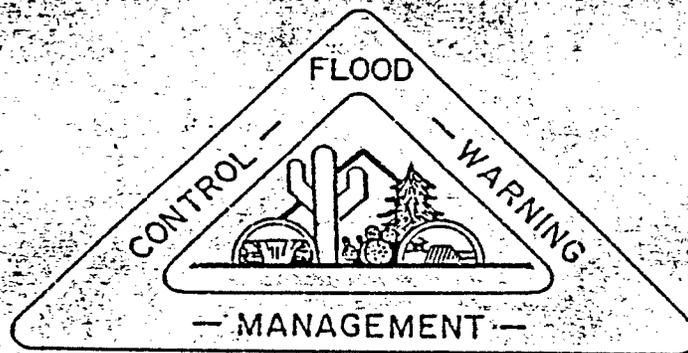


45
Flood Control Assistance Program^{DS 3}

A.R.S. No. 1441 et. seq.

Laws 1987

AUTHORITY, POLICIES & PROCEDURES



State of Arizona
Department of Water Resources

July 1987

FORWARD

The Flood control assistance program authorizes the State to financially assist local sponsors of a federal flood control project by reimbursing them for up to one-half of the cost of the land acquisition and utility relocation required to accommodate the construction of federal flood control projects.

"It is hereby declared that recurrent floods on streams, rivers and other waterways of the State, causing loss of life and other property, disruption of commerce, interruption of transportation and communications and wasting of water, are detrimental to the peace, health, safety and welfare of the people of the State. Support of the central storage and full beneficial use of flood waters and the washing away of river and stream banks by floods in cooperation with counties, cities, state agencies and public districts and the United States, or any of its departments or agencies, is a proper function of the state."

"The legislature intends that from time to time allocations from the general fund for flood control projects will be made to pay for not to exceed one-half of the cost of all lands, easements and rights-of-way necessary for the flood control purposes of projects adopted and authorized pursuant to federal law and recommended by the Arizona Water Commission and approved by the legislature concurrent with the availability of federal funds for their construction."

...Laws 1973 Chapter 40
State of Arizona

More information concerning Flood Control Assistance Programs administered by the department see the following reports:

Alternative Flood Control Assistance
Flood Control Loan Program
Development of Flood Control Plan

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FLOOD CONTROL ASSISTANCE PROGRAM

I. Authority

A.R.S. § 48-3603 Powers, duties and immunities of district and board....

C. A district organized under this article, acting through its board of directors may:...

3. Contract and join with this state, the United States or any other flood control district or floodplain board, municipality, political subdivision, governmental agency, irrigation or agricultural improvement district, association, corporation or individual in acquiring, constructing, maintaining and operating flood control work^s, and regulating floodplains.

A.R.S. § 48-3624. Cooperation in flood control projects

A district may cooperate with the United States and this state or any instrumentality, department, agency or political or municipal subdivision of either in the construction, maintenance and operation of flood control projects and the enforcement of this article and regulations adopted pursuant to it. To that end, the district may:

1. Enter into appropriate agreements.
2. Acquire and provide without cost to the cooperating entity land, easements, rights-of-way and services necessary for the construction of flood control projects and the regulation of floodplains.
3. Hold and save any cooperating entity free from any claim for damages arising from the construction, maintenance and operation of flood control projects and the regulation of floodplains.

4. Maintain and operate all works according to regulations prescribed by the cooperating entity.
5. Establish and enforce flood channel limits and floodplain regulations, if any, satisfactory to the cooperating entity.

A.R.S. § 45-1445. Flood control assistance fund; limit of financial assistance

- A. A flood control assistance fund is established. All or part of an appropriation to the fund may be allocated for a specific flood control project defined by § 45-1441, paragraph 3, subdivision (a). All payments for flood control assistance under this article shall be made from the fund. The monies in the fund are exempt from § 35-190, relating to lapsing of appropriations.
- B. The state may contribute funds not to exceed one-half of the non-federally supported cost solely for lands, easements and rights-of-way necessary in connection with the construction of any federal or federally assisted flood control project recommended by the director, subject to appropriation of monies by the legislature."

II. Policy

This flood control financial assistance program authorizes the State to reimburse up to 50 percent of eligible project costs incurred by a public agency in securing the installation of a federally adopted and authorized flood control project. State assistance will be limited to 50 percent of public agency expenditures for project required land easements and rights-of-way.

Requests for an investigation of any flood control project to receive funding under this program shall be made to the Director of the Arizona Department of Water Resources. The request shall include a

description of the project, total estimated installation cost as well as that portion to be funded by the sponsor, and an estimated time schedule leading to project construction. The Director of the Arizona Department of Water Resources will investigate the request and make a certification to the State Legislature as to whether the project should be funded under the provisions of this program, the date and amount of funds required.

III. Procedures

A. General

1. Sponsoring public agencies are responsible to the Federal Government for fulfilling the local cooperation requirements on federal flood control projects. This includes both financing and acquisition of rights-of-way and making relocations, and land enhancement costs.
2. The public agency sponsors are expected to diligently pursue rights-of-way negotiations, legal actions in condemnation, and all other aspects of local cooperation required for authorized federal flood control projects. Increased costs which are attributable to lack of diligence on the part of the public agency sponsor will not be considered eligible for reimbursement.
3. Public agency sponsors can expect reimbursement for one half of their necessary costs associated with acquisition of project lands, easements and rights-of-way. sights and relocation of conflicting utilities, roads, and bridges. However, the responsibility for justification of these costs rests with the public agency sponsor. Failure to adequately justify costs will result in the rejection of questionable items. Subject to availability of funds, disbursements by the State will be made as soon as possible after completion of normal administrative reviews and receipt of additional supporting documentation that may be required to justify questionable expenditures.

Lands, easements and rights-of-way means:

- (a) Lands and rights of interest in lands necessary for flood control storage, channel improvements and channel rectifications.
 - (b) Lands, rights or interests in lands necessary in connection with the construction, operation or maintenance of such storage, channel improvements and rectifications, including those necessary for flowage purposes, spoil areas, borrow pits or for access roads.
 - (c) The cost of the relocation, reconstruction or replacement of existing improvements, structures or utilities rendered necessary by such channel improvements and rectifications.
 - (d) Land enhancement costs, if any, charged to a public agency by a federal agency in connection with construction of a flood control project.
4. Public agency sponsor costs shall be audited within 90 days following certification of project completion. Any costs found by the audit to be ineligible shall be absorbed by the public agency sponsor. In order to provide the Arizona Department of Water Resources with a convenient means of adjustment to compensate for any possible overpayments that might be detected through a compliance audit, the sponsor's final payment for a specific project shall be at a total reimbursement of no more than ninety-percent of the estimated total reimbursement for the project. Upon review and acceptance of the audit compliance report by the Department, a final disbursement for all remaining eligible project expenditures will be made.
5. No disbursement will be made for any project until the appropriate agencies have adopted the necessary floodplain regulations in accordance with A.R.S. § 48-3609.

6. In reconstructing bridges, roads, and other affected works, reimbursements will be limited to one-half the costs of facilities which will provide equivalent usefulness. The extent of State financial participation in the replacement facilities will be established by (ADWR). The Department will not consider for eligibility any costs attributed to betterments associated with the relocated structures.
7. The public agency sponsors are expected to establish a fund sufficient for assuring the financing of the costs of rights-of-way, land and easements A.R.S. § 45-1448.
8. Representatives of the (ADWR) will be available to meet with and brief representatives of the local agencies on State participation at the time projects are initiated.

B. Project Formulation and Local Responsibilities

1. Project Development by Federal Agencies

The agencies of the Federal Government which construct flood control projects in response to local requests for assistance, are the U.S. Army Corps of Engineers and the U.S. Department of Agriculture, Soil Conservation Service. Projects planned and constructed by the Corps of Engineers are authorized by specific acts of Congress. Upon specific authorization, a General Investigation Report is prepared. If the project is found to be feasible, congressional authorization of the project is requested. Upon such authorization and subsequent budgeting of funds, a Post Authorization Study is undertaken and a General Design Memorandum prepared. Assurances of local sponsorship are required during preparation of this memorandum. Upon approval of the General Design Memorandum by the Chief of Engineers, the sponsor should proceed with acquisition of necessary lands, easements, and rights-of-way. The decision to proceed with the acquisition of land rights should be made after coordination

with the Arizona Department of Water Resources.

