable costs to be incurred by DOE and the State.

B. For each past Cost Estimate Period, DOE and the State shall attempt to identify the actual costs incurred during the Cost Estimate Period. For each past Cost Estimate Period the actual costs incurred by the parties are as follows:

1. Cost Estimate Period Number __ - *N/A through N/A :

   a. State - $ N/A
   b. DOE - $ N/A
   c. Total - $ N/A

2. Cost Estimate Period Number __ - N/A through N/A :

   a. State - $ N/A
   b. DOE - $ N/A
   c. Total - $ N/A

*(Note: This paragraph does not apply until the first Cost Estimate Period expires.)

C. 1. Cost Estimate Period Number 1 shall be from May 1, 1985, through September 30, 1985. The estimated allowable costs to be incurred during Cost Estimate Period Number 1 are as follows:

a. State - $ 0
b. DOE - $ 0
c. Total - $ 0

2. The total allowable costs incurred or to be incurred by the State from the effective date of this Agreement through the latest Cost Estimate Period shown above is estimated to be - $ 0 .

3. The total allowable costs incurred or to be incurred by DOE from the effective date of this Agreement through the latest Cost Estimate Period shown above is estimated to be $ 0 .

4. The total allowable costs incurred or to be incurred by DOE and the State from the effective date of this Agreement through the latest Cost Estimate Period shown above is - $ 0 - (hereinafter referred to as the "Total Cost Limitations").

5. At such time as either party has reason to believe that the allowable costs it will incur in performing its responsibilities under this Agreement will be greater than the estimated allowable costs shown above, then such party shall notify the other in writing to that effect, giving its revised estimate of allowable costs, and DOE and the State shall execute a modification to this Agreement appropriately revising the estimated allowable costs shown above; Provided, that, prior to being included as part of the Total Cost Limitation, the estimated allowable costs associated with remedial action shall be established and revised by execution and modification of Remedial Action Plans and Radiological Engineering Assessments, as appropriate, pursuant to Article II, "Description of Remedial Action Program."

D. The State, for the period from the effective date of this Agreement through the latest Cost Estimate Period, has obligated funds in the amount of $-0-, for payment of its share of allowable costs under this Agreement. The State shall not be liable in an amount in excess of the funds it has obligated herein; however, DOE shall not be required to continue performance of this Agreement beyond such time as the Total Cost Limitation exceeds an amount 10 times the amount of the funds obligated by the State. Prior to each Government fiscal year

or from time to time during the performance of this Agreement, as necessary, the State shall increase the amount of funds obligated by written notice to the Contracting Officer specifying the amount of such increase. Upon such written notice DOE and the State shall execute a modification to this Agreement which reflects the increased obligation of funds by the State. In the event the State fails to obligate funds at a level necessary to ensure payment of its share of the Total Cost Limitation, DOE may elect to treat such failure as a termination by the State pursuant to the article of this Agreement entitled "Term and Termination."

E. DOE, for the period from the effective date of this Agreement through the latest Cost Estimate Period: (1) has obligated funds in the amount of $-0- for payment to the State for DOE's share of allowable costs which the State incurs under this Agreement; and (2) will obligate funds in an amount sufficient to pay to DOE contractors and subcontractors DOE's share of those allowable costs which DOE incurs under this Agreement. DOE shall not be liable to the State in an amount in excess of the funds it has obligated herein for payment to the State; however, the State shall not be required to continue performance of this Agreement beyond such time as such amount obligated by DOE is less than 90% of the amount shown in paragraph C.2. of this article. Prior to each Government fiscal year or from time to time under this Agreement, as necessary, DOE shall increase the amount of funds obligated by unilateral modification to this Agreement which reflects the increased obligation of funds by DOE. In the event DOE fails to obligate funds at a level necessary to ensure payment of its share of the total allowable costs to be incurred by the State, the State may elect to treat such failure as a termination by the State pursuant to the article of this Agreement entitled "Term and Termination."

F. The State shall not be required to pay for allowable costs incurred in excess of 10% of the Total Cost Limitation as it may be amended from time to time by modification to this Agreement. DOE shall use its best efforts to perform its responsibilities under this Agreement within the estimated allowable costs set forth in paragraph C.3. of this article. However, the Government and DOE do not guarantee the correctness of any such estimate of allowable costs and there shall be no liability on the part of the Government or DOE by reason of errors in the computation of estimates or differences between such estimates and the actual allowable costs.

G. DOE shall not be required to pay for allowable costs incurred in excess of 90% of the Total Cost Limitation as it may be amended from time to time by modification to this Agreement.

The State shall use its best efforts to perform its responsibilities under the Agreement within the estimated allowable costs set forth in paragraph C.2. of this article. However, the State does not guarantee the correctness of any such estimate of allowable costs and there shall be no liability on the part of the State by reason of errors in the computation of estimates or differences between such estimates and the actual allowable costs.

VII. STATE FINANCIAL MANAGEMENT SYSTEM

The State shall assure that its financial management system provides for:

A. Accurate, current and complete disclosure of the financial results of the State's participation in the remedial action program, carried out pursuant to this Agreement and the Remedial Action Plan.

B. Records that identify adequately the source and application of funds for activities supported pursuant to this Agreement. These records shall contain information pertaining to authorizations, obligations, unobligated balances, assets, liabilities, outlays, and program income.

C. Effective control over and accountability for all funds, property, and other assets. The State shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

D. Comparison of actual outlays with budgeted or otherwise authorized amounts.

E. Procedures to minimize the time elapsing between transfer of funds from the U.S. Treasury and the disbursement by the State, whenever funds are advanced by the Government.

F. Procedures for identifying the reasonableness of costs.

G. Accounting records that are supported by adequate and reasonable source documentation.

H. Examinations in the form of audits which meet the requirements set forth in Office of Management and Budget (OMB) Circular A-102, Attachment P, as that Attachment was revised by OMB effective October 22, 1979, and published in the Federal Register, Volume 45, No. 65, April 2, 1980, pp. 21875-21878, and which are in accordance with the "Guidelines for Financial and Compliance Audits of Federal Assisted Programs," issued by the United States General Accounting office.

I. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

VIII. AUDIT

A. The State shall maintain, and the Contracting Officer or his representatives shall have the right to examine books, records, documents, and other evidence and accounting proce- dures and practices, sufficient to reflect properly all allow- able costs claimed to have been incurred and anticipated to be incurred for the performance of this Agreement. Such right of examination shall include inspection at all reasonable times of the State's plants, or such parts thereof, as may be engaged in the performance of this Agreement as to cost or pricing data submitted by the State.

B. If the State submitted or submits cost or pricing data in connection with the pricing of this Agreement or any other change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or process set by law or regulation, the Contracting Officer or his representatives who are employees of the United States Government shall have the right to examine all books, records, documents, and other data of the State related to the negotiation, pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Additionally, in the case of pricing any change or modification exceeding $1,000,000 to formally advertised agreements, the Comptroller General of the United States or his representatives who are employees of the United States Government shall have such rights. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projects used therein.

C. The materials described in paragraphs A. and B. above shall be made available at the offices of the State, at all reasonable times, for inspection, audit or reproduction, until the expiration of three years from the date of final payment under this Agreement or such lesser time specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20) and for such longer period, if any, as is required by applicable statute, or by other articles or clauses of this contract, or by 1. and 2. below:

1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three years from the date of any resulting final settlement.

2. Records which relate to appeals or disputes or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of.

IX. STATE AUDIT AND EXAMINATION OF DOE RECORDS

A. DOE shall maintain, in accordance with Government policy and practice, and the State Site Representative or his representatives shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all allowable costs claimed to have been incurred and anticipated to be incurred for the performance of this Agreement. Such right of examination shall include inspection at all reasonable times of DOE's facilities, or such parts thereof, as may be engaged in the performance of this Agreement as to cost or pricing data submitted by the DOE.

B. The materials described in paragraph A. above shall be made available at the offices of the Contracting Officer, at all reasonable times, for inspection, audit or reproduction, until the expiration of three years from the date of final payment under this Agreement and for such longer period, if any, as is required by applicable statute, or by other articles or clauses of this contract, or by 1. and 2. below:

1. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three years from the date of any resulting final settlement.

