

APPENDIX ___
SAMPLE FORMATS FOR WATER SUPPLY AGREEMENTS AND PERMITS

PART 1: WATER STORAGE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND

FOR
WATER STORAGE SPACE IN _____

THIS AGREEMENT, entered into this ___ day of _____, 19___, by and between THE UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the District Engineer executing this agreement, and _____ (hereinafter called the "User");

WITNESSETH THAT:

WHEREAS, the **_____ Act of 19 ___ (Public Law ___, ___ Congress), authorized the construction, operation, and maintenance of the [Project]*** on [Waterway], [State], (hereinafter called the "Project"); and

WHEREAS, the User desires to enter into an agreement with the Government for the use of storage [included in the Project] [added to the Project by action of _____] for municipal and industrial water supply, and for payment of the cost thereof in accordance with the provisions of the Water Supply Act of 1958, as amended (43 U.S.C. 390b-f); and

WHEREAS, the User as shown in Exhibit "A: attached to and made a part of this agreement, is empowered to enter into an agreement with the Government and is vested with all necessary powers of accomplishment of the purposes of this agreement, [including those required by Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5d) (as amended)];

(For use in agreements with reallocation of storage.)

[WHEREAS, provided as Exhibit "___": attached to and made a part of this agreement, is a reallocation report entitled "_____", dated: _____, which provides information pertinent to the reallocation of storage space in the Project for use by the User;]

NOW, THEREFORE, the Government and the User agree as follows:

* Other appropriate terms may be used in lieu of User here and uniformly throughout the agreement.

** Use correct authorization citation (e.g., WRDA of 19___, Public Law ___-___).

*** Language in [] brackets is to be used or deleted as appropriate.

ARTICLE 1 - Water Storage Space.

a. Project Construction. The Government, subject to the directions of Federal law and any limitations imposed thereby, [shall design and construct]

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[has designed and constructed] [shall modify] [has modified] the Project so as to include therein space for the storage of water by the User.

b. Rights of User.

(1) The User shall have the right to utilize an undivided ____ percent (estimated to contain _____ acre-feet after adjustment for sediment deposits) of the usable storage space in the Project between elevations _____ feet and _____ feet above National Geodetic Vertical Datum, which usable conservation storage space is estimated to contain _____ acre-feet after adjustment for sediment deposits. This storage space is to be used to impound water for [present] [present and anticipated future] [anticipated future] demand or need for municipal and industrial water supply. [____ percent (an estimated _____ acre-feet) of the space which User has a right to utilize is for present use water storage and _____ percent (an estimated _____ acre-feet) is for future use water storage.]

(2) The User shall have the right to withdraw water from the lake, or to request releases to be made by the Government through the outlet works in the Dam, subject to the provisions of Article 1c and to the extent the aforesaid storage space will provide; and shall have the right to construct all such works, plants, pipelines, and appurtenances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the District Engineer as to design and location. The grant of an easement for right-of-way, across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the User, under the authority of and in accordance with the provisions of 10 U.S.C. 2669 and such other authorities as may be necessary. Subject to the conditions of such easement, the User shall have the right to use so much of the Project land as may reasonably be required in the exercise of the rights and privileges granted under this agreement.

c. Rights Reserved. The Government reserves the right to control and use all storage in the project in accordance with authorized Project purposes. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life and/or property, including the right not to make downstream releases during such periods of time as are deemed necessary, in its sole discretion, to inspect, maintain, or repair the Project.

d. Quality or Availability of Water. The User recognizes that this agreement provides storage space for raw water only. The Government makes no representations with respect to the quality or availability of water and assumes no responsibility therefor, or for the treatment of the water.

e. Sedimentation Surveys.

(1) Sedimentation surveys will be made by the District Engineer during the term of this agreement at intervals not to exceed fifteen (15) years unless [the District Engineer determines that such surveys are unnecessary] [otherwise agreed to in writing by both parties]. When, in the opinion of the District Engineer, the findings of such survey indicate any Project purpose will be affected by unanticipated sedimentation distribution, there shall be an equitable redistribution of the sediment reserve storage space among the purposes served by the Project including municipal and industrial water supply. The total available remaining storage space in the Project will then be divided among the various Project features in the same ratio as was initially utilized. Adjusted pool elevations will be rounded to the nearest one-half foot. Such findings and the storage space allocated to municipal and industrial water supply shall be defined and described as an exhibit which will be made a part of this agreement and the water control manual will be modified accordingly.

(2) The Government assumes no responsibility for deviations from estimated rates of sedimentation, or the distribution thereof. Such deviations may cause unequal distribution of sediment reserve storage greater than estimated, and/or encroachment on the total storage at the Project.

ARTICLE 2 - Regulation of and Right to Use of Water. The regulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the User. The User has the full responsibility to acquire in accordance with State laws and regulations, and, if necessary, to establish or defend, any and all water rights needed for utilization of the storage provided under this agreement. The Government shall not be responsible for diversions by others, nor will it become a party to any controversies involving the use of the storage space by the User except as such controversies may affect the operations of the Project by the Government.

ARTICLE 3 - Operation and Maintenance. The Government shall operate and maintain the Project and the User shall pay to the Government a share of the costs of such operation and maintenance as provided in Article 5. The User shall be responsible for operation and maintenance of all installations and facilities which it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation and maintenance of such installations and facilities.

