

**MODEL FORMAT FOR REALLOCATED
WATER SUPPLY STORAGE AGREEMENTS
AUGUST 30, 2007**

APPLICABILITY:

This is one of four types of agreements typically used for water supply storage at Corps lakes. Use this Reallocated Model for storage reallocated to municipal and industrial water supply from storage currently allocated to another project purpose (ie. flood control pool, conservation pool). This August 30, 2007 model replaces the January 1998 Part 1 Model Format referenced in ER 1105-2-100 paragraph E-58.a.(1).

Use the August 2007 Originally Authorized Model for water supply storage originally authorized as part of the project when constructed. For agreements pursuant to Section 6 of the Flood Control Act of 1944 (P.L. 78-534) regarding Surplus Water and Emergency Water Withdrawal Permit (referenced in ER 1105-2-100 paragraphs E-58.a. (2) and (3)), consult with the appropriate HQ RIT for guidance on drafting the agreement.

NOTES IMBEDDED IN THE MODEL TEXT:

* 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.

[DELETE ALL TEXT ABOVE THIS LINE]

WATER STORAGE AGREEMENT
BETWEEN THE DEPARTMENT OF THE ARMY
AND

FOR
REALLOCATED WATER STORAGE SPACE IN _____

THIS AGREEMENT, entered into this ___ day of _____, 20___, by and between THE DEPARTMENT OF THE ARMY (hereinafter called the "Government") represented by the District Engineer executing this agreement, and _____ [NAME OF USER] (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 for municipal and industrial water supply added to the Project by reallocation, 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)].

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

ARTICLE 1 - Water Storage Space.

a. Project [Construction][Modification]. The Government, subject to the directions of Federal law and any limitations imposed thereby, [shall modify the Project] [has modified the Project] [shall modify the allocation of storage space in 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 conservation storage space in the Project (see column (5) of Exhibit B-1) between elevations ___ feet and ___ feet above National Geodetic Vertical Datum (NGVD), which is estimated to contain ___ acre-feet after adjustment for sediment deposits. The User's storage space is to be used to impound water for present demand or need for municipal and industrial water supply.

(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 of the Project, 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, under the authority of and in accordance with the provisions of 10 U.S.C. 2668 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. 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.

[f. Dependable Yield Mitigation Storage. [Paragraph to be used if storage is being reallocated from flood control storage.] In addition to the (____) acre-feet of water supply storage space acquired by the User, the User will pay for an additional (____) acre-feet of dependable yield mitigation storage.]

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 5c. 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.

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. First Cost of Storage.

(1). The User shall repay to the Government, at the times as hereinafter specified, the amounts stated below which, as shown in Exhibit B-II attached to and made a part of this agreement, constitute the entire actual amount of the first cost of storage allocated to the water storage right acquired by the User under this agreement. The amount of the cost 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 costs shown in Exhibit B are for (___) acre-feet of storage space. [Of this space (___) acre-feet are for the User and (___) acre-feet are for dependable yield mitigation storage.] 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-II. These costs shall be repaid within the life of the Project in not to exceed 30 years from the date this agreement is executed by the Secretary of the Army or his duly authorized representative. The payments shall be in equal consecutive annual installments, adjusted at 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 [that this agreement is executed] [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 first cost of storage allocated to the storage within 30 years from the above date.

[(3). [For use if the project is being modified to accommodate the reallocation action.] Project construction costs associated with the reallocation are currently estimated at \$_____, on the basis of the costs presented in Exhibit B-IV. These 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 (RR&R) Costs. The User will be required to pay [_____percent of the cost of any RR&R of specific water supply facilities. In addition, the User will be required to pay]____ percent of the cost of joint-use RR&R 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.

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.

Payments for O&M expense are due and payable in advance on the date for payment of the first cost of storage 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.

d. Prepayment. The User shall have the right at any time to prepay the indebtedness under this Article 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 Financial Manual (1 TFM 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. A month's interest will be charged for any portion of each 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.

ARTICLE 6 - Duration of Agreement. This agreement shall become effective when signed 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 7 - 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. The District Engineer will establish such costs 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 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 8 - 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 9 - 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 United States Department of Agriculture, 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 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 price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 12 - 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 13 - 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,

e. Prevention of landscape defacement and damage.

ARTICLE 14 - 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: 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.), the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)), and the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655).

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 195 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, Standard Form-LLL "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 15 - Definitions. [Delete those inappropriate]

a. First cost of storage. This is the cost assigned to the Users right to the storage space in the project. In this Agreement, the first cost of storage was developed by the [insert appropriate term, e.g. benefits foregone, updated cost of storage, etc.] method and is summarized in Exhibit B-II.

b. Interest Payments.

(1). Interest on the unpaid balance. When the Project cost is amortized, this is the interest on the unpaid balance (see Exhibit C). When payments are made in "lump sum," there is no amortization schedule and therefore, no "interest on the unpaid balance."

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. Annual operation and maintenance (O&M) expense. Annual expenses funded under the O&M, General account. These expenses include the day-to-day costs to operate and maintain the Project as well as O&M costs which are not capitalized.

f. Repair, rehabilitation and replacement (RR&R) costs. Costs funded in part under the Operation and Maintenance, General, or Construction, General accounts but not associated with first cost of storage. Such expenditures are for costly, infrequent work and are intended to ensure continued satisfactory operation of the Project. For the purposes of this agreement the term "reconstruction" used in Article 8 "Permanent Rights to Storage" shall be included in this definition of repair, rehabilitation and replacement; repayment of those costs shall be the same as described in Article 5b.