2. Records which relate to appeals or disputes or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of.

X. REPORTING REQUIREMENTS

A. DOE shall inform the State Site Representative of the status of activities under this Agreement: (1) upon request of the State Site Representative; or (2) as major milestones identi- fied in Appendix C are reached, but in no event less fre- quently than quarterly.

B. Upon the request of the Contracting Officer, the State shall submit to the Contracting Officer progress and financial reports of its activities in the performance of this Agreement; Provided, that with respect to State acquisition of the

millsite, relocation assistance, and management of the millsite, the State shall provide periodic, but no less than quarterly, reports to the Contracting Officer regarding the status of such activities, including a schedule of future activities, a narrative summary of past activities, an estimate of costs to be incurred, and any comments or recommendations for DOE consideration.

C. The State shall submit annually, commencing one year from the effective date of this Agreement, to the Contracting Officer, OMB Standard Form 269, "Financial Status Report," to report the status of funds paid to the State by DOE pursuant to this Agreement. DOE shall request that the reports be either on a cash or accrual basis. If DOE requests accrual information and the State's accounting records are not normally kept on the accrual basis, the State shall not be required to convert its accounting system but shall develop such accrual informa- tion through an analysis of the documentation on hand. The State shall submit a final Financial Status Report upon close- out of this Agreement in accordance with the article hereof entitled Closeout Procedures. The State shall submit the OMB Standard Form 269, original and two copies, to the Contracting Officer no later than 90 days after the end of the specified reporting period for the annual and final reports. Reasonable extensions to reporting due dates may be granted by the Con- tracting Officer upon written request of the State.

D. The State shall supply to DOE such additional financial information as is requested in writing by DOE to comply with Congressional requirements.

XI. EXAMINATION OF RECORDS

A. The State agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this Agreement or such lesser time specified in the Federal Procurement Regulations, Part 1-20, have access to and the right to examine any directly pertinent books, documents, papers, and records of the State involving transactions related to this Agreement.

B. The State further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract or such lesser time specified in the Federal Procurement Regulations, Part 1-20, have access to and the right to examine any directly pertinent books, documents, papers, and

records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C. The periods of access and examination described in A and B, above, for records which relate to (1) litigation or the settlement of claims arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

D. The State shall report to the Secretary promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the State has knowledge.

E. In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, the State shall furnish to the Government, when requested by the Secretary, all evidence and information in possession of the State pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the State has agreed to indemnify the Government.

F. DOE may request, and the State shall, transfer to the custody of DOE copies of certain records maintained by the State pursuant to this Agreement when DOE determines that the records possess long-term retention value. In order to avoid duplicate recordkeeping, DOE may make arrangements with the State to retain any records that are continuously needed for joint use.

XII. CONTRACTING OFFICER'S REPRESENTATIVE

The work to be performed by DOE under this Agreement will be managed for DOE by the Manager, Uranium Mill Tailings Remedial Actions (UMTRA) Project. The work to be performed by the State under this Agreement is subject to the monitoring of the Manager, Uranium Mill Tailings Remedial Actions (UMTRA) Project Office, who has been designated by the Contracting Officer as "Contracting Officer's Representative" (COR). A copy of such designation shall be furnished to the State. Said designation shall set forth the COR's

responsibilities regarding this Agreement. The COR shall not make any commitments or authorize any changes which affect the Agreement scope, price, terms or conditions; any request for such changes shall be referred to the Contracting Officer for action.

XIII. TERM AND TERMINATION

A. The period of performance of this Agreement shall expire at the earliest effective date that: (1) DOE and the State mutually agree in writing, with the concurrence of the Commission, that the objectives of the remedial action program have been met and that all work to be performed under this Agreement, or any modification or amendment hereto, has been completed; or (2) the date seven years from the date of promulgation of the EPA Standards or such other date as Congress shall establish, after the date of enactment of the Act, as the date of termination of the Secretary's authority to perform remedial action under the Act.

B. DOE and the State may terminate this Agreement in whole, or in part, when both parties agree that 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. Neither party shall incur new obligations for the terminated portion after the effective date. The parties shall cancel as many outstanding obligations as possible. Full credit shall be allowed by each party for non-cancellable obligations properly incurred by the other party prior to the termination.

C. DOE, upon written Notice of Termination to the State, may terminate this Agreement, in whole, or from time to time, in part, whenever the Contracting Officer determines that the State has failed to comply with the conditions of this Agreement and such non-compliance continues for 60 days after receipt of a written Notice of Default from DOE. For purposes of this Article, the failure by the New Mexico Legislature to appropriate funds shall not constitute failure by the State to comply with the conditions of this Agreement.

D. The State, upon written Notice of Termination to DOE, may terminate this Agreement whenever the State Site Representative determines that DOE has failed to comply with the conditions of this Agreement and such non-compliance continues for 60 days after receipt of a written Notice of Default from the State. For purposes of this Article, failure by the United States Congress to appropriate funds shall not constitute failure by DOE to comply with the conditions of this Agreement.

E. After receipt of a Notice of Termination by either party, DOE and the State shall close out this Agreement in accordance with the terms and conditions of the article hereof entitled, "Closeout Procedures"; Provided, that DOE may, in its discretion, continue unilateral performance of this Agreement, including performance of the State's responsibilities, until such time as the remedial action contemplated by this Agreement and the Remedial Action Plan is completed.

F. Neither DOE nor the State shall be considered in default of this Agreement because of delay in performance for reasons beyond its control including, but not restricted to, acts of God or the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

G. In the event appropriated funds are not available to the State to carry out this Agreement:

1. DOE shall have the right to continue unilateral performance of the remedial action contemplated by this Agreement, including performance of the State's responsibilities, without cost to the State, until such time as the remedial action contemplated by this Agreement and the Remedial Action Plan is completed.

2. DOE and the State shall close out this Agreement pursuant to the article hereof entitled Closeout Procedures, and such other procedures as mutually agreed to in writing.

H. In the event appropriated funds are not available to DOE to carry out the Act or this Agreement, DOE and the State shall close out this Agreement pursuant to the article hereof entitled Closeout Procedures, and such other procedures as mutually agreed to in writing by the parties.

XIV. CLOSEOUT PROCEDURES

A. Notwithstanding any other provision of this article and this Agreement, closeout of this Agreement is subject to final resolutions of disputes under the article hereof entitled Disputes.

B. As of the date of receipt of a Notice of Termination pursuant to the article hereof entitled Term and Termination, or on the date of expiration of the period of performance or failure of the State or the Government to appropriate funds as provided in the article hereof entitled Term and Termination, and except as otherwise directed by the Contracting Officer:

1. The parties shall:

   a. Stop performance under this Agreement on the date and to the extent specified in the Notice of Termination or on the date when the period of performance expires;

   b. Place no further orders and make no further subcontracts or other agreements, for materials, services, or property except as may be necessary for completion of such portion of the work under this Agreement as is not terminated by any Notice of Termination;

   c. Terminate all orders, subcontracts or other agreements entered into in performing this Agreement, to the extent that they relate to the performance of work terminated by the Notice of Termination or terminated by the expiration of the period of performance of this agreement.

   d. Settle all outstanding liabilities and all claims arising out of such termination of orders, subcontracts and agreements, the cost of which would be reimbursable, in whole or in part, as an allowable cost in accordance with the provisions of this Agreement;

   e. In the event of termination of performance in part, complete performance of such part of the work as shall not have been terminated by the Notice of Termination;

   f. Take such action as may be necessary or as the Contracting Officer may direct for the protection and preservation of the property related to this Agreement which is in the possession of the State and in which the Government has or may acquire an interest.

2. DOE shall, upon written request by the State, make prompt payment to the State pursuant to the article hereof entitled Payments and Allowable Costs, for any outstanding allowable costs incurred by the State and not yet paid by DOE as required by this Agreement.

3. The State shall, upon written request by DOE, make prompt payment to DOE pursuant to the article hereof entitled Payments and Allowable Costs, for its outstanding share of allowable costs incurred by DOE and the State in performance of this Agreement.