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ARTICLE 4 - Measurement of Withdrawals and Releases. The User agrees to furnish and install, without cost to the Government, suitable meters or measuring devices satisfactory to the District Engineer for the measurement of water which is withdrawn from the Project by any means other than through the Project outlet works. The User shall furnish to the Government monthly statements of all such withdrawals. Prior to the construction of any facilities for withdrawal of water from the Project, the User will obtain the District Engineer's approval of the design, location and installation of the facilities including the meters or measuring devices. Such devices shall be available for inspection by Government representatives at all reasonable times. Releases from the water supply storage space through the Project outlet works shall be made in accordance with written schedules furnished by the User and approved by the District Engineer and shall be subject to Article 1c. The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of the water supply storage space.

ARTICLE 5 - Payments. In consideration of the right to utilize the aforesaid storage space [and the water supply conduit] in the Project for municipal and industrial water supply purposes, the User shall pay the following sums to the Government:

a. Project Investment Costs. (Include appropriate paragraph from the following.)

[(a) Project Investment Costs. (Option 1. For projects where municipal and industrial water supply storage space was operational or under construction as of 17 November 1986.)

(1) The User shall repay to the Government [in a lump sum payment, _____] [at the times and with interest on the unpaid balance as hereinafter specified, the amounts stated below] which, as shown in Exhibit "B" attached to and made a part of this agreement, constitute the entire [estimated] [actual] amount of the investment costs, including interest during construction and interest accrued following the end of the 10-year interest free period [date], allocated to the water storage [and the water supply conduit] right acquired by the User under this agreement. The interest rate to be used for purposes of computing interest during construction and [interest on the unpaid balance] [accrued interest] will be the coupon rate as determined by the Secretary of the Treasury on the basis set forth in the Water Supply Act of 1958, Title III of PL 85-500. For the Project, construction of which was initiated in FY ____ this interest rate is ____ percent. The User shall repay:

100 percent of the construction cost of specific water supply facilities, [estimated at] (Revise percentage as necessary if there is more than one user of the water supply conduit in the Project or delete if inappropriate.)	\$
____ percent of the total Project joint-use construction costs, [estimated at]	\$
Interest during construction, [estimated at]	\$
Total [estimated] amount of Project investment costs allocated to the User	\$

(2) The Project investment costs allocated to the storage space indicated in Article 1b(1) as being provided for present demand [and the water supply conduit] is [currently estimated at] \$_____, on the basis of the costs presented in Exhibit "B". The amount of the Project investment costs allocated to the storage for present demand shall be paid within the life of the Project in not to exceed 30 years from [the plant-in-service date, ____] [the date the first agreement for water supply storage space in the Project was approved by the Secretary of the Army, ____] [the date of approval of this agreement by the Secretary of the Army]. The payments shall be in equal consecutive annual installments, the first of which shall be due and payable within 30 days after the User is notified by the Contracting Officer [that the project is completed and operational for water supply purposes]. [of approval of this contract by the Secretary of the Army]. Annual installments thereafter will be due and payable on the anniversary date of the date of notification. Except for the first payment which will be applied solely to the retirement of principal, all installments shall include accrued interest on the unpaid balance at the rate provided above. The last annual installment shall be adjusted upward or downward when due to assure repayment of all of the investment costs allocated to the storage for present demand within 30 years from the above date.

(3) The Project investment costs allocated to the storage space indicated in Article 1b(1) as being provided for future demand, is [currently estimated at] \$_____ on the basis of the costs presented in Exhibit "B". No principal or interest payment with respect to this storage for future water supply is required to be made during the first 10 years following the plant-in-service date unless all or a portion of such storage is used during this period. The amount to be paid for any portion of such storage which is used shall be determined by multiplying the percentage of the total storage for future water supply which is placed in use by the total amount of the Project investment costs allocated to future water supply. Interest at the rate provided above will be charged on the amount of Project investment costs allocated to the storage for future water supply which is not being used from the tenth (10th) year following the plant-in-service date until the time when such storage is first used. The User will annually pay the interest as it becomes due until the storage is used. When any portion of the storage for future water supply is used, payment of both principal and interest for the portion used must be started, and the amount of the Project investment costs allocated thereto, with interest on the unpaid

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balance as provided above, shall be paid within the life of the Project in not to exceed 30 years from the date established in Article 5a(2). The payment for each portion shall be in equal consecutive annual installments [beginning within 30 days after the date of first use of such portion.] [commencing with the next anniversary of the notification date as stipulated in Article 5a(2). The first payment shall include interest on the investment cost of such portion from the date of first use of such portion to the next anniversary date as stipulated in Article 5a(2).] Annual installments thereafter will be due and payable on the anniversary date of the date of first use. Except for the first payment which will be applied solely to the retirement of principal, all installments shall include accrued interest on the unpaid balance at the rate provided above. The last annual installment for any portion of the storage for future water supply shall be adjusted upward or downward when due to assure repayment of all of the investment costs allocated to such portion within the repayment period.