Projects planned and constructed by the Soil Conservation Service include both RC&D projects and P.L. 566 projects. The formulation of either type project commences with a Preliminary Investigation. If this investigation shows that further study is warranted, a Watershed Work Plan is developed. If the project is found to be feasible and a local sponsor adopts a resolution accepting necessary non-federal responsibility, approval of the Work Plan and construction is requested from the necessary federal authority.

Approval of the Watershed Work Plan assures the sponsor that the project will be constructed. The sponsor should proceed with acquisition of necessary lands, easements, and rights-of-way at this time after coordination with (ADWR). Sponsors should be aware of the progress of project formulation and approvals in order to budget necessary funds for property acquisition.

2. Local Responsibilities

Public agency sponsor responsibilities under the Flood Control Assistance Act begin when the federal agency completes its preliminary investigation of a proposed project. The federal report provides a considerable amount of information which will affect rights-of-way and relocation costs.

Using information in the preliminary report, the public agency sponsor can define, to a reasonably accurate degree, the approximate area which will be required for a project. The public agency sponsor shall then do everything legally within its power (zoning restrictions, etc.) to prevent the prior construction or installation of public or private works which would require relocation at the time of project construction. The public agency sponsor is expected to contact those persons responsible for the issuance of building permits, the approval of subdivision maps, and any other agency exercising control of land use and to advise them of the potential rights-of-way

requirements for the project. Efforts in this area should be documented. If, in the opinion of (ADWR), the public agency sponsor has not attempted to prevent encroachments in the project area, the cost of relocating the encroaching works will not be eligible for reimbursement by the State.

3. Requirement for Floodplain Regulations

The Floodplain Regulation and Use statute requires that local governing agencies establish regulations for floodplains and channels. The Flood Control Assistance Funding Statute prohibits the disbursement of any State monies for flood control projects until the appropriate public agency or agencies have established the required floodplain regulations for the area classified as a designated floodway.

Before (ADWR) will release funds for flood control projects, the public agency sponsor shall submit a detailed map of the project area showing the designated floodways or restricted reservoir right-of-way limits that will be subject to regulation upon project completion. The public agency sponsor shall also submit a copy of the floodplain regulations enacted by the floodplain governing board responsible for the area in which the project is located. If the project public agency sponsor is not in compliance with the Floodplain Management Act (A.R.S. § 48-3601 et seq.), the Department shall deny State flood control funds.

4. Public Agency Revenue Base

The public agency sponsor is responsible to the Federal Government for complying with the local cooperation requirements of federal flood control projects. This includes both financing and acquisition of rights-of-way and making relocations. The legislative intent of the Flood Control Assistance Act is to reimburse the public agency sponsor for one-half the sponsor's necessary costs. In order to carry out project construction in an orderly manner, the public agency sponsor shall have adequate

funds to acquire rights-of-way, make relocations, and pay the cost of this work pending State reimbursement. Therefore, the Arizona Department of Water Resources expects the public agency sponsor to establish a financing base for each project.

Prior to the federal government budgeting funds for the construction of a flood control project, the Arizona Department of Water Resources may only disburse the State's portion of the costs incurred by a public agency in acquiring fee title to real property necessary for such project. At such times as the federal government does budget funds for the construction of any flood control project in this State, (ADWR) may then disburse the State's portion of the costs for easements and relocation, reconstruction or replacement of existing improvements, structures or utilities rendered necessary by the proposed flood control project. The public agency sponsor shall establish a sufficient revenue base to allow compliance with this criteria (A.R.S. § 45-1443).

The State assistance program was created specifically to encourage public agency sponsors to establish adequate funding programs for urgently needed flood control projects. While (ADWR) will do everything reasonably possible to see that public agency sponsor costs are reimbursed at an early date, it must be remembered at all times that the responsibility for incurring and paying the project costs rests with the public agency. Disbursement will be made to public agency sponsors for portions of the total rights-of-way and relocations as soon as they qualify and State funds are available.

5. Cost Allocations for Multiple Use Projects

The Corps of Engineers and the Soil Conservation Service encourage the inclusion of water conservation and recreation as project purposes in flood control projects. Since the State Flood Control Assistance Act limits financial assistance to the flood control purposes only, it is necessary that the costs of a project reservoir which include water conservation or recreation

as a project purpose be allocated to the various purposes which the reservoir serves.

The (ADWR), as well as most other agencies in the water resources development field, uses the Separable Cost-Remaining Benefit (SCRB) method of cost allocation for reservoir projects. This method is widely accepted as an equitable method of allocating costs to the purposes of a reservoir and will be used in the State's financial assistance program.

The Separable Cost-Remaining Benefit allocation will be made prior to the time (ADWR) disburses State funds. The Separable Cost-Remaining Benefit allocation will be used to determine the maximum amount of State flood control funds which may be reimbursed to the sponsor. Since the federal agency may pay a portion of the joint use rights-of-way and relocation costs when recreation is a project purpose, the amount of federal contributions to items eligible for State assistance will be considered in determining the amount of State financial assistance.

C. Claim Requirements for Financial Assistance

All public agency sponsor requests for State financial assistance for flood control projects shall be made on a properly filed claim. This section outlines the requirements for claims filed with (ADWR) and lists several prerequisites to filing such claims.

1. Resolutions of Support

Prior to filing claims for State financial assistance, the public agency public agency sponsor shall submit the following to the Arizona Department of Water Resources:

- (1) A certified copy of all resolutions giving assurances of local cooperation to the federal agency constructing the project.
- (2) A Resolution giving assurance that the sponsor will hold and

save the State of Arizona free from damages due to the construction and operation of the project (Sample Form No. Five in the Appendices).

(3) A Resolution designating the sponsor's representative authorized to file claims for State assistance (Sample Form No. Six in Appendices).

(4) A copy of all requests from the federal agency regarding local cooperation on project requirements.

2. Claim Format

The claim shall include an affidavit, signed under penalty of perjury, by the person authorized to file claims for State financial assistance. The affidavit shall contain the information shown in Sample Form One in the Appendices.

The claim shall contain a tabulation showing detailed information regarding separate items of the claim and a certificate of payment for the items covered in the claim. The certificate of payment shall be signed, under penalty of perjury, by the person responsible for settlement of accounts. Two types of claim forms (request for payment) are used to itemize project expenditures. Sample Form Two shall be used to submit expenditures for the actual cost of parcels of land, and Sample Form Three shall be used to submit general project costs such as title reports, surveys, and utility relocations.

3. State Review

Prior to any public agency sponsor receiving reimbursement from the State, a review of submitted expenditures will be performed by the Department of Water Resources. The public agency sponsor shall keep and maintain a complete, accurate, and itemized record of costs for which State reimbursement is requested. The public agency sponsor shall permit any autho-

rized officer or employee of the State of Arizona to examine such records, and to interview in connection with such records, the officers, agents, or employees of the sponsor. In making its review, the Arizona Department of Water Resources will except any items which cannot be verified. The public agency sponsor will have 90 days from the date of notification of the exceptions to submit additional supporting information. If such information is not received within 90 days, the Department will presume that the public agency sponsor accepted the deduction. If the public agency sponsor can support its request for reimbursement, a supplemental payment will be made.

Original disbursements to the public agency sponsor may be limited to 90 percent of the amount found eligible for State assistance in order to provide a mechanism for future adjustments.