4. To the extent title has not been transferred or property has not otherwise been disposed of under the article hereof entitled Acquisition, Disposition and Use of Property, the

State shall transfer title to the Government and deliver or otherwise account for and dispose of, in the manner, at the times, and to the extent directed by the Contracting Officer, any property acquired by the State pursuant to this Agreement.

5. The State shall immediately refund to DOE any balance of cash advanced to the State that is not authorized by the Contracting Officer to be retained by the State.

6. The State shall provide to DOE, within ninety days after either the date of expiration of the period of performance or the date of termination of performance, or at such time designated by the Contracting Officer, all financial, performance, and other reports required pursuant to this Agreement. The Contracting Officer may grant reasonable extensions when requested by the State. An independent audit may be requested by either party.

7. In the event a final audit has not been performed by DOE prior to closeout of this Agreement, either party shall, until such final audit is performed, retain the right to recover any outstanding share of allowable costs from the other party.

XV. PUBLIC PARTICIPATION AND INFORMATION

A. The State Site Representative shall cooperate with the Contracting Officer in formulating and implementing a public participation plan in order to encourage public participation in carrying out the provisions of the Act, this Agreement and the Remedial Action Plan.

B. Procedures for timely release of information to the public regarding activities by the State and DOE in carrying out this Agreement shall be those established by mutual agreement between the Contracting Officer and the State Site Representative.

XVI. LOCAL ADVISORY COMMITTEES

DOE shall not be a member of any local advisory committees established in connection with the remedial action to be performed under this Agreement for the purpose of providing information to and receiving information from the citizens of the State and the localities affected by such remedial action. DOE shall, however, make every reasonable effort to interface with any such committee to the extent requested by the State or the committee. Subject to Paragraph A-6 of the article entitled State Performance of Remedial Action Activities, no costs associated with any committee so established shall be allowable costs under this Agreement.

XVII. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Recipients of DOE financial assistance awards which are provided under DOE Federal Assistance programs shall comply with the provisions of Part 1040, Chapter X, Title 10 of the Code of Federal Regulations, "Nondiscrimination in Federally Assisted Programs" (10 CFR Part 1040), as published in the Federal Register, Volume 45, No. 116, Friday, June 13, 1980 (pp. 40514-40535). 10 CFR Part 1040 provides that no person shall on the ground of race, color, national origin, sex, handicap, or age be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment where the main purpose of the program or activity is to provide employment or when the delivery of program services is affected by the State's employment practices, in connection with any program or activity receiving Federal assistance from DOE.

XVIII. NOTICE ADDRESS

Except as otherwise specifically provided herein, any notice, letter, or grievance given or payment made pursuant to the terms of this Agreement shall be sent to the respective party at its address designated below:

STATE:

Director
Environmental Improvement Division
P.O. Box 968
Santa Fe, New Mexico 87504-0968

DOE:

Project Manager
Uranium Mill Tailings Remedial Action Project
5301 Central Avenue, NE
Suite 1700
Albuquerque, NM 87108

XIX. CONCURRENCES AND CONSULTATIONS

A. Whenever in performing this Agreement or in carrying out the Act a concurrence from or consultation with another Government agency is required, DOE shall seek such concurrence and be responsible for undertaking such consultation.

B. Wherever in this Agreement a concurrence from the State is required: (1) such concurrence shall not be unreasonably withheld; (2) a written concurrence or nonconcurrence shall be given within a reasonable amount of time and in any case no later than 60 days from the date of request for such concurrence or such right of concurrence shall be deemed waived; and

(3) any written nonconcurrence shall be considered appropriate for resolution under the Disputes article of this Agreement.

DOE shall use its best efforts to supply the State, on a timely basis, with information or documentation regarding UMTRA Project activities such that the State may concur, as expressly provided for in this Agreement, or otherwise fully participate in the cooperative development of planning documents for the millsite, depository site and vicinity properties. Such UMTRA Project activities include, but are not limited to, inclusion, preparation of environmental documentation, preparation of Remedial Action Plans, preparation of Radiological and Engineering Assessments, development of preliminary and final designs, inspection of remedial actions, and certification of remedial actions.

XX. DISPUTES

A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail, or otherwise furnish a copy thereof to the State. The decision of the Contracting Officer shall be final and conclusive unless within 60 days from date of receipt of such copy, the State mails, or delivers a written notice of appeal to the DOE Financial Assistance Appeals Board in accordance with 10 CFR Part 1024 (See Rule 1). The decision of the DOE Financial Assistance Appeals Board shall be final and conclusive except as otherwise determined by a court of competent jurisdiction in accordance with 5 U.S.C. 706. In connection with any appeal proceeding under this clause the State shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the State and the Government shall proceed diligently with the performance of this Agreement and in accordance with the Contracting Officer's decision.

B. This Disputes article does not preclude consideration of law questions in connection with decisions provided for in paragraph A above; provided, that nothing in this Agreement shall be construed as making final the decision of any administra- tive official, representative, or board, based on a question of law.

XXI. RULES AND REGULATIONS

All activities under this Agreement shall be carried out pursuant to applicable Federal, State and local regulations, including but not limited to such rules and regulations promulgated or to be promulgated by the Secretary pursuant to Section 109 of the Act.

XXII. OTHER REMEDIES

Nothing in this Agreement shall prevent the Secretary from enforcing any provision of Title I of the Act, any regulation promulgated thereunder, or any provision of this Agreement, by injunction or other equitable remedy, or as otherwise provided by Section 110 of the Act.

XXIII. STATE PERFORMANCE OF REMEDIAL ACTION ACTIVITIES

A. In addition to its performance of any property acquisition activities under the article hereof entitled Acquisition, Disposition and Use of Property, the State, as agreed upon by the Contracting Officer's Representative and the State Site Representative, shall perform the following activities:

1. Assist DOE in the inclusion of candidate vicinity properties, including obtaining from affected property owners executed owner consent forms (to be provided by DOE) and conducting radiological surveys of affected properties.

2. Assist DOE in the development and review of vicinity property Radiological and Engineering Assessments or remedial action plans and millsite design documents, including but not limited to identification of applicable State, county or local permits and licenses and coordination of applications for such permits and licenses.

3. Perform radiological measurements in connection with remedial actions for the purpose of quality assurance.

4. Support DOE in the interim and final inspections of remedial actions for the purpose of noting compliance or noncompliance with applicable EPA Standards.

5. Assist DOE in performing periodic safety inspections of remedial actions and immediately identify to the Contracting Officer Representative any safety violations.

6. Assist DOE in its public participation activities, including but not limited to, making arrangements for meetings and hearings, written and oral presentations to local task forces, and assuring compliance with applicable State public notice requirements.

7. Perform such other remedial action activities agreed upon by the Contracting Officer Representative and the State Site Representative.

8. Provide to the Contracting Officer Representative, with a copy to the Contracting Officer, a brief written quarterly status report of remedial action and property acquisition activities performed under this Agreement.

B. In performing the remedial action activities described in Paragraph A hereof, the State shall utilize State personnel deemed qualified by the State Site Representative and the Contracting Officer Representative. The direct costs incurred by the State for the performance of those activities described in Paragraph A. shall be allowable costs under this Agreement to the extent determined by the Contracting Officer pursuant to the articles hereof entitled Allowable Costs and Payments and subject to costs previously estimated and funds currently obligated for such purpose as reflected in the article hereof entitled Cost Limitation and Obligation of Funds.

C. Any State employee utilized by the State in its performance of remedial action pursuant to this Article shall not by this Agreement be deemed a DOE or Government employee or contractor for any purpose, including but not limited to hours of work, rates of compensation, leave, unemployment compensation, workmen's compensation (including medical and accident insurance, as well as income maintenance insurance) or other compensation for injury or death, employment benefits, or any other benefit.

XXIV. ORDER OF PRECEDENCE

In the event of an inconsistency between provisions of this Agreement, the inconsistency shall be resolved by giving precedence as follows:

(a) Agreement Articles;

(b) Remedial Action Plan (when executed);

(c) Other provisions of this Agreement, whether incorporated by reference or otherwise.