(4) An estimated schedule of annual payments for the water supply storage [and the water supply conduit] provided for present demand is attached as Exhibit "C" of this agreement. The annual payments as provided therein shall be made subject to Article 6. [Payment schedules for the storage provided for future water supply demands will be furnished by the Contracting Officer when use of such storage is started, and if based on estimated costs will be subject to Article 6.]

[(a) Project Investment Costs. (Option 2. For projects where municipal and industrial water supply storage is being added through reallocations of storage)

(1) The User shall repay to the Government, at the times and with interest on the unpaid balance as hereinafter specified, the amounts stated below which, as shown in Exhibit "B" attached to and made a part of this agreement, constitute the entire actual amount of costs allocated to the water storage right acquired by the User under this contract. The amount of costs is based on [revenues foregone] [benefits foregone] [replacement cost] [updated cost of storage] [provisions of Section 322 of Public Law 101-640] [(other as appropriate)]. The interest rate to be used for purposes of computing interest on the unpaid balance will be the yield rate adjusted at five-year intervals as determined by the Secretary of the Treasury on the basis set forth in Section 932 of the 1986 Water Resources Development Act. For this agreement, the starting interest rate shall be that rate in effect at the time the agreement is approved.

For FY ____, such rate is ____ percent. Should the agreement not be signed in FY ____, the amounts due herein will be adjusted to reflect the application of the appropriate rate.

(2) The cost allocated to the storage space indicated in Article 1b(1) is currently estimated at \$ _____ on the basis of the costs presented in Exhibit "B". These costs shall be repaid within the life of the Project in not to exceed 30 years from the date of approval of this agreement by the Secretary of the Army. The payments shall be in equal consecutive annual installments, adjusted a 5-year intervals as shown in Exhibit "C". The first payment shall be due and payable within 30 days after the User is notified by the District Engineer [of approval of this agreement by the Secretary of the Army] [that the project modification is completed and operational for water supply purposes.]

Annual installments thereafter will be due and payable on the anniversary date of the date of notification. Except for the first payment which will be applied solely to the retirement of principal all installments shall include accrued

interest on the unpaid balance at the rate provided above. The last annual installment shall be adjusted upward or downward when due to assure repayment of all of the investment costs allocated to the storage within 30 years from the above date.]

(3) The Project construction costs allocated to the storage space indicated in Article 1b(1) as being provided for present demand [and the water supply conduit] is currently estimated at \$_____, on the basis of the costs presented in Exhibit "B". The costs shall be repaid during the period of construction in the following manner. (Fill in as appropriate). The last payment shall be adjusted upward or downward as appropriate to assure repayment of all the construction cost allocated to the Users storage right during the period of construction.

b. Repair, Rehabilitation, and Replacement Costs. The User will be required to pay [_____ percent of the cost of any repair, rehabilitation, or replacement of specific water supply facilities. In addition, the User will be required to pay]_____ percent of the cost of joint-use repair, rehabilitation, or replacement of Project features. Payment of these costs shall be made either incrementally during construction or in lump sum (including interest during construction) upon completion of construction.

c. Annual Operation and Maintenance (O&M) Expense.

(1) Present Use Storage. The User will be required to pay [_____ percent of the annual O&M expense of specific water supply facilities. In addition, the User will be required to pay] _____ percent of the annual experienced joint-use O&M expense of the Project.

[(2) Future Use Storage. (This paragraph may be appropriate only for those projects operational or under construction as of 17 November 1986). [If storage for future water supply demands is used during the ten-year interest-free period, the share of the annual joint-use O&M expense which the User will be required to pay, [in addition to _____ percent of the annual O&M expense of specific water supply facilities,] will be increased commensurate with the User's percentage of future water supply storage being used, up to a total, for both present and future storage space, of _____ percent of such expense. Upon expiration of the ten-year interest free period, the User's share of such expense shall immediately become (the above maximum) percent.] [Since the ten-year interest-free period has expired the User shall be required to pay, [in addition to _____ percent of the annual O&M expense of specific water supply facilities,] _____ percent of the annual joint-use O&M expense.]

(3) Payment. Payments for O&M expense are due and payable in advance [on the plant-in-service date] [on the date for payment of Project investment costs as set forth in Article 5a(2)] and shall be based on O&M expense for the Project in the Government fiscal year most recently ended. The amount of each annual payment will be the actual experienced O&M expense ([specific plus] allocated joint-use) for the preceding fiscal year or an estimate thereof when actual expense information is not available. (The following bracketed language may be appropriate only for those projects operational or under construction as of 17 November 1986) [Should future increment usage during the ten-year interest-free period commence on other than the anniversary date of present usage, O&M expense for that portion of a year would be prorated by months in use prior to said

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anniversary date on the basis of the actual experienced joint-use O&M expense for the preceding Government fiscal year. The first payment, in such a case, shall be due and payable within 30 days from the date of scheduled first use of storage space. Subsequent annual payments shall be made on the date for payment of project investment costs as set forth in Article 5a(2).]

d. Prepayment. The User shall have the right at any time to prepay the indebtedness under this Article, subject to redetermination of costs as provided for in Article 6, in whole or in part, with accrued interest thereon to the date of such prepayment.

e. Delinquent Payments. If the User shall fail to make any of the aforesaid payments when due, then the overdue payments shall bear interest compounded annually until paid. The interest rate to be used for overdue payments due under the provisions of Articles 5a, 5b, 5c and 5d above shall be that determined by the Department of Treasury's Treasury Fiscal Requirements Manual (1 TFRM 6-8000, "Cash Management"). The amount charged on payments overdue for a period of less than one year shall be figured on a monthly basis. For example, if the payment is made within the first month after being overdue after a 15-day grace period from the anniversary date of the date of notification, one month's interest shall be charged. Thereafter a month's interest will be charged for any portion of each succeeding month that the payment is delinquent. This provision shall not be construed as giving the User a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by the User.