4. Compliance and Financial Audit Services

Upon completion of a project or upon completion of a separable reach or feature of a project, the public agency sponsor shall have an engineer's certificate of completion and a compliance and financial audit made of project expenditures. The contract for hiring an auditor, who shall be an independent Certified Public Accountant, along with an auditor's pre-qualifications list, shall be submitted to (ADWR) prior to engagement of an auditor. A sample contract for hiring an auditor is included as Sample Form Eight in the Appendices. The public agency sponsor will be reimbursed for one-half the cost of this audit if it is approved in the prescribed manner.

The auditor shall comply with A.R.S. § 41-725 and shall determine the amount eligible for State assistance in compliance with these procedures and applicable laws. He shall make an examination of appropriate vouchers, appraisal reports, title policies, deeds, easements, court orders, agreements, invoices, contracts, and paid warrants. Any discrepancies between previously filed claims and eligible costs, shall be detailed in

his report. The (ADWR) will review the compliance and financial audit report and determine the amount of the final disbursement to the public agency sponsor. This disbursement will be made as soon as possible after receipt of the compliance audit report. If the audit report shows that disbursements were in excess of eligible costs, the sponsor shall reimburse the State for overpayments.

If at the time of the audit there are court judgments pending, costs attributed to the acquisition of the subject lands should be shown. Such costs will be eligible for reimbursement. Upon final agreement or court judgment, a supplementary disbursement will be made for the final acquisition costs. The Department will determine if an additional audit is necessary before final disbursement.

D. Land Acquisition Requirements

State financial assistance for rights-of-way costs is limited to lands determined necessary by the federal agency for the flood control features of the project. The following subsections describe criteria which public agency sponsors shall comply with to receive reimbursement for one-half their rights-of-way costs.

1. General Criteria

- (1) The (ADWR) will disburse funds to the public agency sponsor only for rights-of-way costs which have been determined by the responsible federal agency to be necessary for the construction, operation, and maintenance of the flood control features of the project. These right-of-way requirements must be concurred in by the Department prior to disbursement of State funds. Any lands acquired in excess of this standard must be paid for totally by the sponsor.
- (2) When a temporary easement is required during project construction such as for an equipment storage yard, haul roads,

etc., the public agency sponsor should only acquire a temporary interest in the land, returning unconditional use to the property owner at the end of project construction.

- (3) When lands required for the project were acquired after project authorization by public entities under the same governing board as the public agency sponsor, and when these lands are not donated for the project, (ADWR) will reimburse no more than one-half the original purchase price of the lands paid by those entities.
- (4) If it is determined that rights-of-way acquired for the project are no longer needed for construction, installation, or operation and maintenance of the project, the public agency sponsor will be expected to dispose of such lands, easements, or rights-of-way at fair market value and reimburse the State one-half the net amount received. This interest of the State in acquired property shall be documented, recorded by the county recorder with a copy provided the (ADWR).
- (5) When conditions exist that allow a public agency sponsor to generate revenues through the leasing of rights-of-way acquired for project purposes, the public agency sponsor will credit the State with one-half the net proceeds generated from such an arrangement. Net proceeds are considered to be the gross income generated from the lease agreement minus the public agency sponsor's cost to administer the lease. Revenues such as this essentially serve to reduce the overall parcel acquisition cost to the public agency sponsor. This reduction in acquisition cost shall be passed on to the State by credits in subsequent claims for reimbursement of project expenditures. Only lands for which the sponsor has received State financial assistance will be subject to the provisions of this paragraph. Additionally, exceptions will be considered in

those instances where the lease agreement effectively serves to reduce the operation and maintenance cost to the sponsor, after project construction, such as removal of reservoir sediment for sale as top soil.

- (6) The (ADWR) will disburse funds to the public agency sponsor for one-half the cost incurred in the relocation of "displaced persons" resulting from the proposed project as dictated by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646). That act relates to acquisition of land for federal and federally assisted programs and provides assistance and benefits to certain persons displaced by the acquisition. Relocation payments exceeding the monetary limits set forth in P.L. 91-646 will be considered eligible for State assistance only if adequate justification exists for the excess payment. The public agency sponsor will provide written documentation detailing the need for and the amount of any relocation payments made in excess of those required by P.L. 91-646.

2. Rights-of-Way Maps and Data

Before eligibility of costs for reimbursement can be determined by (ADWR), the public agency sponsor shall provide detailed information regarding proposed land acquisitions. The information listed below shall be submitted prior to acquisition by the public agency sponsor.

- (1) Maps depicting the lands required by the federal agency for the project or for the portion of the project for which the lands are required.
- (2) Parcel maps showing parcels to be acquired. These maps may be combined with those requested under Item (1) above.
- (3) A table showing parcel numbers, whether the parcel includes

improvements, parcel map numbers, interests to be acquired, area of each parcel, reason for acquisition, agency requesting acquisition, and whether the costs will be included with a claim. See Sample Form Four in the Appendices.

- (4) The parcel numbers used in the information required in paragraphs (1) through (3), shall be used in appraisals, acquisition documents, and the claims filed by the sponsor. If parcel numbers are changed, (ADWR) shall be informed of the new parcel numbers.

3. Appraisals

All properties for which the public agency sponsor plans to request State reimbursement shall be appraised by a properly designated appraiser, i.e., a member in good standing with the National Association of Independent Fee Appraiser, National Society of Real Estate Appraisers, or the American Society of Appraisers. Accordingly, sponsors should coordinate their selection of appraisers with (ADWR). The following paragraphs outline the Department's requirements for appraisals and requisitions.

- (1) When property with an estimated value of \$100,000 or more is to be acquired, the sponsor may be required at the option of (ADWR) to obtain two (2) appraisals. If two appraisals are required, one of the appraisals must be made by an independent fee appraiser. In no case shall the appraiser be requested to negotiate for acquisition of lands required for the project. For property estimated to have a value of less than \$100,000, only one appraisal report need be obtained.
- (2) Property appraisals may require updating or adjustments when, in the opinion of the public agency sponsor, such action is warranted or necessary in order to provide a basis for negotiating an equitable settlement. However, reimbursement for cost of any property acquisition based on by

costs incurred to update or revise appraisals must first be approved by the Arizona Department of Water Resources'.

(3) A copy of the executed contract with the independent appraiser shall be submitted with claims to (ADWR) for reimbursement of the appraisal fees. However, the Department reserves the right to withhold reimbursement of fees if in the opinion of the Department the appraisal is found to be factually incomplete or as to the contract specifications required, or was prepared by an appraiser with qualifications not acceptable to (ADWR).

(4) A sample form of contract for the hiring of real estate appraisers is included as Sample Form Seven in the Appendices. Specific items which should be covered in appraisal reports, are listed below. Public agency sponsors may modify this contract format if desired, but the modified contract must contain, at a minimum, the following items:

(a) Title page (sufficient data to identify project).

(b) Letter of transmittal (brief summary of important conclusions: market value, date of valuation, etc.).

(c) Table of Contents.

(d) Photographs, plat, legal description of property certified by a registered land surveyor, and name of owner.

(e) Map showing all sales in relation to subject property.

(f) Analysis of area surrounding subject property.

(g) Analysis of the site including all standard items such as zoning, taxes, utilities, topographic features, etc.

- (h) Highest and best use (if controversial, discuss fully).
 - (i) Description of improvements.
 - (j) Discussion of sales, including photographs, comparing them directly to subject.
 - (k) The three approaches to market value (if any of the three approaches are inapplicable, explain why).
 - (l) Discussion of severance damage (or lack of it) where a partial take is involved.
 - (m) Effect of title exceptions on market value.
 - (n) Correlation and final estimate of market value (summarize the reasons supporting conditions).
 - (o) Estimated value of salvage or excess of lands after taking.
- (5) The public agency sponsor shall submit a list of pre-qualified appraisers to (ADWR) together with appraisers' qualifications prior to selecting an appraiser. The Department may remove from the list any assessors' name who has demonstrated unacceptable performance or inability to perform.
- (6) When it is necessary to acquire widening or corridor strips from properties located along channel reaches, the public agency sponsor should engage appraisers on a reach by reach basis, where practical, rather than an individual parcel basis.
- (7) If the public agency sponsor should desire to acquire an entire parcel rather than only the portion necessary for the

project, the public agency sponsor shall keep careful records to justify such action. The public agency sponsor shall submit details of the transaction, including an appraisal of the entire parcel and the basis for dividing the cost, at the time it submits a claim for reimbursement.