XXV. COVENANT AGAINST CONTINGENT FEES

The State warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commer- cial or selling agencies maintained by the State for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commis- sion, percentage, brokerage, or contingent fee.

XXVI. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

XXVII. STANDARD FORMS

All standard forms required to be submitted by the State pursuant to this Agreement shall be provided to the State by the Contracting Officer upon request.

XXVIII. APPENDICES

The following appendices are attached to and made a part of this Agreement:

Appendix A - Site Descriptions & Ownerships;
Appendix B - Remedial Action Plans;
Appendix C - Attachment O to OMB Circular A-102
Appendix D - General Provisions;
Appendix E - UMTRA Project Schedules;
Appendix F - Site Acquisition Documentation; and
Appendix G - OMB Circular A-87

IN WITNESS WHEREOF, the parties have executed this Agreement in several counterparts.

THE UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

BY: R. G. Romatowski

R. G. Romatowski
Manager
Albuquerque Operations Office
P. O. Box 5400
Albuquerque, New Mexico 87115

DATE: SEP 11 1985

STATE OF NEW MEXICO

BY: Toney Anaya

Toney Anaya
Governor

DATE: SEP 11 1985

BY: Denise D. Fort

Denise D. Fort
Director
Environmental Improvement Division
P. O. Box 968
Santa Fe, New Mexico 87504-0968

DATE: Sept. 7, 1985

CONCURRENCE:
NUCLEAR REGULATORY COMMISSION

BY: Robert B. Higginbotham

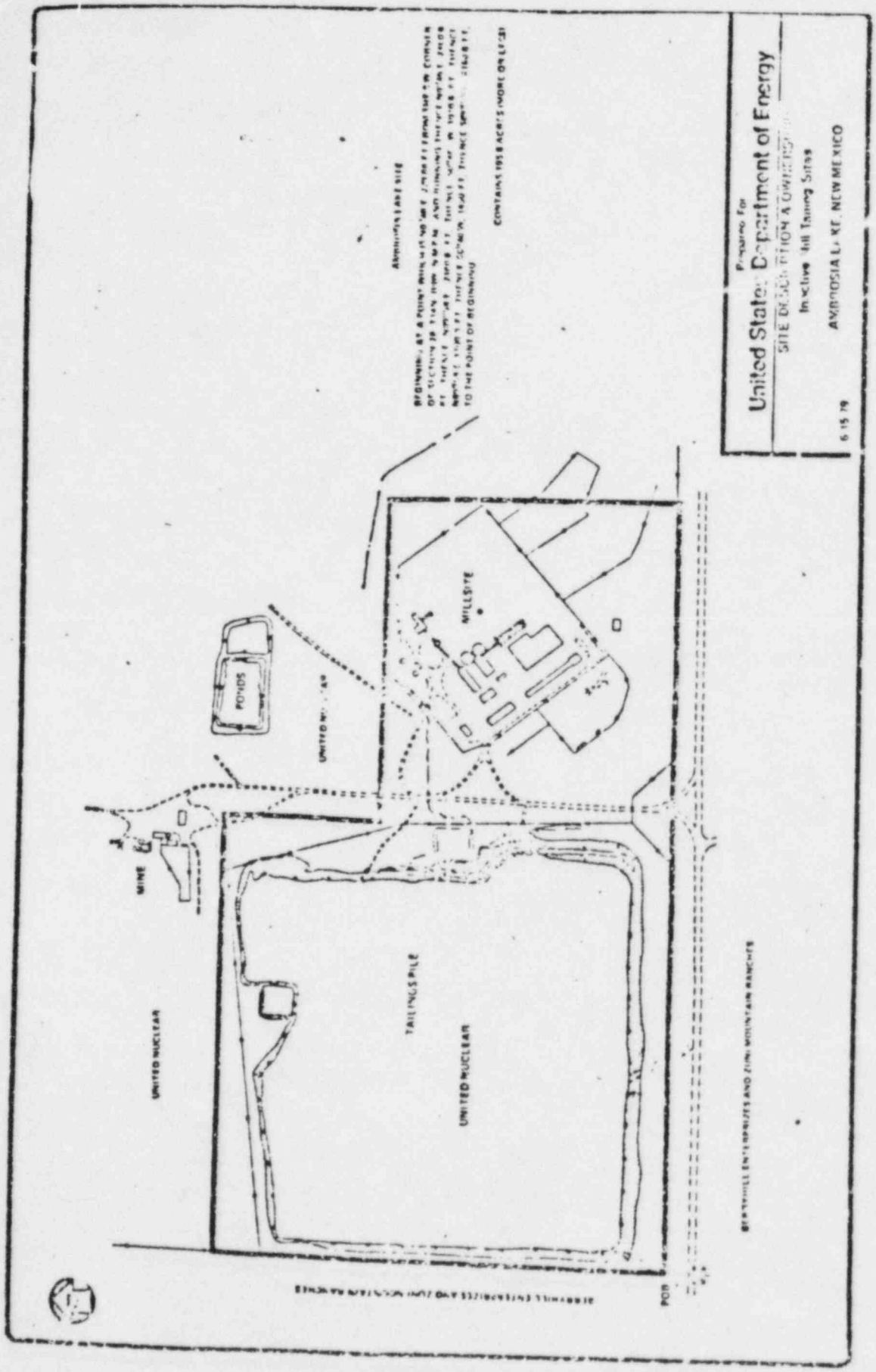
Chief, Low-Level Waste and Uranium
Recovery Projects Branch
TITLE: Division of Waste Management, NMSS

DATE: Sep 27, 1985

APPENDIX A

SITE DESCRIPTIONS AND OWNERSHIPS

U. S. Department of Energy
Agreement No. DE-FC04-85AL20533
Attachment 1 to Appendix A



APPENDIX B

REMEDIAL ACTION PLANS

(To be developed at a later date)

APPENDIX C

ATTACHMENT O TO OMB CIRCULAR A-102

PROCUREMENT STANDARDS

1. Applicability

a. This Attachment establishes standards and guidelines for the procurement of supplies, equipment, construction and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and executive orders.

b. No additional procurement requirements or subordinate regulations shall be imposed upon grantees by executive agencies unless specifically required by Federal law or executive orders or authorized by the Administrator for Federal Procurement Policy. This prohibition is not applicable to payment conditions issued in accordance with Treasury Circular 1075, individual grantee requirements pursuant to Section 10 of the basic circular or the provisions of this or other OMB circulars.

c. Provisions of current subordinate requirments not conforming to this Attachment shall be rescinded by grantor agencies unless approved by the Office of Federal Procurement Policy (OFPP).

2. Grantee/Grantor Responsibility

a. These standards do not relieve the grantee of any contractual responsibilities under its contracts. The grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered in support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims. Executive agencies shall not substitute their judgment for that of the grantee unless the matter is primarily a Federal concern. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs

conform to the standards set forth in this Attachment and applicable Federal law.

3. Grantee Procurement Improvement

Executive agencies awarding Federal grants or other assistance which require or allow for procurement by the recipients are encouraged to assist recipients in improving their procurement capabilities by providng them with technical assistance training, publications, and other aid.

4. Procurement System Reviews

a. Executive agencies are encouraged to perform reviews of their grantees' procurement systems if a continuing relationship with the grantee is anticipated or a substantial amount of the Federal assistance is to be used for procurement and review of individual contracts is anticipated. The purpose of the review shall be to determine: (1) whether a grantee's procurement system meets the standards prescribed by this Attachment or other criteria acceptable to the OFPP, such provisions of the Model Procurement Code for State and local government; and (2) whether the grantee's procurement system should be certified by the reviewing agency. Such a review will also give an agency an opportunity to give technical assistance to a grantee to remedy its procurement system if it does not fully comply. In addition, such a review may provide a basis for deciding whether the grantee's contracts and related procurement documents should be subject to the grantor's prior approval, as provided by Section 6.

b. In conducting procurement system review, grantor agencies will evaluate a grantee's procurement system in terms of whether it complies with the standards prescribed by this Attachment and represents a fair, efficient and effective procurement system. To the maximum extent feasible, reviewers will rely upon State or local evaluations and analyses performed by agencies or organizations independent of the grantee contracting activity.

c. When a Federal grantor agency completes a procurement review, it shall furnish a report to the grantee, with a copy to OFPP.

d. All agencies should normally rely upon the resultant findings or certification for a period of 24 months before another review is performed.

e. Reviews shall be conducted in accordance with standards and guidelines approved or issued by OFPP.

f. The reviews authorized by Section 6 are waived if a grantee's procurement system is certified.