[f. Credit. (This paragraph may be appropriate only for those projects operational or under construction as of 17 November 1986 and is not applicable for interim use for agriculture.) If storage under future-use agreement is used for other beneficial purposes during the interim between the end of the ten-year interest-free period and the time water supply use is initiated and the Federal Government receives payments for such interim use, then the User shall be credited with an appropriate share of payments made under Article 5b and 5c.]

ARTICLE 6 - Adjustment to Project Investment Cost. (In reallocations of storage, this article should be deleted). (This paragraph may be appropriate only for those projects operational or under construction as of 17 November 1986). The investment cost shown in this agreement and the exhibits is based on [[the Governments' best estimates. At the plant-in-service date and again within five years after such date, the District Engineer shall make a revised interim estimated determination of investment costs.] [actual costs at the plant-in-service date. Five years after such date, the District Engineer shall make a revised interim estimated determination of investment costs.] [actual costs five years from the plant-in-service date.] Further interim determinations of cost will be made at intervals considered necessary by the District Engineer. All interim cost estimates will take into account the actual costs to the extent they are then known. Such further interim determinations will be performed at such periods so as to keep the User reasonably informed as to the required payment. On each occasion of a cost adjustment, the annual payments thereafter due shall be adjusted upward or downward so as to provide for repayment of the balance due in equal installments during the remaining life of the repayment period. The last such investment cost adjustment will be made when the last of the construction general funds have been expended. Such final determination will include the Government's approved estimate of any pending real estate items and any known claims not previously accrued.] [actual final construction costs of the project.] Any further investment cost accruing to the User's water storage right shall be repaid under reconstruction, rehabilitation and replacement costs if capitalized or under operation and maintenance expense if not capitalized.

ARTICLE 7 - Duration of Agreement. This agreement shall become effective when approved by the Secretary of the Army or his duly authorized representative and shall continue in full force and effect for the life of the Project.

ARTICLE 8 - Permanent Rights to Storage. Upon completion of payments by the User, as provided in Article 5a herein, the User shall have a permanent right, under the provisions of the Act of 16 October 1963 (Public Law 88-140, 43 U.S.C. 390e), to the use of the water supply storage space in the Project as provided in Article 1, subject to the following:

a. The User shall continue payment of annual operation and maintenance costs allocated to water supply.

b. The User shall bear the costs allocated to water supply of any necessary reconstruction, rehabilitation, or replacement of Project features which may be required to continue satisfactory operation of the Project. Such costs will be established by the District Engineer and repayment arrangements shall be in writing in accordance with the terms and conditions set forth in Article 5b for reconstruction, rehabilitation, and replacement costs, and be

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made a part of this agreement.

c. Upon completion of payments by the User as provided in Article 5a, the District Engineer shall redetermine the storage space for municipal and industrial water supply in accordance with the provisions of Article 1e. Such redetermination of reservoir storage capacity may be further adjusted from time to time as the result of sedimentation resurveys to reflect actual rates of sedimentation and the exhibit revised to show the revised storage space allocated to municipal and industrial water supply.

d. The permanent rights of the User under this agreement shall be continued so long as the Government continues to operate the Project. In the event the Government no longer operates the Project, such rights may be continued subject to the execution of a separate agreement or additional supplemental agreement providing for:

(1) Continued operation by the User of such part of the facility as is necessary for utilization of the water supply storage space allocated to it;

(2) Terms which will protect the public interest; and,

(3) Effective absolvment of the Government by the User from all liability in connection with such continued operation.

ARTICLE 9 - Release of Claims. (Project documents for certain projects require a specific hold and save harmless agreement from the water supply sponsor. In those cases, the project document language should be used). The User shall hold and save the Government, including its officers, agents and employees harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project, or withdrawal or release of water from the Project, made or ordered by the User or as a result of the construction, operation, or maintenance of the water supply facilities and appurtenances thereto owned and operated by the User except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE 10 - Transfers and Assignments.

a. The User shall not transfer or assign this agreement nor any rights acquired thereunder, nor suballot said water supply storage space or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this agreement, without the approval of the Secretary of the Army, or his duly authorized representative provided that, unless contrary to the public interest, this restriction shall not be construed to apply to any water that may be obtained from the water supply storage space by the User and furnished to any third party or parties, nor any method of allocation thereof.

b. Regarding approval of assignments, references to restriction of assignments shall not apply to any transfer or assignment to the Rural Economic Community Development (RECD, formerly Farmers Home Administration) or its successor agency, or nominee, given in connection with the pledging of this water storage agreement as security for any loans or arising out of the foreclosure or liquidation of said loans. The User will notify the Corps in writing 15 days prior to applying for a RECD loan. A copy of the final loan instrument will be furnished to the Corps for their record.