- (8) It is recommended that a specialty report be prepared when property includes a significant amount of machinery, equipment, or other specialty items. Such reports should be independently prepared by qualified staff or contracted specialist. The reports should contain all the information necessary to explain, substantiate, and document the estimated value of specialty items.

4. Settlements

Three types of rights-of-way settlements are possible. These are the; (1) negotiated settlement, (2) stipulated judgment, and (3) court judgment. The following paragraphs outline the Arizona Department of Water Resources' standards for eligibility of settlements and discuss special problems in connection with severance damage and construction in lieu of monetary payment as compensation for obtaining rights-of-way.

- (1) Reimbursement of property acquisition costs resulting from negotiated settlements and stipulated judgments will not exceed 30 percent (60 percent of appraised value) unless the basis for such settlement is concurred in by the Department.

When the total appraised value of a parcel (including any severance damage) exceeds \$100,000, the public agency sponsor shall acquire approval from (ADWR) prior to agreeing to any settlement that would exceed 120 percent of the total appraised value. If prior Department approval is not obtained, the State will only reimburse the sponsor a maximum of 30 percent (60 percent of the eligible project appraised value) of the parcel. For those parcels of land which have

a total appraised value of \$100,000 or less, the public agency sponsor may, without prior (ADWR) approval, proceed with a negotiated settlement or stipulated judgment that exceeds 120% of the total appraised value. In such cases the public agency sponsor will be required to provide ADWR with adequate justification supporting such a settlement at the time the parcel acquisition cost is submitted for State reimbursement. The Department of Water Resources reserves the right to limit its 50 percent project reimbursement to 30 percent (60 percent of the appraised value) of the parcel if the public agency sponsor fails to submit satisfactory justification in support of the settlement. Regardless of the appraised values of a parcel of land, it would be in the public agency sponsor's interest to always coordinate any questionable settlement with the Department prior to finalizing the settlement.

- (2) When a court judgment exceeds the public agency sponsor's appraisal by 25 percent or more, ADWR shall be notified by the public agency sponsor within ten days following the date of judgment. The notification should include a brief analysis of the trial and a recommendation as to the appropriateness of an appeal. The Department may direct the public agency sponsor to appeal a judgment or to settle for a reimbursement from the State for less than half the judgment. If an appealed judgment is affirmed, the Department will reimburse the public agency sponsor 50 percent of the affirmed judgment.
- (3) Settlements may include severance damage. The public agency sponsor should, however, determine if it is more economical to acquire an entire parcel containing excess lands. If acquiring the entire parcel is more economical, the public agency sponsor should attempt to do so. The public agency sponsor's claim for reimbursement should set forth the actual or appraised value of the excess lands and the

estimated salvage value of improvements in the designated column on Sample Form Two. This estimated salvage value will not be deducted from the amount requested for reimbursement on the claim. Credits for the value of excess land and improvements will be made to (ADWR), by future claims, after the improvements have been sold or put to some non-flood control use or a flood control use not associated with the project for which State funding approval has been obtained (A.R.S. § 45-1443). This procedure for crediting the State with a percentage of revenues generated from the disposal of excess lands or improvements will be applied to all land and property acquisitions, regardless of the presence of potential severance damage. The sponsor shall maintain a written record of all excess lands and project improvements which shall list a description of the improvement (with project parcel number), the date sold, the amount of the sale, and the date or claim number showing when the credit was given to the Department.

- (4) One half the costs of construction to mitigate severance damage may be reimbursed. Reimbursement, however, will be contingent upon the Arizona Department of Water Resources' review and concurrence in the facts relevant to each specific case and will be limited to a maximum of one-half of 60 percent of the appraised value of the severance damage. The public agency sponsor will be required to provide the Department with adequate justification supporting the decision to proceed with the mitigating construction.
- (5) Where possession of property has been obtained by court order through eminent domain proceedings, and a stipulated judgment has been obtained, interest may be considered eligible for reimbursement if it is considered and agreed to in reaching the settlement. The payment of current interest under these circumstances is considered an associated land acquisition cost.

(6) Frequently during eminent domain proceedings, the public agency sponsor will require immediate possession of property prior to the settlement of the litigation. When this occurs, the public agency sponsor can obtain the right to use the property for project purposes through acquisition of a court order for immediate possession. Normally, the "Order for Immediate Possession" will stipulate that the public agency sponsor make a specified cash deposit with the court as interim compensation to the property owner for the use of his land. These cash deposits, when ordered by the court, are considered eligible for reimbursement by the State even if they exceed the appraised property value by more than 25 percent. Appraised values, however, accompany the public agency sponsor's request for reimbursement of such cash deposits. When a final judgment is awarded at the conclusion of the condemnation action, the public agency sponsor will provide the Arizona Department of Water Resources with an analysis of the settlement in order that any necessary adjustments can be made to the original reimbursement for the cash deposit. These adjustments will be made in accordance with the criteria previously established for stipulated and court judgments. However, if the final settlement is less than the original cash deposit, the public agency sponsor will be required to credit the State with one-half the difference between the original deposit and the settlement.

(7) In lieu of monetary payment for the use or acquisition of project required lands, the public agency sponsor may, at the request of the landowner, undertake certain construction of benefit to the landowner. Reimbursement of such costs will be limited to a maximum of 30 percent of (60 percent of the appraised value) the interest in the land actually acquired. The public agency sponsor will be required to provide ADWR with adequate justification supporting the decision to proceed with this option. Any construction

costs which would normally be paid by the federal agency will not be eligible for reimbursement by the Department.

- (8) The Arizona Department of Water Resources expects the public agency sponsor to exercise diligence in obtaining rights-of-way settlements. Particular attention should be given to setting early trial dates when negotiated settlements cannot be secured. Adjustments of appraisals or reappraisals should be coordinated with (ADWR). If the Department determines that the public agency sponsor has failed to exercise diligence, increased costs resulting from the lack of diligence will not be eligible for reimbursement.
- (9) The public agency sponsor shall secure and keep on file satisfactory evidence of titles to lands or interests in lands for which reimbursement is requested from the State.

5. Associated Land Acquisition

In addition to the costs of lands and improvements acquired for the project, a public agency sponsor may be reimbursed for one-half of certain associated land acquisition costs. These costs are described as follows:

- (1) Associated land acquisition costs may include, but are not necessarily limited to, costs incurred in securing appraisals, land survey costs, title reports, title insurance, preparation of deeds and agreements, cost of printing summons and complaint, filing fees, reporter's fees, witness fees, jury fees, recording fees, negotiation costs, relocation assistance, and similar expenses directly attributable to the acquisition of rights-of-way.
- (2) The public agency sponsor may not receive reimbursement for its own administrative overhead. The (ADWR) defines administrative overhead to include the salaries and fringe benefits of the executive officer of the local agency, his

deputy and their immediate stenographic support. It also includes expenditures for office space, utilities, vehicle use and maintenance and office equipment. However, the public agency sponsor may receive reimbursement for the cost of salaries, wages, fringe benefits (FICA, retirement plan, life insurance, health insurance) for project engineers and land management personnel on the public agency sponsor's staff who worked on right-of-way acquisitions and utility relocations. If the public agency sponsor obtains services from some other separate unit of government of city, county, State or Federal Government, overhead charges of the agency or unit supplying the services are considered eligible for reimbursement.

(3) If the cost of removing buildings or other improvements is estimated to be in excess of the salvage value therefrom, the public agency sponsor should contact the federal agency constructing the project to arrange for disposal at federal expense. Associated land acquisition costs incurred in acquiring lands which are granted to the public agency sponsor without fee, may also be reimbursable.

(4) Public agency sponsors may be reimbursed for one-half of the project land enhancement costs charged to them by the federal agency. A copy of the federal invoice for such costs and an explanation of how the costs were computed should be included with the public agency sponsor's claim for reimbursement.