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

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

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

j. Dependable Yield Mitigation Storage. The use of the reallocated space for water supply storage diminishes the dependable yield of water to prior water supply users. To compensate for that loss, additional conservation storage, above and beyond the storage required by the new user, is provided and made available to the prior users. The new user pays for this space. The reallocated storage mitigation

space becomes part of the total storage space jointly shared by all the water supply users.

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

THE DEPARTMENT OF THE ARMY

[NAME OF USER]

[NAME]
Colonel, U.S. Army
District Commander

[NAME]
[TITLE]

DATE: _____

DATE: _____

[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.]

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 by the Department of the Army, it will be legally
enforceable.

Given under my hand, this _____ day of _____ 20_____.

Attorney for the _____

EXHIBIT B: COST COMPUTATIONS

I - LAKE STORAGE

Feature (1)	Elevation (feet, NGCD) (2)		Usable Storage (acre-feet) <u>1/</u> (3)	Percent of	
				Usable Storage <u>2/</u> (4)	Conservation Storage <u>3/</u> (5)
Flood Control					
Conservation					100.00
Water Supply User					
Other Water Supply Users [list as appropriate] [DYMS to support User]					
Other Conservation Purposes [list as appropriate]					
Other Purposes [list as appropriate]					
Total Usable Storage				100.00	

Notes:

1/ Storage remaining after 100 years of sedimentation from the date the project is operational and does not include dead storage and/or storage set aside for hydropower head.

2/ Used to compute the Users cost (see Exhibits B-II and B-III).

3/ This percent is used to compute the Users storage space (see Article 1b(1)).

II - FIRST COST TO BE REPAID BY THE USER FOR THE REALLOCATED STORAGE SPACE

(Summarize how the costs to the User were derived, i.e., benefits foregone, revenues forgone, replacement cost, updated cost of storage, Section 322 of Public Law 101-640, or other as appropriate.)

EXHIBIT B: (Continued)

**III - TOTAL ANNUAL COST TO USER
FOR THE REALLOCATED WATER SUPPLY STORAGE**

Item	Type of Use	Computation	Cost
Interest and amortization	Total cost of storage space acquired by the User as determined in Exhibit B-II.	\$_____ x _____ factor based on _____ payments, of which _____ payments are at interest rate of _____%.	\$
Operation and maintenance <u>1/</u>	Joint-use [estimated] [actual for FY__]	_____ % <u>2/</u> x \$_____	\$
	[Specific water supply facilities [estimated] [actual for FY__]	[100% x \$_____]	[\$]
Repair, rehabilitation and replacement <u>3/</u>	Joint-use	_____ % <u>2/</u> x \$_____	\$
	[Specific water supply facilities [estimated] [actual for FY__]	[100% x \$_____]	[\$]

Notes:

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

2/ Percent of Users share of the Usable storage space in the project (column (4) of exhibit B-I).

3/ Repair, rehabilitation and replacement costs are payable only when incurred as specified in Article 5(b).

**IV - COST OF PROJECT MODIFICATION ASSOCIATED
WITH THE REALLOCATION**

(Summarize the construction and associated costs necessary to accommodate the reallocation. The method of cost repayment is to be included.)

EXHIBIT C: AMORTIZATION SCHEDULE PRESENT DEMAND

(Example 1/)

TOTAL COST: \$ _____

NUMBER OF PAYMENTS: _____

INTEREST RATE, PERCENT 2/ _____ %

Annual Payment Number	Amount of Payment (\$)	Interest (\$)	Allocated Cost (\$)	Balance of Allocated Cost (\$)
1				
2				
3				
.				
.				
.				
.				
30	3/			0

Notes:

1/ An amortization schedule is applicable to those projects which will be repaid over time in lieu of during construction.

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 payment will be adjusted upward or downward to assure all costs are repaid within 30 years of approval of the agreement.

EXHIBIT D: ASSURANCE OF COMPLIANCE

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE DIRECTIVE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED; THE AGE DISCRIMINATION ACT OF 1975; AND THE REHABILITATION ACT OF 1973, AS AMENDED

The party executing this assurance, being the applicant recipient of Federal financial assistance under the instrument to which this assurance is attached; **HEREBY AGREES THAT**, as a part of its obligations under the aforesaid instrument, it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 195), issued as Department of Defense Directive 5500.11, pursuant to that title; The Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), to the end that in accordance with the aforementioned Title, Directive and Acts, no person in the United States shall on the ground of race, color, age, sex, religion, handicap or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from the Department of the Army and **HEREBY GIVES ASSURANCE THAT** it will immediately take any measures necessary to effectuate this agreement.

If any personal property or real property, or interest therein, or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant-recipient by the Department of the Army, or if such assistance is in the form of personal property or real property, or interest therein or structure thereon, then this assurance shall obligate the applicant-recipient or in the case of any transfer of such property, any transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for the period during which it retains ownership or possession of the property whichever is longer. In all other cases, this assurance shall obligate the applicant-recipient for the period during which the Federal financial assistance is extended to it by the Department of the Army. The Department of the Army representatives will be allowed to visit the recipient's facilities. They will inspect the facilities to ensure that there are no barriers to impede the handicap's accessibility in either programs or activities.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the applicant-recipient by the Department of the Army, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The applicant-recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant-recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the applicant.

Date _____

(Applicant-Recipient)

By _____

Title _____

(Applicant-Recipient's Mailing Address)

EXHIBIT E: CERTIFICATION REGARDING LOBBYING

[PROJECT NAME]
[NAME OF USER]

1. The undersigned certifies, to the best of their knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the water supply agreement for the [NAME OF USER], the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions. This form is available at <http://contacts.gsa.gov/webforms.nsf>.

c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[NAME OF USER]

BY _____