5. Protest Procedures

a. Grantor agencies may develop an administrative procedure to handle complaints or protests regarding grantee contractor selection actions. The procedure shall be limited as follows:

a. No protest shall be accepted by the grantor agency until all administrative remedies at the grantee level have been exhausted.

b. Review is limited to:

(i) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(ii) Violations of grantee's protest procedures or failure to review a complaint or protest.

6. Grantor Review of Proposed Contracts

Federal grantor pre-award review and approval of the grantee's proposed contracts and related procurement documents, such as requests for proposal and invitations for bids, is permitted only under the following circumstances:

a. The procurement is expected to exceed $10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

b. The procurement expected to exceed $10,000 specifies a "brand name" product; or

c. The grantee's procurement procedures or operation fails to comply with one or more significant aspects of this Attachment. The grantor agency shall notify the grantee in writing, with a copy of such notification to the OFPP.

7. Code of Conduct

Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

a. The employee, officer or agent;

b. Any member of his immediate family;

c. His or her partner; or

d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees 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.

8. Procurement Procedures

The grantee shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by grantee officials to avoid the purchase of 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 approach would be the most economical. To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

9. Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of suppliers, equipment, construction and services. Affirmative steps shall include the following:

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

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

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

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

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the the Department of Commerce and the Community Services Administration as required.

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

b. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

c. Grantees are encouraged to procure goods and services from labor surplus areas.

d. Grantor agencies may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

10. Selection Procedures

a. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and

free competition consistent with this Attachment. Procurement procedures shall not restrict or eliminate competition. Example of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) noncompetitive practices between firms; (3) organizational conflicts of interest; and (4) unnecessary experience and bonding requirments.

b. The grantee shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation shall:

(a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(b) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that 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, compliance with public policy, record of past performance, and financial and technical resources.

11. Method Procurement

Procurement under grants 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.

a. 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. Grantees 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.

b. 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.

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

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

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

(c) 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.

(2) If formal advertising is used for a procurement under a grant the following requirements shall apply:

(a) 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.

(b) 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.

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

(d) A firm-fix-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.

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

c. 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 procurement under a grant, the following requirements shall apply:

(1) 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.

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

(3) The grantee 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.

(4) 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.

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

d. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after soliciation 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:

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

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

(3) The Federal grantor agency authorizes noncompetitive negotiation; or

(4) After soliciation of a number of sources, competition is determined inadequate.

e. Additional innovative procurement methods may be used by grantees with the approval of the grantor agency. A copy of such approval shall be sent to the OFPP.

12. Contract Pricing

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

13. Grantee Procurement Records

Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall

include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

14. Contract Provision

In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal law or the grantor agency.

a. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it 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.

c. All contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees 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).

d. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 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 grantee shall report all suspected or reported violations to the grantor agency.

e. When required by the Federal grant program legislation, all construction contracts in excess of $2,000 awarded by grantees and subgrantees shall include a provision for compliance

with the Davis-Bacon Act (40 USC 276a to a-7) 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 often than once a week. The grantee 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 grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which 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 USC 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 standard workday of 8 hours and a standard workweek 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 work week. 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.

g. The contract shall include notice of grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.

h. All negotiated contracts (except those awarded by small purchase procedures) awarded by grantees shall include a

provision to the effect that the grantee, the Federal grantor agency, 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 that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

i. Contracts, subcontracts, and subgrants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

j. 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).

Grantor agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

15. Contract Administration

Grantees shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

APPENDIX D

GENERAL PROVISIONS

To the extent that the State is authorized by the DOE Contracting Officer to procure supplies, equipment, construction, or services under this Agreement the following clauses are applicable to the State's performance and should be included in any subcontracts at any tier:

1. Inspection

DOE through any authorized representative, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder the premises in which it is being performed. If any inspection, or evaluation is made by DOE on the premises of the State or a subcontractor, the State shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of DOE representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

2. Convict-Labor

In connection with the performance of work under this Agreement, the State agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

3. Clean Air and Water

a. The State agrees as follows:

(1) To comply 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 P.L. 95-95) 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 before the award of this Agreement.

(2) That no portion of the work required by this Agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Agreement was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use its best efforts to comply with clean air standards and clean water standards at the facility in which the Agreement is being performed.

(4) To insert the substance of this clause into any nonexempt contract, including this paragraph 5.a.(4).

b. The terms used in this provision have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857, et. seq., as amended by P.L. 91-604 and P.L. 95-95).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S. 1251, et. seq., as amended by P.L. 92-500).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857(c)-6(c) or (d)), or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards during and after remedial action. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirements of the Air Act or Water and regulations issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by a

participant or subcontractor, to be utilized in the performance of an agreement or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

4. Flood Insurance

The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, 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 Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The State will comply with provisions prescribed by the Federal Insurance Administrator in 24 CFR Chapter X, Subchapter B.

5. Permits and Licenses

Except as otherwise agreed to by the Contracting Officer, the State shall procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the State territory, and political subdivision in which the work under this Agreement is performed.

6. Authorization and Consent

DOE hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this Agreement or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts).

7. Safety and Health

a. The State shall take all reasonable precautions in the performance of the work under this Agreement to protect the health and assure the safety of employees and the public. The State shall comply with all applicable Federal, State, and local health and safety regulations and requirements including but not limited to those established pursuant to the Occupational Safety and Health Act and with any additional safety and health standards and requirements (including reporting requirements) established by DOE which is to include compliance with DOE Order 5481.1, Safety Analysis and Review System.

The State shall submit a management program and implementation plan to the Contracting Officer for review and approval within 30 days after authorization by the Contracting Officer to procure supplies, equipment or services this Agreement is in effect.

b. In the event that the State fails to comply with said regulations and requirements, the Contracting Officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter a start order for resumption of work may be issued at the discretion of the Contracting Officer. The State shall make no claim for an extension of time or for an equitable adjustment, compensation or damages by reason of or in connection with such work stoppage.

8. Audit

(As required by the article of the Agreement entitled Audit.)

9. Examination of Records

(As required by the article of the Agreement entitled Examination of Records.)