6. Costs and Revenues From Land Management Program

If a public agency sponsor initiates a program to dispose of or lease excess lands or property which will not be needed for project construction until some future date, the revenues from such a program shall be shared equally with the State if the public agency sponsor received State reimbursement for the property generating such revenue. The administrative costs

required to lease or sell the property should be deducted from the gross revenues before the credit is transmitted to the State. This provides a mechanism for the State to share in the administrative costs as well as the revenues. However, if the administrative costs exceed the revenues, the State will not reimburse the sponsor for such costs. Any rental revenues generated prior to the time the sponsor received State reimbursement for a given parcel need not be credited to the State. The public agency sponsor should coordinate the initiation of a land management program with ADWR in order that adequate accounting procedures may be established to document the administrative costs, revenues, and transfer of credits to the State.

E. Bridge, Road, and Utility Relocation Requirements

A public agency sponsor may be reimbursed for one-half the cost of relocations necessary for the construction of a federal project. The following subsections describe the Arizona Department of Water Resources' criteria for reimbursement.

1. General Criteria

- (1) Relocations are eligible for State financial assistance only to the extent that the relocated facility provides a capacity equivalent to the existing facility.

- (2) Relocations identified as necessary for the construction of the project by the federal agency will be eligible for State financial assistance. Additionally, the cost to remedy local drainage and access problems created as a direct result of project construction will be eligible for State assistance contingent upon the Arizona Department of Water Resources' review and concurrence in the problem and solution pertaining to each case. The public agency sponsor should document all requests of the federal agency for relocations.

- (3) The Arizona Department of Water Resources will determine the extent of eligibility for State financial assistance of any given relocation. Any cost in excess of this determination will be considered a "betterment," and will be the responsibility of the local agency.

2. Relocation Standards

- (1) The Arizona Department of Water Resources' procedures for relocation of public bridges and roadways is limited to providing a bridge or road cross section equivalent to that which is being replaced. The cost of sidewalks, safety curbs, and railings will be considered eligible only to the extent that they were part of the bridge or roadway being replaced or are required by current design standards. Eligibility replacement width for private bridges or roads is limited to the width of the existing facility.
- (2) Occasionally, flood control projects require the construction of a new bridge at a location where one did not previously exist. This situation frequently occurs where swales or ill-defined drainageways, currently traversed by dip crossings, are replaced by manmade channels. Bridge crossings are then required across the new channel in order to maintain continuity of the roadway. The Arizona Department of Water Resources will participate in the cost of these bridges to the extent that they are designed to provide an equivalent number of traffic lanes as the existing roadway being replaced. The actual amount of bridge width eligible for State assistance will be based upon the current design standards for two or four-lane bridges, etc. (whichever is applicable on the basis of the existing structure) adopted by the agency which will be responsible for operation and maintenance of the structure once it is completed. Additionally, State assistance will be limited to reimbursement of bridge costs associated with

current design conditions rather than forecast future design conditions. The cost of sidewalks, safety curbs, and railings will be considered eligible only if sufficient justification warrants their inclusion.

- (3) Construction of new roads, where there were no existing roads prior to project construction, will only be considered eligible for reimbursement to the extent that (ADWR) decides they are warranted as part of the flood control project. The portion of these road construction costs eligible for State assistance will be determined by the Department on the basis of existing traffic conditions and current design criteria.
- (4) The Department policy for relocating pipelines, sewers, or other related facilities is replacement facilities of equivalent capacity.
- (5) The Department reimburses only the cost of relocating existing rights-of-way fencing. Channel fencing is not considered an obligation of the State.
- (6) During the construction of a flood control project, various other types of relocations may be necessary. In all cases, only the cost of facilities which provide equivalent capacity will be considered eligible for reimbursement.

3. Betterments

Whenever relocations are in excess of the procedures outlined above, the additional work will be considered to be betterments and any cost for such betterments will not be reimbursed by the State.

The public agency sponsor shall submit to (ADWR) information and preliminary plans regarding relocations where betterments may be involved. The Department will review this

information and notify the public agency sponsor of the extent to which the State will participate in the works involved. The following paragraphs outline the policy the Department will use to determine betterment in common cases.

- (1) The costs assigned to betterment in relation to the total cost of bridges will be computed using a percentage relationship. This relationship will be based on the ratio of the additional width of the structure which exceeds that necessary to provide equivalent capacity to the total width of the proposed bridge. Determination of this ratio factor will be made as soon as practical, after preliminary plans are available. The factor will not be adjusted unless radical changes are made during construction. There may be some cases where the replacement bridge actually constructed is so changed from the replacement bridge without betterments that the width-to-width ratio would not be equitable. For such cases, an alternative method will be devised. Unless the sponsor provides detailed quantity estimates for the Arizona Department of Water Resources' review, the width-to-width ratio also will be applied to box culvert bridges.
- (2) The eligibility of roads with betterments will be based on a width-to-width ratio, i.e., the width of the eligible road without betterments to the width of the road actually constructed.
- (3) For other types of relocations with betterments, a proportional relationship will be used for cost sharing. This relationship will be based on the cost of equivalent facilities without betterment to the total cost of the replacement facility.

4. Agreements and Contracts

All relocations shall be performed in accordance with

agreements between the public agency sponsor and the owner agency. Such agreements shall clearly describe the work to be performed and the financial obligations of each agency. Any relocation costs submitted to the State for reimbursement shall reflect any salvage value that may be realized from the relocation of a facility.

Construction contracts for performing relocations shall conform to the provisions of the Arizona Revised Statutes and shall include provisions for liquidated damages. Construction overhead and inspection costs are directly proportional to the length of time spent in completing the contract. Continuation of the contract past its scheduled completion date increases these costs and thus damages the sponsor. Since ADWR reimburses the public agency sponsor for the cost of construction overhead and inspection, it is similarly damaged when a contract runs over its scheduled completion date. The public agency sponsor shall make every reasonable effort to collect liquidated damages and credit one-half of them to the Department in proportion to its share of the contract. The daily rate for liquidated damages shall reflect the fixed cost of administering the contract. This provision does not preclude granting the contractor change orders which allow additional time for contract completion. Reimbursement of costs resulting from any change orders affecting the time or cost of the contract will be contingent upon the Arizona Department of Water Resources' concurrence in the need for the change orders.

Prior to reimbursement of any relocation costs, the Department shall be furnished copies of all agreements and/or correspondence executed by the public agency sponsor authorizing the work to be initiated.

5. Associated Relocation Costs

Costs incurred by the public agency sponsor in meeting relocation requirements of the project are eligible for reimbursement. These costs may include engineering, surveying, and

contract administration and inspection. It may also include all other reasonable costs in connection with the relocation. The agency may not be reimbursed for its own administrative overhead.

APPENDICES

The purpose of this appendices is to present samples of the various forms and certifications to be used for the filing of claims for the Flood Control Assistance Program and the Alternative Assistance Program and Definition of Terms.

<u>Sample Forms</u>		<u>Applicable Program</u>	
<u>Form No.</u>	<u>Sample Description</u>	<u>Flood Control Assistance</u>	<u>Alternative Assistance</u>
1	Claim Affidavit	X	
2	Claim for Reimbursement Right-of-Way Acquisition Costs	X	X
3	Claim for Reimbursement Sheet, General Project Cost	X	X
4	Property Requirements	X	X
5	Resolution of Assurance to State		X
6	Resolution Designating Person to Authorize File Claims	X	
7	Contract for Hiring Real Estate Appraisers	X	X
8	Contract for Hiring Auditor	X	X

CLAIM FOR REIMBURSEMENT
RIGHT-OF-WAY ACQUISITION COSTS

Project Title Swan River Project Sponsor Santa Margo Co. FCD
 Claim No. 1 Date April 1, 1961

Parcel No.	Owner (Grantor)	Appraisal	Negotiated Price	Estimated Salvage Excess Land and/or Impr.*	Project Cost	Warrant	
						Number	Date
T-238	J.J. Jones	\$ 9,500	\$13,100	\$3,200	\$13,100	AX1234	12-2-60
T-485	S.M. Smith	15,350	17,542	0	17,542	AX6975	2-16-61
T-011	A.B. Doe	180	175	0	175	AX8129	11-23-60

Total Rights-of-Way Cost this Claim \$27,617.00
 Total Claim for State Assistance \$13,808.50**

Certified by Authorized Representative of LOCAL AGENCY

I, _____, _____
 (Name) (Title)

certify, under penalty of perjury, that I am responsible for the settlement of accounts and that the amounts claimed have been paid.