ARTICLE 11 - 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.

ARTICLE 12 - Covenant Against Contingent Fees. The User 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 commercial or selling agencies maintained by the User 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 add to the price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 13 - Protective Covenant. (Should be deleted when not applicable).

a. In order to utilize the water storage space, the User must acquire a loan from _____. Pending approval of this loan, the Government shall reserve for the User _____ acre-feet of storage for municipal and industrial water supply purposes for a period of up to _____ months. For this privilege, the User shall pay the Government \$1.00 per acre-foot of storage space per year for a total of \$_____. The payment is not refundable and shall be due and payable within 30 days after the User is notified by the District Engineer that the agreement has been approved. Should the User be unable to secure said loan it shall notify the District Engineer of said failure and the agreement shall be considered terminated at that time.

b. In the event of any termination pursuant to this Article, the User shall, upon request of the District Engineer, promptly remove at User's own expense, any facilities constructed on Project land for water withdrawal and restore premises around the removed facilities to a condition satisfactory to the District Engineer.

ARTICLE 14 - Environmental Quality. During any construction, operation, and maintenance by User of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State, and local laws and regulations concerning environmental pollution. Particular attention should be given to:

a. Reduction of air pollution by control of burning, minimization of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters;

b. Reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion;

c. Minimization of noise levels;

d. On-site and off-site disposal of waste and spoil; and,

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e. Prevention of landscape defacement and damage.

ARTICLE 15 - Federal and State Laws.

a. Compliance. In acting under its rights and obligations hereunder, the User agrees to comply with all applicable Federal and State laws and regulations, including but not limited to the provisions of the Davis-Bacon Act (40 U.S.C. 276a et seq.); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333); Title 29, Code of Federal Regulations, Part 3; and Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646).

b. Civil Rights Act. The User furnishes, as part of this agreement, an assurance (Exhibit D) that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 42 U.S.C. 2000d, et seq.) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

c. Regulatory Program. Any discharges of water or pollutants into a navigable stream or tributary thereof resulting from the User's facilities and operations undertaken under this agreement shall be performed only in accordance with applicable Federal, State, and local laws and regulations.

d. Lobbying Activities. The User furnishes, as part of this agreement, a certification (Exhibit E and if applicable, a Disclosure of Lobbying Activities) that it will comply with Title 31 U.S.C. Section 1352 of the limitation on use of appropriated funds to influence certain Federal contracting and financial transactions (Public Law 101-121, October 23, 1989) and Federal Acquisition Regulation 52.203-12 issued pursuant thereto.

ARTICLE 16 - Definitions. (Delete those inappropriate)

a. Project [construction] [investment] costs. The initial cost of the Project, including: land acquisition; construction; [interest during construction on the value of land, labor, and materials used for planning and construction of the Project].

b. Interest Payments.

(1). Interest during construction. An amount of interest which accrues on expenditures for the establishment of Project services during the period between the actual outlay and the time the Project is first made available for water storage.

(2). Interest on the Unpaid Balance. An amount of interest which is computed on the unpaid balance in the amortization schedule. When payments are made in "lump sum," there is no amortization schedule and therefore, no "interest on the unpaid balance."

(3). Accrued Interest. An amount of interest compounded following the end of the 10-year interest free period until payments begin to be made. If payments are made in "lump sum" following completion of construction, "accrued Interest" will be applicable.

c. Specific costs. The costs of Project features normally serving only one particular Project purpose.

d. Joint-use costs. The costs of features used for any two or more Project purposes.

e. Plant-in-service date. This date is the date that the Project is physically available to initiate deliberate impoundment for water supply purposes.

f. Annual operation and maintenance (O&M) expense. Annual expenses funded under the O&M, General account. These expenses include the daily Project O&M costs as well as those O&M costs which are not capitalized.

g. Repair, rehabilitation and replacement. Costs funded in part under the Operation and Maintenance, General, or Construction, General accounts but not associated with initial Project investment costs. Such expenditures are for costly, infrequent work and are intended to ensure continued satisfactory operation of the Project.

h. Fiscal Year. Refers to the Government's fiscal year. This year begins on 1 October and ends on 30 September. The September calendar year corresponds to the fiscal year.

i. Life of the Project. This is the physical life of the Project.

j. District Engineer. Refers to the District Engineer of the _____ District of the United States Army Corps of Engineers, or his/her successor or designee.

ARTICLE 17 - Approval of Agreement. This agreement shall be subject to the written approval of the Secretary of the Army or his duly authorized representative and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

APPROVED:

THE UNITED STATES OF AMERICA

1/

By _____
(District Engineer)

DATE: _____

[Insert name of User]

By _____
[Title]

(Necessary approvals and countersignatures required by State and local law with respect to execution on behalf of the User must be ascertained by the District Engineer and his Counsel and added to the signature block.)

1/ Fill-in Title of appropriate approving government official if other than District Commander. The approving official for HQUSACE is the Director of Civil

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Works.