10. Nondiscrimination in Federally Assisted Programs

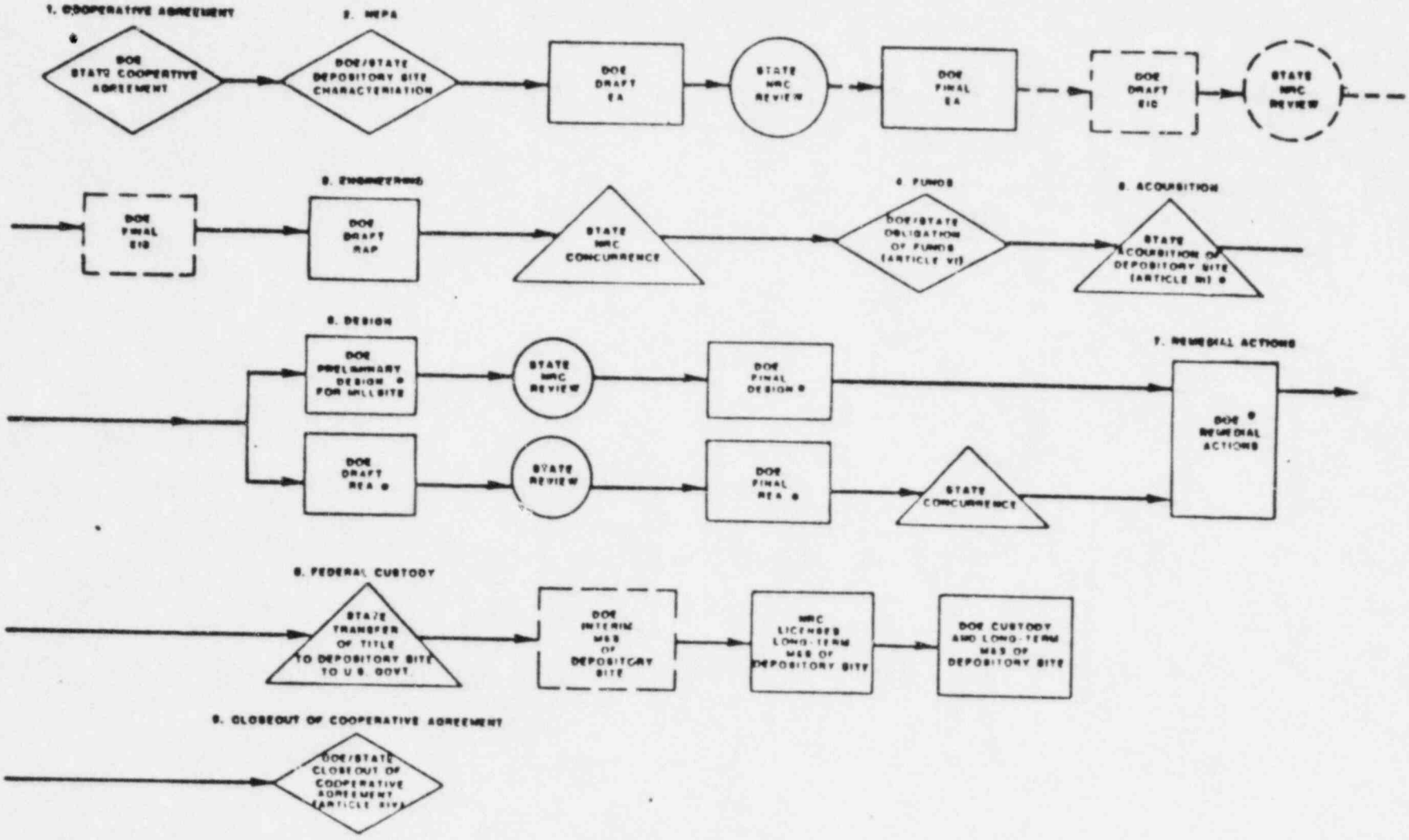
(As required by the article of the Agreement entitled Nondiscrimination in Federally Assisted Programs.)

APPENDIX E

UMTRA PROJECT SCHEDULES

U.S. DEPT OF ENERGY
COOPERATIVE AGREEMENT NO.
DE-FC04-85AL20533
EXHIBIT 1 TO APPENDIX E

DOE-STATE COOPERATIVE AGREEMENT
FLOW CHART OF REMEDIAL ACTION ACTIVITIES
AS DESCRIBED IN ARTICLE II.D.



* COST-SHARED ACTIVITY - 90% - DOE AND 10% STATE

UMTRA PROJECT FUNDING SCHEDULE
AMBROSIA LAKE, NEW MEXICO

U.S. DEPT OF ENERGY
COOPERATIVE AGREEMENT NO.
DE-FC04-85AL20533
EXHIBIT 2 TO APPENDIX E

(FY 1984 - $000)

	FY'79-80	FY'81	FY'82	FY'83	FY'84	FY'85	FY'86	FY'87	FY'88	FY'89	FY'90	TOTAL
PLAN & DES. DEV.	79	22	4	0	0	554	150	60	40	20	0	929
ENGINEERING: *												
PROCESSING SITE	0	0	0	0	0	0	110	390	0	0	0	500
VICINITY PROPERTIES	0	0	0	0	0	0	0	740	170	0	0	910
ENVIRONMENTAL H & S	83	23	63	81	0	30	100	10	40	0	0	430
TECH DEVELOPMENT	184	219	132	57	0	0	0	0	0	0	0	592
SITE ACQUISITION *	0	0	0	0	0	0	200	0	0	0	0	200
REMEDIAL ACTION: *												
PROCESSING SITE	0	0	0	0	0	0	0	4260	9680	0	0	13940
VICINITY PROPERTIES	0	0	0	0	0	0	0	0	2130	0	0	2130
MAINT & SURVEILLANCE	0	0	0	0	0	0	0	0	10	40	20	70
TECH & MGMT SUPPORT	89	58	136	50	0	116	38	143	361	2	40	1033
TOTALS	435	322	335	188	0	700	598	5603	12431	62	60	20734

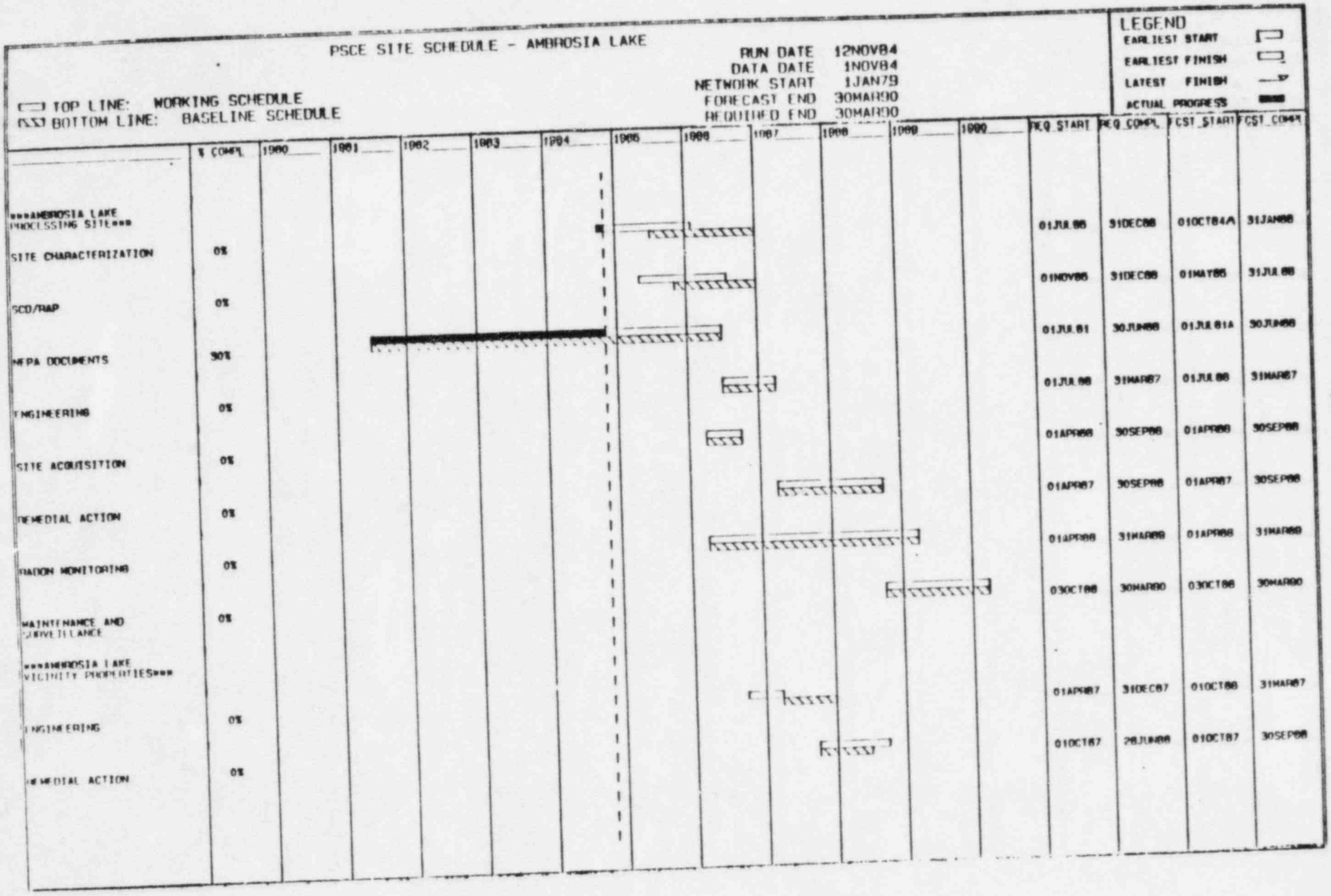
(ESCALATED - $000)