Signed _____

* Credits to be deducted after final sale. Value listed here for reference only.
 ** One-half total eligible cost.

Note: Claims for deposits of funds into court should, in addition to this tabulation, be accompanied by the order of the court.

CLAIM FOR REIMBURSEMENT
GENERAL PROJECT COSTS

Project Title Dry Gulch Dam Sponsor Santa Margo Co. FCD
 Claim No. 1 Date December 16, 1981

Payee	Amount	Purpose	Warrant	
			Number	Date
John Smith	\$11,000.	Relocation Assistance Parcel T-143	1586	9/6/81
Chicago Title Company	250.	Title report and escrow fees, Parcel T-116	2835	6/8/80
Jones & Jones	1,740.	Legal fees regarding eminent domain action Parcel T-236	4385	7/7/79
MTI Engineering	17,000.	Right-of-way survey per contract CB.2.3	5336	6/6/80
Southern Bell Telephone Co.	28,000.	Relocate underground telephone cable at right abutment of Dry Gulch Dam	2349	9/17/80
Acme Constr. Co.	57,185.	Progress payment No. 1 for construction of Dry Gulch Dam	7232	11/11/80
Santa Margo Co.	13,502.	Salaries, wages and fringe benefits for project engineers and land mgmt. personnel on the FCD staff who worked on Dry Gulch Dam project August 1980	N/A - Computer data available a County Controller's Office	

Total Cost \$129,177.

Total Claim for
State Assistance \$ 64,588.50

M. A. Gawn
 Certified by Authorized
 Representative of LOCAL AGENCY

I, _____, _____
 (Name) (Title)

certify, under penalty of perjury, that I am responsible for the settlement of
 accounts and that the amounts claimed have been paid,

Signed _____

PROPERTY REQUIREMENTS

Project Title Dry Gulch Dam

Parcel Number	R/W Map No.	Type Instrument	Take Area	Reason for Acquisition	Requested By	Improvements
T-166	2 of 7	Warranty Deed	5.6 Ac.	Dam Reservoir	Corps of Engineers	Harvest - Store Gain Silo
T-236	4 of 7	Flowage Easement	2.34 Ac.	Spillway Channel	Soil Conservation Serv.	None
T-143	3 of 7	Temporary Construction Easement	0.28 Ac.	Storage Site	Dept. of Water Resources	None

Resolution of Assurance to State - Flood Control Assistance

WHEREAS, under Public Law _____ the (federal agency) intends to construct a flood control project at _____
_____; and

WHEREAS, under the provisions of § 45-1471, Arizona Revised Statutes, the State of Arizona intends to pay one-half of the costs for lands, easements, and right-of-way necessary for said project;

NOW THEREFORE BE IT RESOLVED, that the (local organization) hereby gives assurances to the State of Arizona that it will operate and maintain said project after completion, in such manner as will accomplish the purposes for which the project was authorized and constructed and as may be required by the (Secretary of the Army) (Secretary of Agriculture) and the Arizona Department of Water Resources; that it will hold and save the State of Arizona free from damages or claims due to the construction, installation, or operation of the project; and that it will give all assurances required by federal law as to said project.

Resolution Designating Person Authorized to File Claims

WHEREAS, under Public Law _____ the (federal agency) intends to construct a flood control project at _____
_____ ; and

WHEREAS, under the provisions of § 45-1471, the State of Arizona intends to pay one-half of the costs for lands, easements, and rights-of-way and relocations necessary for said project; and

WHEREAS, the (local organization) has given all assurance required by federal or state law;

NOW THEREFORE BE IT RESOLVED, that the (local organization) hereby appoints (name of individual) to file claims with the State of Arizona for reimbursement of expenditures made by the (local organization) for lands, easements, and rights-of-way necessary for said project.

COUNTY FLOOD CONTROL DISTRICT

AGREEMENT NO. _____

FORM OF AGREEMENT FOR FINAL APPRAISAL

THIS AGREEMENT, made this ____ day of _____, 198__ by and between

_____ Flood Control District, acting through its _____

(Title of Office Acting for Agency)

herein after referred to as the "District" and _____
referred to as the "Appraiser".

WITNESSETH THAT:

WHEREAS, the District proposed to acquire through purchase or condemna-
tion proceedings the following described property (ies) and desires to obtain
an appraisal of each parcel (s), including all improvements, structures,
appurtenances, or other elements of value which are recognized by the courts
in eminent domain proceedings; and

WHEREAS, the Appraiser represents that he is authorized and qualified to make such appraisal and is familiar with recognized appraisal practices and with the standards required for determining values in eminent domain proceedings;

NOW, THEREFORE, the District and the Appraiser, for the considerations and under the conditions hereinafter set forth, do agree as follows:

1. The Appraiser agrees to:

- a. Make a personal inspection of each parcel including all improvements, structures, appurtenances, or other elements of value thereon or thereunto belonging which are recognized by the courts in eminent domain proceedings and to advise the District, in a written report, of his opinion of the fair market value of each such parcel.
- b. Verify, insofar as is practicable, all recent sales of the property appraised, and all recent sales of comparable property which the Appraiser has taken into consideration as reflecting the fair market value of the property appraised. Such verification shall include interviewing the seller, buyer, agent, or any other person known to have participated in the transaction, to ascertain the consideration, the terms and conditions of the sale, any special factors affecting the amount of the consideration, and the actual condition of the property at the time of transfer.

- c. Complete said report _____ days following notice by the District to proceed with the appraisal of each certain parcel.
2. The report in _____ copies shall, in form and substance, conform to recognized appraisal practices and to the principles of evaluating property for determining values in eminent domain proceedings.
3. The report shall, among other things, contain the following:
 - a. The Appraiser's opinion of the fair market value for each parcel including improvements, structures, appurtenances, or other elements of value recognized by the courts in eminent domain proceedings. In the event that the parcel is improved, he shall state the age, dimensions, kind, character, and condition of each of the various structures, improvements, or fixtures appertaining to the property together with the Appraiser's opinion of the property's highest and best use and an allocation of the value and utility of each such structure, improvement, fixture (or other element of value) in relation to the highest and best use to which the property, in the Appraiser's opinion, is adaptable. It shall include a photograph of the property.
 - b. A report of any and all circumstances found by the Appraiser to exist with respect to unlawful condition, use or occupancy of the property being appraised.
 - c. The names and addresses of the owners of the property and the date and place of recording the instrument of conveyance under which the owners claim title.
 - d. The assessed value of the property and the amount of the current real estate tax levy.

- e. A statement showing all recent sales of the property appraised, and a statement of all sales of comparable property which the Appraiser has taken into consideration in estimating the fair market value of the subject property. The statement covering sale of comparable properties shall indicate the factors of comparability and shall set forth the names of the grantor or grantee, a general description of the property and its condition, photograph, date of transfer, place of recording of the conveyance, and a map, diagram, or other information indicating the location of such sales in relation to the subject property.
- f. A scale plat of the parcel being appraised signed by a Registered Land Surveyor.
- g. In the event of severance, the Appraiser shall state his opinion of the fair market value of the whole, the fair market value of the part taken; the fair market value of the part not taken, and the value of any special benefits accruing to the part not taken which under local law may be taken into consideration; and shall state his opinion and analysis and the fair allocation of the value of the part taken, and that represented in the diminished value of the remainder, giving due consideration under local law to the value of such special benefits, if any. Where an allocation is made for severance damages, a full statement of the reasons for such an allocation should be made.
- h. A statement of the rental value of the property and a history of the rental experience, if any.