EXHIBIT-A
CERTIFICATION

I _____, Attorney for the _____,
have reviewed the foregoing agreement executed by _____,
and as principal legal officer of/for the _____ certify that [I
have considered the legal effect of Section 221 of the 1970 Flood Control Act
(Public Law 91-611) and find that] _____ is legally
and financially capable of entering into the contractual obligations contained
in the foregoing agreement and that, upon acceptance, it will be legally
enforceable.
Given under my hand, this _____ day of _____ 19_

Attorney for the _____

EXHIBIT B COST COMPUTATIONS

I - LAKE STORAGE

<u>Feature</u>	<u>Elevation</u> (ft., NGVD)	<u>Usable</u> <u>Storage*</u> (ac. ft.)	<u>Percent of</u>	
			<u>Conservation</u> <u>Storage</u>	<u>Water</u> <u>Supply</u> <u>Storage</u>
Flood control	-			
Conservation	-		100.00	
Water Supply	-	()		100.00
User		()		
Present		()		
Future		()		
Others		()		
Other purposes	-	()		
Other purposes	-			

Total

*Storage remaining after 100 years of sedimentation from the date the project is operational.

II - ALLOCATION OF ESTIMATED CONSTRUCTION COST

<u>Feature</u>	<u>Cost (\$)</u>	<u>Percent of</u>
		<u>Project Joint-</u> <u>Use Construction</u> <u>Cost</u>
Flood control		
Specific	()	
Joint-use	()	
Recreation		
Specific	()	
Joint-use	()	
Water Supply		
Specific	()	
Joint-use	()	
Other Purposes		
Specific	()	
Joint-use	()	
Road Betterments (specific)		
Cultural Resources (specific)		
Total		100.00

EXHIBIT B (CONT)

III - INVESTMENT COSTS TO BE REPAYED BY USER FOR WATER
 SUPPLY STORAGE

Present Use: 1/

Cost of _____ acre-feet of water supply storage (_____ % X \$ _____)	=	\$ _____
Cost of specific facilities	=	_____
Subtotal	=	_____
Interest during construction <u>2</u> /	=	_____
Total investment present use	=	\$ _____

Future Use: 3/

Cost of _____ acre-feet of water supply storage (_____ % X \$ _____)	=	\$ _____
Interest during construction <u>2</u> /	=	\$ _____
Total investment future use	=	\$ _____

Total investment cost under this agreement = \$ _____
 Present Use plus Future Use = \$ _____

Notes:

- 1/ If appropriate, add to present use costs, the cost of interest due to the lapse of the 10-year interest free period.
- 2/ Include which ever of the following is applicable:
 "Based on preliminary cost estimate of \$ _____ X interest rate of _____ %
 X 1/2 the estimate construction period of _____ years."
 or)
 "Based on actual construction expenditures by quarter and an interest rate of _____ %."
- 3/ Costs cannot exceed 30 per centum of the total estimated project construction cost as determined in Exhibit B-II.

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EXHIBIT B (CONT)

IV - TOTAL ANNUAL COST TO USER FOR PRESENT USE OF WATER
SUPPLY STORAGE

Interest and amortization

\$ _____ X _____ factor based on _____ payments,
_____ with interest at _____ %. = \$ _____

Operation and maintenance^{1/}

Joint-use [estimated] [actual for FY]
_____ % X _____ %^{2/} X \$ _____ = _____

Specific water supply facilities
100% X \$ _____ [estimated] [actual for FY] = _____

Repair, rehabilitation and replacement^{3/}

Joint-use
_____ % X _____ X^{4/} X \$ _____ = _____

Specific water supply facilities
100% X \$ _____ [estimated] [actual for FY _____] = _____

TOTAL ESTIMATED ANNUAL COST = \$ _____

Notes:

^{1/} Payment due and payable on the date specified in Article 5(a)(2).

^{2/} Percent of Project joint-use operation and maintenance cost allocated to water supply.

^{3/} Repair, rehabilitation and replacement costs are payable only when incurred as specified in Article 5(b)(3). It is suggested that the amount shown be placed in a reserve or sinking fund for future contingency.

^{4/} Percent of Project joint-use repair, rehabilitation and replacement cost allocated to water supply.

EXHIBIT C
AMORTIZATION SCHEDULE
PRESENT DEMAND 1/

<hr/>				
TOTAL COST				
NUMBER OF PAYMENTS			<u>30</u>	
INTEREST RATE, PERCENT <u>2/</u>				
<hr/>				
			APPLICATION	
ANNUAL	AMOUNT			BALANCE
PAYMENT	OF		ALLOCATED	ALLOCATED
NUMBER	PAYMENT	INTEREST	COST	COST
	\$	\$	\$	\$
1				
2				
.				
.				
.				
30	<u>3/</u>			

Notes:

- 1/ This 30 year amortization schedule is applicable to:
 - a. Those projects not operational or under construction as of 17 November 1986 which will be repaid over time in lieu of during construction; and
 - b. All reallocations.
- 2/ In accordance with Section 932 of the Water Resources Development Act of 1986, this interest rate will be adjusted at five year intervals throughout the repayment period. The rate is the yield rate as determined by the Secretary of the Treasury plus 1/8 %.
- 3/ The last (30th) payment will be adjusted upward or downward to assure all costs are repaid within 30 years of approval of the agreement.