	FY'79-80	FY'81	FY'82	FY'83	FY'84	FY'85	FY'86	FY'87	FY'88	FY'89	FY'90	TOTAL
PLAN & DES. DEV.	79	22	4	0	0	554	159	68	48	26	0	960
ENGINEERING:												
PROCESSING SITE	0	0	0	0	0	0	117	441	0	0	0	558
VICINITY PROPERTIES	0	0	0	0	0	0	0	837	205	0	0	1041
ENVIRONMENTAL H & S	83	23	63	81	0	30	106	11	48	0	0	446
TECH DEVELOPMENT	184	219	132	57	0	0	0	0	0	0	0	592
SITE ACQUISITION*	0	0	0	0	0	0	213	0	0	0	0	213
REMEDIAL ACTION: *												
PROCESSING SITE	0	0	0	0	0	0	0	4818	11645	0	0	16463
VICINITY PROPERTIES	0	0	0	0	0	0	0	0	2562	0	0	2562
MAINT & SURVEILLANCE	0	0	0	0	0	0	0	0	12	51	27	91
TECH & MGMT SUPPORT	89	58	136	50	0	116	40	162	434	3	55	1143
TOTALS	435	322	335	188	0	700	636	6337	14954	80	82	24069

*COST SHARED ITEMS IN ACCORDANCE WITH ARTICLE IV, ALLOWABLE COSTS.

U.S. DEPT OF ENERGY
COOPERATIVE AGREEMENT NO.
DE-FC04-85AL20533
EXHIBIT 3 TO APPENDIX E

UMTRA PROJECT REMEDIAL ACTION SCHEDULE
AMBROSIA LAKE, NEW MEXICO



APPENDIX F

SITE ACQUISITION DOCUMENTATION

The data described below will be collected or developed by the State upon written instruction from the Contracting Officer.

1. Description of Real Estate or Real Estate Interests. A general description of the real estate to be acquired, total acreage, availability for purchase and possible method of acquisition.

2. Parcel Descriptions. Perimeter and parcel descriptions, to be provided and used for acquisition by purchase or condemnation. A perimeter or tabular description of the total area will be based on acceptable survey data. Parcel descriptions will be furnished for each separate ownership from available public records.

3. List of Owners. A list of the owners of all parcels, including the owners of easements and other rights, and their addresses.

4. Taxes. Name and address of the taxing authority, amount of the taxes paid during the preceding tax years, current assessed value of the property to be acquired, and current tax rate.

5. Easements. A list of existing easements for rights-of-way for utilities, access roads and other purposes.

6. Vicinity Map. A vicinity map showing the location of the real property to be acquired and its proximity to major highways, railroads, rivers, airfields, and metropolitan areas. Any significant features in its immediate and general vicinity which might affect its acquisition or its proposed use will be noted.

7. Current Use. Present residential, industrial, commercial or agricultural uses, described in enough detail so that DOE will have a full understanding of the present utilization of all parcels.

8. Property Map. A property map showing:

   (1) Exterior boundaries of the real property to be acquired and each parcel.

   (2) General location of major improvements and structures.

   (3) Location of existing rights-of-way for roads, highways, railways, utilities, and for other purposes.

   (4) Approximate location and direction of flow of natural water courses.

(5) Other pertinent information that may affect acquisition or use of the real property.

9. Subsurface Rights.

(1) Information on any mining, oil or gas activities within the parcels proposed for acquisition as well as in the general area.

(2) Identify: minerals currently being removed or removed since January 1, 1978; subsidence; the period during which the mining operations have taken place; possibility of termination of such operations; and whether surface or subsurface mining operations are conducted. Identify mineral interests under separate ownership and include the names and addresses of the owners.

10. Topographical and Boundary Survey. A survey made to identify individual parcels, land rights, and the metes and bounds description. A right of entry for survey and exploration must be obtained if the surveyor is going to enter the land. The survey will be accomplished so that the legal description contained in the title evidence is checked and verified. A notification should be sent to the property owners that the survey will be made.

11. Title Evidence. One of the following types of title evidence will be obtained:

(1) Certificate of Title. A contract in which a title company certifies that title to a specific parcel of land is good and unencumbered except for the defects and encumbrances shown.

(2) Title Insurance Policy. A contract insuring interests acquired in property against all defects in title.

(3) Abstract of Title. A summary of all instruments of record affecting the title to a specific parcel. Abstracts are the least acceptable and should only be used when it is impossible to obtain Certificates of Title or Title Insurance Policy.

The title evidence shall conform with the requirements of the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," issued by the Department of Justice. Requests for title services should be made to those companies that are acceptable to the Department of Justice. These usually include the major title companies. The local United States Attorney may assist by identifying such companies. Another source is "The Directory of the American Land Title Association" published by the American Land Title Association, 1828 L Street, Northwest, Washington, District of Columbia, 20036.

12. Relocation Assistance. An estimate of the funds needed to cover payments and services given to persons who will be displaced as a result of the

acquisition, and which are authorized either under State law or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646. Relocation assistance includes providing funds for moving and related expenses, costs incurred in searching for another location, and for actual direct losses experienced as a result of the move.

13. Appraisal. Appraisals are made to determine fair market value of each parcel of land and compensation to which each owner is entitled. The State shall, as soon as possible, obtain one appraisal for each separately owned parcel of the site. Upon the request of the Contracting Officer, the State shall obtain two appraisals for each separately owned parcel of the site whenever the Contracting Officer determines that the site acquisition is controversial or that the estimated cost of the site acquisition is over $100,000.00.

The appraisal(s) shall be:

a. Performed by a professional appraiser and, by experts qualified to determine and testify to the extent to which the presence of the residual radioactive materials actually diminishes or enhances the market value of the site. If the appraisal is contracted for by the State, the contract shall include a provision for a minimum of two updatings. The appraisal shall be updated in the event more than six months has elapsed from the time of the initial appraisal to the anticipated commencement of negotiations, and shall be updated as of the date any property is acquired by condemnation.

b. Procured and prepared in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" (hereinafter referred to as the "Appraisal Standards") issued by the Interagency Land Acquisition Conference, and "A Procedural Guide for the Acquisition of Real Property by Government Agencies" (hereinafter referred to as the DOJ Procedural Guide).

The State shall cause the appraiser to prepare an appraisal report which conforms with the requirements of the Appraisal Standards and the DOJ Procedural Guide.

APPENDIX G

OMB CIRCULAR A-87

H-01

Federal Register

Wednesday
January 28, 1981

Part X

Office of Management and Budget

Cost Principles for State and Local Governments

'CE OF MANAGEMENT AND
3ET

Cost Principles for State and Local Governments

AGENCY: Office of Management and Budget.

ACTION: Final policy.

SUMMARY: This notice advises that Federal Management Circular 74-4 (Revised), dated July 18, 1974, is reissued under its original designation of Office of Management and Budget Circular No. A-87. No substantive changes are made in the Circular. The Circular is set forth below in its entirety.

EFFECTIVE DATE: The revision was effective January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, Deputy Chief, Financial Management Branch, Budget Review Division, 8002 New Executive Office Building, Washington, D.C. 20503, 202/395-4773.

TO OBTAIN SINGLE COPIES OF THE CIRCULAR, CONTACT: Document Distribution Center, Office of Administration, G-236 New Executive Office Building, Washington, D.C. 20503

TO OBTAIN MULTIPLE COPIES, CONTACT:
rintendent of Documents, U.S.
rnment Printing Office,
Washington, D.C. 20402

Daniel F. Mann,

Budget and Management Officer

January 15, 1981

To: The Heads of Executive Departments and Establishments

Subject: Cost principles for State and local governments

1. *Purpose.* This Circular establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments.