- i. A statement as to existing utilities and the adequacy thereof with respect to the service available to the property; a brief description of the character of street improvements approximate to the site of the property appraised; and a statement showing transportation, school, marketing, and public libraries.
 - j. A statement as to whether or not the property or any portion thereof is subject to special assessments; if so, the nature, amount, and number of years during which payments must be made.
 - k. A statement of all factors taken into consideration by the Appraiser believe by him to influence, either favorable or unfavorably, the market value of the area; together with a statement concerning the activity of the real estate market in the immediate area and surrounding area during the past few years and current market conditions.
 - l. A statement that any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration with the reasonable control of the owner, will be disregarded in determining the fair market value for the property.
4. The performance of services or acceptance of the appraisal reports required hereunder shall not relieve the Appraiser from obligation to correct any defective work subsequently discovered, and all incomplete, inaccurate, or defective work shall be remedied by the Appraiser on demand without cost to the Agency.

5. In the event that the testimony of the Appraiser is required in any legal proceedings in connection with the District's acquisition of the property herein referred to, the Appraiser agrees to appear as a witness on behalf of the Agency and agrees that the fair and reasonable compensation for his services shall be a sum of _____ per day for each full day's attendance in court. In the event such attendance shall be one-half day or less, compensation shall be made on the basis of _____ for such half day. The Appraiser shall keep such records of all details with respect to the appraisal of parcels as will enable the Appraiser to appear as such witness.
6. It is understood and agreed that the Appraiser shall receive compensation for services performed hereunder (except as provided in Paragraphs 5 hereof) in the total amount of \$_____ which services shall include reinspection for additional or supplemental data as required under provisions of Paragraph 4 thereof. In the event that the report(s) after acceptance by the District, need(s) to be revised because of change in circumstances or updated because of lapse of time, the Appraiser agrees to perform such services at the rate of _____ per day or _____ per half day.
7. If the total amount due under the agreement exceeds the sum of _____, partial payments of the appraisal fee can be made on the basis of the number of reports submitted and approved by the Agency in relation to the total number of reports to be submitted as provided herein.
8. The District shall furnish a map or plat of Subject Area and a legal description and dimensions of the parcels. On such map the parcels shall be designated by number, and in the appraisal reports the

numbers used shall correspond with the numbers shown on the map or plat of the Subject Area furnished by the District. The District shall also furnish the tract ownership data required to be included in the appraisal report by Paragraph 3c hereof.

9. The District may at any time by notice in writing to the Appraiser exclude any parcel or parcels from the operations of this contract and in such even equitable adjustment shall be made for all work completed and accepted prior to such exclusion and for any substantial amount of work or service performed to the date of such exclusion but not in such form that it can be accepted by the District, such adjustment in no event to exceed the total amount provided in Paragraph 6 hereto (but exclusive of the provisions of Paragraphs 5 hereof).
10. The Appraiser's obligations and duties, under this contract shall not be assigned in whole or in part, but this shall not prohibit the assignment of the proceeds due hereunder to a bank or financial institution. This contract may be assigned by the District to any corporation, agency, or instrumentality authorized to accept such assignment.
11. The appraiser agrees that this report and conclusions are for the confidential information of the District and that he will not disclose his conclusions, in whole or in part, to any person whatsoever, other than to submit his written report to the District, and will only discuss the same with it or its authorized representatives, until called upon to testify in relation to such report and conclusions under oath in a judicial forum for the purpose of determining fair market value.

12. In the event of breach of any condition or provision hereof, the District shall have the right, by prior written notice to the Appraiser, to terminate the employment of the Appraiser hereunder and cancel this contract and have the work thus canceled otherwise performed, without prejudice to any other rights or remedies of the District. The District shall have the benefit of such work as may have been completed up to the time of such termination or cancellation, and with respect to any part which shall have been delivered to and accepted by the District there shall be an equitable adjustment of compensation, which in no event shall exceed the total amount provided in Paragraph 6 hereof (but exclusive of the provisions of Paragraphs 5 hereof).
13. The term "parcel" as used herein means any contiguous tract of land in the same ownership whether such tract consists of one or more platted lots or a fractional part thereof.
14. It is understood that the time within which the work is to be performed is of primary importance and of the essence of this contract. The Appraiser will proceed with the work hereunder in such sequence and order as to the different parcels as the District may, in writing, direct, and will furnish and deliver the appraisal reports to the District as soon as completed.
15. As an inducement to the execution of this agreement by the District, the Appraiser represents and agrees that the Appraiser has not employed any person to solicit or procure this contract, and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other

compensation in connection with the procurement of this contract; and that the Appraiser has not now, and will not acquire, any interest (including that of real agent or broker), direct or indirect, present or prospective, in any of the parcels in the Subject Area prior to acquisition of all the parcels by the District; and has not employed and will not employ in connection with work to be performed here under any person having any such interest during the term of this contract either directly or indirectly.

16. During the performance of this contract, the Appraiser agrees as follows:

- a. The appraiser will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The appraiser will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not limited to, the following: employment; upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The appraiser agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the District setting forth the provisions of this nondiscrimination clause.
- b. The Appraiser will, in all solicitations or advertisements for employees placed by or on behalf of the Appraiser, state that

all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

- c. The Appraiser will cause the foregoing provisions to be inserted in all subcontracts or any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
17. No Member of or Delegate to the Congress of the United States of America, and no Resident Commissioner, shall be admitted to any share of part hereof or to any benefit to arise herefrom.
18. No member of the District shall participate in any decision relating to this contract which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any member, officer, agent, or employee of the District have any interest indirect or direct in this contract or the proceeds thereof.
19. The legal description (s) and Map (s) will be furnished to the Appraiser.
20. The owner or his designated representative shall be given an opportunity, by reasonable advance notice in writing or otherwise, to accompany the appraiser during the his inspection of the property. Appraisers will be required to furnish, upon request, evidence of compliance with this regulation.

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

ATTEST:

By _____

APPROVED AS TO FORM:

ATTORNEY FOR THE DISTRICT

Appraiser

Authorized by Formal Action of the
Board of Directors

_____ County Flood Control District

on _____.

SAMPLE
AUDITOR CONTRACT

THIS CONTRACT made and entered into by and between the _____ Flood Control District, herein after referred to as DISTRICT, and _____ hereinafter referred to as AUDITOR.

RECITALS

1. In accordance with the authority granted DISTRICT under the laws of the State of Arizona, DISTRICT wishes to procure the services of AUDITOR for the purpose of providing certified public accounting services for certain Flood Control compliance and financial audits, hereinafter referred to as PROJECT.
2. The AUDITOR and DISTRICT desire to enter into and execute a written contract involving said services and to agree upon the terms thereof.

The AUDITOR as an independent contractor and not as an agent of DISTRICT shall provide the services required in accordance with the Scope of Work dated _____ attached hereto as Attachment A, and with AUDITOR'S Proposal dated _____, attached hereto as Attachment B.

Term of Agreement

The term of this Agreement shall be for a period beginning _____ and ending _____. The DISTRICT assumes no liability for work performed or costs incurred prior to the beginning date or subsequent to the contract completion date.

Payments

1. The method of payment for this contract is "Lump Sum." Total compensation for work performed shall be the sum of \$ _____, plus approved adjustments.
2. The DISTRICT shall retain ten (10) percent of the amount billed monthly progress reports and monthly invoices for work accomplished to date.
3. The DISTRICT shall retain ten (10) percent of the amount billed until completion of the PROJECT to the satisfaction of the Director, Arizona Department of Water Resources and its acceptance of the work. Final payment shall be made as soon as possible after the date of acceptance.
4. When all work is delivered, accepted and approved as complete by the Arizona Department of Water Resources, the DISTRICT may prepare a report of audit clearance. Preparation of this report may require an audit examination of the AUDITOR'S records.