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PART 2: SURPLUS WATER AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND

FOR
SURPLUS OF WATER FROM _____

THIS AGREEMENT, entered into this _____ day of _____, 19__, by and between the UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the District Engineer executing this agreement, and _____, (hereinafter called the "User"*);

WITNESSETH THAT:

WHEREAS, pursuant to **Public Law _____, _____ the Congress, _____ Session, approved _____ 19__, the Government has constructed and is operating _____, (hereinafter called the "Project"); and,

WHEREAS, Section 6 of the Flood Control Act of 1944 (Public Law 78-534), as amended, provides that the Secretary of the Army is authorized to enter into agreements with states, municipalities, private concerns, or individuals, at such prices and on such terms as he may deem reasonable, for domestic and industrial uses for surplus water that may be available at any reservoir under his control provided that no agreements for such water shall adversely affect the existing lawful uses of such water;

WHEREAS, the User desires to enter into an agreement with the Government for the privilege of withdrawing surplus water from the Project; and

WHEREAS, provided as Exhibit "___": attached to and made a part of this agreement, is a letter report entitled "_____", dated: _____, which provides information pertinent to the use of surplus water in the Project by the User;

NOW, THEREFORE, the parties do mutually agree as follows:

ARTICLE 1 - Water Supply and Withdrawals.

a. The Government will reserve _____ acre feet of storage space in the Project in order to meet the water demands of the User. From this storage space the User shall have the privileges of withdrawing water at a rate not to exceed _____ during the term of this contract as specified in Article 6 hereof.

* Other appropriate terms may be used in lieu of User here and uniformly throughout the agreement.

**Use correct authorization citation (e.g., WRDA of 19__, Public Law ___-___).

b. The User shall have the right to construct, operate and maintain installations and facilities, or to enter into agreements with third parties therefor, for the purpose of withdrawing water from the Project, subject to the approval of the District Engineer as to design and location of such installation and facilities. All costs associated with such installations and facilities or any modifications thereof or any future construction in connection therewith, shall be without expense to the Government.

c. The Government reserves the right to control and use all storage in the project in accordance with authorized Project purposes.† The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life and/or property, including the right not to make downstream releases during such periods of time as are deemed necessary, in its sole discretion, to inspect, maintain, or repair the Project.

d. The User recognizes that this agreement provides storage space for raw water only. The Government makes no representation with respect to the quality or availability of water and assumes no responsibility therefor, or for treatment of the water. The water level of the Project will be maintained at elevations which the Government deems will best serve the authorized purposes of the Project, and this agreement shall not be construed as giving the User any rights to have the water level maintained at any elevation. The User further recognizes that it is acquiring no permanent right to the use of storage in the Project.

ARTICLE 2 - Metering. For the purpose of maintaining an accurate record of the water withdrawn from the Project, the User agrees to furnish and install, or cause to be installed, meters or measuring devices satisfactory to the District Engineer, without cost to the Government. As required, the User agrees to furnish to the District Engineer advance estimates of need and records of the quantity of water actually withdrawn. Such devices shall be available for inspection by Government representatives at all reasonable times.

ARTICLE 3 - Regulation of the Use of Water. The regulation of the use of and water rights needed for the water withdrawn or released from the storage space shall be the sole responsibility of the User and under the sole authority of the User in accord with Federal, State, and local laws and shall not be considered a part of this agreement. The Government shall not be responsible for the use of water by the User, nor will it become a party to any controversies involving the water use, except as such controversies may affect the operations of the Project.

ARTICLE 4 - Consideration and Payment. (To be determined by the pricing policy as described in paragraph 24-32b of ER 1105-2-100 and detailed in the letter report provided as Exhibit "___" to this agreement. Derivation of costs and storage volumes need to be provided in an exhibit similar to that used in storage agreements (see pages ___-16, ___-17 and ___-18 of this appendix).

(a) In consideration of the right to withdraw ___ acre-feet per calendar year for [not to exceed five (5) years] from the Project for municipal and industrial water supply purposes, the User shall pay the Government \$_____ [per year, the first of] which shall be due and payable within thirty (30) days of the effective date of the agreement as set forth in Article 5 herein. [Future payments thereafter will be due and payable on [the anniversary date the first payment is due.]] (day and month) each following year, beginning in (year).]]

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(b) The repayment amount shown in Article 4(a) is based [upon joint use and specific water supply construction costs updated to October 19__ price levels using appropriate indices and the Fiscal Year 19__ water supply interest rate of _____ percent as computed by the Secretary of the Treasury in accordance with Section 932 of the Water Resources Development Act of 1986 (Public Law 99-662)] [on the provisions of Section 322 of the Water Resources Development Act of 1990 (Public Law 101-640)].

(c) If the User shall fail to make any payment under this agreement within thirty (30) days of the date due, interest thereon shall accrue at the rate as determined by the Department of Treasury's Treasury Fiscal Requirements Manual (1 TFRM 6-8000, "Cash Management") and shall compound annually from the date due until paid. This provision shall not be construed as waiving any other rights the Government may have in the event of default by the User, including but not limited to the right to terminate this agreement for default.

ARTICLE 5 - Duration of Agreement. This agreement shall become effective as of the date of the approval by the [Secretary of the Army or his duly authorized representative] [District Engineer], and shall continue in full force and effect under the conditions set forth herein, for a period of not to exceed five (5) years from the said date of approval. Upon expiration, this agreement may be extended by mutual agreement for additional periods of not to exceed five (5) years each. All such agreement extensions shall be subject to recalculation of reimbursement. Nothing in this agreement, nor in any extension thereto, shall imply a permanent right to utilize the storage space.