2. *Supersession.* This Circular supersedes Federal Management Circular 74-4 as revised. The Circular is reissued under its original designation of OMB Circular A-87.

3. *Summary of changes.* No substantive changes are made in the Circular.

4. *Policy intent.* This Circular provides principles for determining the allowable costs of programs administered by State, local, and federally-recognized Indian tribal governments under grants from and contracts with the Federal Government. They are designed to provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between grantees and the Federal Government. The principles are for determining costs only and are not intended
entify the circumstances nor to dictate
xtent of Federal and State or local
..ticipation in the financing of a particular project. They are designed to provide that federally-assisted programs bear their fair share of costs recognized under these principles except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

5. Applicability and scope.

a. The provisions of this Circular apply to all Federal agencies responsible for administering programs that involve grants and contracts with State, local, and federally-recognized Indian tribal governments.

b. Its provisions do not apply to grants and contracts with:

(1) Publicly-financed educational institutions subject to Office of Management and Budget Circular A-21, and

(2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

Any other exceptions will be approved by the Office of Management and Budget in particular cases where adequate justification is presented.

6. *Attachments.* The principles and related policy guides are set forth in the attachments which are:

Attachment A—Principles for determining costs applicable to grants and contracts with State, local, and federally-recognized Indian tribal governments.

Attachment B—Standards for selected items of cost.

7. *Inquiries.* Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone 202-395-4773.

James T. McIntyre, Jr.

Director

[Circular No. A-87]

Attachment A—Principles for Determining Costs Applicable to Grants and Contracts With State, Local, and Federally Recognized Indian Tribal Governments

TABLE OF CONTENTS

A. *Purpose and scope.*

1. *Objectives.* This Attachment sets forth principles for determining the allowable costs of programs administered by State, local, and federally-recognized Indian tribal governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally-assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State, local, and federally recognized Indian tribal governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally-assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management

techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied by all Federal agencies in determining costs incurred by State, local, and federally recognized Indian tribal governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly-financed educational institutions subject to Office of Management and Budget Circular A-21, and (b) publicly-owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

B. *Definitions.*

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State, local, or federally-recognized Indian tribal governments.

6. *Federally-recognized Indian tribal governments* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

7. *Grant* means an agreement between the Federal Government and a State, local, or federally-recognized Indian tribal government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Circular as applicable to grants in general also apply to any federally-sponsored cost reimbursement-type of agreement performed by a State, local, or federally-recognized Indian tribal government.

8. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

9. *Grantee* means the department or agency of State, local, or federally recognized Indian tribal government which is responsible for administration of the grant.

10. *Local unit* means any political subdivision of government below the State level.

11. *Other State or local agencies* means department or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

12. *Services,* as used herein, means goods and facilities, as well as services.

13. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and inlcude procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. *Basic guidelines.*

1. *Factors affecting allowability of costs.* To allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant programs, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State, local or federally-recognized Indian tribal governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.*

a. A cost is allocable to a particular cost objective to the extent of benefit received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this Circular may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in Section J.

3. *Applicable credits.*

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indeminties on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirments under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. Composition of Cost

1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allowable under grant programs are provided in the sections which follow.

E. Direct Costs

1. *General.* Direct costs are those that can be identified specifically with a

particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and efforts devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section C of these principles.

F. Indirect Costs

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Circular. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used.

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.*

a. Federal grants may be subject to laws that limit the amount of indirect costs that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Circular, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Circular, the amount not recoverable as indirect costs under a grant not be shifted to another federally sponsored grant program or contract.

G. Cost Incurred by Agencies Other Than the Grantee

1. *General.* The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs (Section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in Section F.2.a.

H. Cost Incurred by Grantee Department for Others

1. *General.* The principles provided in Section G will also be used in determining the cost of services provided by the grantee department to another agency.

I. Cost Allocation Plan

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally-sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally-sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Health and Human Services in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees in preparation of cost allocation plans.

This responsibility applies to both central support services at the State, local, and Indian tribal level and indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.*

a. The Department of Health and Human Services, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single cognizant Federal agency will have responsibility similar to that set forth in a. above, for the negotiation, approval, and audit of the indirect cost proposal. A current list of agency assignments is maintained by the Office of Management and Budget.

c. Questions concerning the cost allocation plans approved under a. and b. above, should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.*

a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is maintained by the the Office of Management and Budget.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Negotiation and approval of indirect cost proposals for federally recognized Indian tribal governments.* The Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

7. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with 4 and 5 above, the Office of Management and Budget will lend assistance as required.

[Circular No. A-87]

Attachment B—Standards for Selected Items of Costs

Table of Contents

A. *Purpose and applicability.*

1. *Objective.* This Attachment provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items c is subject to the general policies an principles stated in Attachment A of t Circular.

B. *Allowable costs.*

1. *Accounting.* The cost of establish and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes costs incurre by central service agencies for these purposes. The cost of maintaining central accounting records required fo overall State or Indian tribal government purposes, such as appropriation and fund accounts by th Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radi and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel require for the grant program.

b. solicitation of bids for the procurement of goods and services required.

c. disposal of scrap or surplus materials acquired in the performan the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurre by State advisory councils or committees established pursuant to Federal requirements to carry out gra programs are allowable. The cost of l organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who hand grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentati and execution of budgets are allowa Costs for services of a central budget office are generally not allowable sin these are costs of general governmen However, where employees of the central budget office actively particip in the grantee agency's budget proces the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review lease proposals, maintenance of a lis available property for lease, and rela activities is allowable.

Central stores. The cost of maintaining and operating a central ...es organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.*

a. *General.* Compensation for personal services includes all remuneration, paid currently or accured, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (Section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees (1) is reasonable for the services rendered, (2) follows an appointment made in accordance with State, local, or Indian tribal government laws and rules and which meets Federal merit system or other requirements, ...re applicable, and (3) is determined ...supported as provided in b. below. ...mpensation for employees engaged in federally-assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State, local, or Indian tribal government. In cases where the kinds of employees required for the federally-assisted activities are not found in the other activities of the State, local, or Indian tribal government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and provided in accordance with generally accepted practice of the State, local, or Indian tribal government. Payrolls must be supported by time and attendance or equivalent records for individual ...mployees. Salaries and wages of ...loyees chargeable to more than one ...ant program or ...her cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.*

a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant propgrams or otherwise, irrespective of where title was orginally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally-sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usuable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in Section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided prusuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State, local or Indian tribal policy, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State, local or Indian tribal government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to

carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.*

a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development, which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations are not is unallowable except when less-than-first-class air accommodations reasonably available. Notwithstanding the provisions of paragraphs D.6. and 8., travel costs of officials covered by those paragraphs, when specifically related to grant programs, are allowable with the prior approval of a grantor agency.

C. Costs Allowable With Approval of Grantor Agency

1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately-owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.* The rental cost of space in a privately-owned building is allowable. Similar costs for publicly owned buildings newly occupied on or after October 1, 1980, are allowable where "rental rate" systems, or equivalent systems that adequately reflect actual costs, are employed. Such charges must be determined on the basis of actual cost (including depreciation based on the useful life of the building, interest paid or accrued, operation and maintenance, and other allowable costs). Where these costs are included in rental charges, they may not be charged elsewhere. No costs will be included for purchases or construction that were originally financed by the Federal Government.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (Section C.3.) are allowable when specifically approved by the grantor agency.

d. *Depreciation and just allowances on publicly-owned buildings.* The costs are allowable as provided in Section B.11.

e. *Occupancy of space under rental, purchase or a lease with option to purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

3. *Captial expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a federally-sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as

al participation in its cost. In case assets are traded on new items, only the net cost of the newly-acquired assets is allowable.

4. *Insurance and indemnification.*

a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification.* Includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Costs of professional services rendered by individuals or organizations not a part of the grantee department are allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. Unallowable Costs

1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs by the chief executive and his staff is allowable. The allowable portion shall be determined by the Federal cognizant agency and the Indian government representative on a reasonable basis.

7. *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation and except as provided for in paragraph C.2.a of this Attachment.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

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