ARTICLE 6 - Termination of Agreement.

a. Either party may terminate this agreement and the privilege of withdrawing water upon [period] written notice. In the event of termination under this paragraph, the Government will make pro rata refund for any balance of the agreement term for which payment has been made and the User will pay all charges which have accrued through the date of the termination.

b. The Government may terminate this agreement and the privilege of withdrawing water upon ninety (90) days written notice, if the User shall default in performance of any obligation of this agreement. Upon such a termination, User shall continue to be liable to the Government for any monies owned and for any costs incurred by the Government as a result of the default.

c. In the event of any termination pursuant to this Article or Article 5, User shall, upon request of the District Engineer, promptly remove, at User's own expense, any facilities constructed on Project land for water withdrawal and restore premises around the removed facilities to a condition satisfactory to the District Engineer.

ARTICLE 7 - Rights-of-Way. Occupancy and use of Project lands shall be in accordance with any permits, rights-of-way, or easements granted to the User by the Government.

ARTICLE 8 - Release of Claims. The User shall hold and save the Government, including its officers, agents, and employees, harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the withdrawal or release of water from the Project made

or ordered by the User, or as a result of the construction, operation or maintenance of any facilities or appurtenances owned and operated by the User except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE 9 - Transfer or Assignment. The User shall not transfer or assign this agreement nor any rights acquired thereunder, nor suballot said water or storage space or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this agreement, without the approval of the Secretary of the Army or his duly authorized representative provided that, unless contrary to public interest this restriction shall not be construed to apply to any water which may be withdrawn or obtained from the water supply storage space by the User and furnished to any third party or parties or to the rates charged therefor.

ARTICLE 10 - 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.

ARTICLE 11 - Covenant Against Contingent Fees. The User 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 commercial or selling agencies maintained by the User 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 add to the agreement price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 12 - Environmental Quality. During any construction, operation, and maintenance by the User of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State and local laws and regulations concerning environmental pollution. Particular attention should be given to (1) reduction of air pollution by control of burning, minimization of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters; (2) reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion; (3) minimization of noise levels; (4) onsite and offsite disposal of water and spoil; and (5) prevention of landscape defacement and damage.

ARTICLE 13 - Federal and State Laws.

a. The User shall utilize the water withdrawn from the Project in a manner consistent with Federal, State, and local laws.

b. The User furnishes, as part of the agreement, an Assurance of Compliance (see pages 17 and 18 of this appendix) with Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d, et seq) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

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c. Any discharges of water or pollutants into a navigable stream or tributary thereof resulting from the User's facilities and operations undertaken under this agreement shall be performed only in accordance with applicable Federal, State and local laws and regulations.

ARTICLE 14 - Approval of Agreement. This agreement shall be subject to the written approval of the Secretary of the Army or his duly authorized representative and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

APPROVED:

THE UNITED STATES OF AMERICA

1/

By _____
(District Engineer)

[Insert name of User]

DATE: _____

By _____
[Title]

1/ Fill-in Title of appropriate approving Government official if other than the District Engineer.

(Necessary approvals and countersignatures required by State and local law with respect to execution on behalf of the User must be ascertained by the District Engineer and his Counsel and added to the signature block.)

PART 3: WATER WITHDRAWAL PERMIT
_____ LAKE

Pursuant to the authority contained in Section 6 of the Flood Control Act of 1944 and in recognition of the declaration of emergency in the State of _____, as declared by the Governor, this permit grants permission to _____ to withdraw water subject to the following conditions:

- a. Payment of _____ 1/ for the withdrawal of up to _____ 2/ gallons of water during _____ 3/. User will report the amount of each withdrawal to the Project Office.
- b. Right-of-entry and permission to withdraw water is granted only at the location(s) designated by the Corps of Engineers.
- c. Should facilities, such as roads, etc. be damaged by the User as a result of emergency uses, the User may be assessed and billed a follow up charge to help in the cost of necessary repairs.
- d. Your copy of this permit must be displayed during water withdrawal.
- f. The User certifies that water withdrawn from the project is for domestic and/or industrial purposes and will not be used for crop irrigation purposes.
- g. The User agrees to comply with appropriate State laws concerning water rights and uses and will obtain permits as are required.
- h. The User shall hold and save the Government, including its officer, agents, and employees, harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the withdrawal of water from the Project by the User, or as a result of the operation or maintenance of any facilities or appurtenances owned and operated by the User.

User's Name _____ Government Approval: _____
(Print) (Project Manager)

Address _____ Today's Date: _____

Telephone _____

User's Signature _____

Government Approval _____
(Project Manager)

Today's Date _____

1/ The dollar value of the storage utilized as determined by the pricing policy, or \$25., whichever is larger. The \$25. represents the minimum cost for storage that will be marketed.

2/ The number of gallons that the storage utilized yields on an annual basis. The minimum amount being the yield represented by a cost of \$25.

3/ Explain the time period allowed for the withdrawal as well as other time related specifications for the withdrawal, such as a maximum rate over any

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given time period. The period shall not exceed one year.