5. In the event this contract is abandoned or terminated prior to its completion, the AUDITOR shall be paid a portion of the total amount of the contract. The DISTRICT, after consideration of allowable costs incurred by the AUDITOR and other applicable factors, will determine an amount to be paid to the AUDITOR as a fair and equitable settlement.

Fiscal Limitation

The obligations for the expenditure of Public Funds incurred by DISTRICT are subject to the limitations set forth in Arizona Revised Statutes Sections 28-1823 through 28-1826.

Changes in Work

Significant changes in the scope, character, or complexity of the work may be negotiated if it is mutually agreed that such changes are desirable and necessary. Contract changes defining and limiting the work and compensation must be authorized by the DISTRICT.

Ownership of Data

The AUDITOR agrees to maintain (in sufficient detail, as will properly reflect all work done and results achieved in the performance of this CONTRACT) books, records, reports, research notes, charts, graphs, comments, computations, analyses, recordings, photographs, computer programs and documentation thereof, and other graphic or written data generated in connection with the work called for in the CONTRACT; all such information and documentation to be

termed "Data" shall become the property of the DISTRICT under this CONTRACT and, upon completion of CONTRACT, shall be promptly delivered to the DISTRICT.

Responsibility for Claims and Liabilities

The AUDITOR hereby agrees to save and hold harmless the DISTRICT, and of its departments, division, agencies, officers or employees may be obligated to pay by reason of liability imposed upon any of the above for damages arising out of the performance of professional services for the DISTRICT in the AUDITOR'S capacity as a professional firm, or caused by any error, negligence, omission or act of the AUDITOR or any person employed by him, or others for whose acts the AUDITOR is legally liable. The above sums shall include, in the event of any action, court costs, expenses of litigation and reasonable attorney's fees. This clause shall not be construed as requiring the AUDITOR to hold harmless the DISTRICT or its employees against claims which are the result of the sole negligence of the DISTRICT or its employees.

Insurance

The AUDITOR shall furnish certificates prior to commencement of the work described herein, showing insurance in force as follows:

1. Public Liability and Property Damage insurance in an amount not less than one million (\$1,000,000) dollars per occurrence. Such insurance shall include damages which may accrue to third parties, property owned by third parties, employees of the AUDITOR, employees of the DISTRICT, and the DISTRICT'S property and equipment.

2. Professional Liability insurance in an amount not less than one million dollars (\$1,000,000).

3. Valuable Papers insurance in an amount sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the work of the AUDITOR used in the completion of this contract.

Excepting the Professional Liability coverage, insurance certificates shall name both the AUDITOR and the DISTRICT as insureds.

Assignment

The contract may not be assigned by AUDITOR without prior written consent of DISTRICT.

Key Personnel

Changes in key personnel, as detailed in AUDITOR'S Proposal attached hereto, cannot be made without prior written approval of the DISTRICT.

Compliance with Laws

The AUDITOR shall comply with all Federal, State and local laws, ordinances, rules, and regulations applicable to the performance of this contract and the work hereunder, and shall comply with applicable laws and regulations governing safety, health and sanitation.

The AUDITOR shall procure all permits and licenses, pay all charges, fees, taxes and give all notices necessary and incidental to the due and lawful prosecution of the work.

Anti-Trust Violations

The AUDITOR and the DISTRICT recognize that in actual economic practice overcharges resulting from anti-trust violations are a face borne by the Purchaser or ultimate users; in this case, the DISTRICT. Therefore, AUDITOR acting as a vendor, hereby assigns to DISTRICT any and all claims for such overcharges.

Jurisdiction

This contract and all work hereunder shall be subject to the laws, rules, regulations and decrees of the State of Arizona. In the event of litigation between the AUDITOR and the DISTRICT, litigation shall be commenced and prosecuted in an appropriate court of competent jurisdiction within the State of Arizona.

Audit

The AUDITOR and any subcontractor shall grant DISTRICT'S duly authorized representative access to any books, documents, papers and records which are in any way pertinent to this contract for the purpose of making audit, examination excerpts and transcriptions.

Retention of Records

The AUDITOR and any subcontractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this contract, and shall make all such materials available to the DISTRICT, or its duly authorized representatives at any reasonable time during the term of work on the contract, and for three (3) years from the date of final payment to the AUDITOR by the DISTRICT for work performed hereunder.

Termination for Convenience

The DISTRICT, by written notice, may terminate this contract, in whole or in part, when it is deemed in the best interest of the DISTRICT. If this contract is so terminated, AUDITOR will be compensated for work performed up to the time of the termination notification. In no event shall payment for such costs exceed the current contract price.

Cancellation of State Contracts

All parties are hereby put on notice that this contract is subject to cancellation by the Governor pursuant to Arizona Revised Statutes Section 38-511.

Failure to Perform

Failure to perform any and all of the terms and conditions of this contract, including the schedule of work, shall be deemed a substantial breach thereof. The DISTRICT shall give the AUDITOR written notice thereof. After receipt of

such notice, the AUDITOR shall have five days in which to cure such failure. In the event the AUDITOR does not cure such failure, the DISTRICT may terminate this contract without further consideration by so notifying the AUDITOR in writing. In the event of cancellation of this Contract, AUDITOR shall not be entitled to damages and agrees not to sue DISTRICT for damages therefor. After notice of cancellation AUDITOR agrees to perform the terms and conditions of this contract up to and including the date of cancellation, as though no cancellation had been made and, notwithstanding other legal remedies which may be available to DISTRICT because of the cancellation, agrees to indemnify DISTRICT for its costs in procuring the services of a new Consultant.

Equal Opportunity

As applicable, the AUDITOR hereby agrees to comply with Title VI of the Civil Rights Act of 1964 and with Executive Order 75-5 issued by Governor Raul Castro on April 28, 1975, the provisions of which are herein incorporated by reference and made a part of this Agreement.

Covenant Against Contingent Fees

The AUDITOR warrants that it has not employed or retained any company or person, other than a bona fide employee working for the AUDITOR, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a fee, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the DISTRICT shall have the right to annul this agreement without liability, or, in its discretion to deduct from the agreement

price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Arbitration

The parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this agreement where the sole relief sought is monetary damages of \$15,000, or less, exclusive of interest and costs.

Notices

All notices or demands upon either party hereto by the other pursuant to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

To DISTRICT at:

To AUDITOR at:

or elsewhere as either party may from time to time designate by written notice to the other.

THIS CONTRACT shall become effective on date of execution by DISTRICT.

_____ COUNTY FLOOD CONTROL DISTRICT AUDITOR

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved As To Form:

Attorney For The District

Definitions and Citations

The following definitions are used in this document.

1. Affected Works - Any existing improvements, structures or utilities, the relocation, reconstruction, replacement or modification of which is rendered necessary by the construction of a flood control project, excepting any such works for which the relocation, reconstruction, or replacement is solely the responsibility of the Federal Government or required of the owner agency by law, franchise, or agreement.
2. Design Flood - Means a selected flood against which protection is provided, or eventually will be provided, by means of flood protective or control works. When a federal survey has been authorized the design flood will be determined by the appropriate federal agency and in all other cases it will be determined by the responsible public agency. It is the basis for design and operation of a particular project after full consideration of flood characteristics, frequencies, and potentials and economic and other practical considerations.
3. Designated Floodway - The channel of a stream and that portion of the adjoining floodplain required to reasonably provide for the construction of a project for passage of the design flood, including lands necessary for construction of project levees.
4. Federal Agency - Any administrative agency of the Federal Government which is responsible under federal law for construction of a flood control project.
5. Flood Control Project - Any project in whole, or in part, for the control of floods within the State; and (1) which has been authorized and approved for construction by the United States; (2) which has

been authorized for financial assistance by the State pursuant to the Flood Control Assistance Act; (3) for which financial assistance is required of sponsoring agencies by federal law; and (4) for which funds have been appropriated by the Legislature.

6. Lands, Easements and Rights-of-Way

(a) Lands and rights of interest in lands necessary for flood control storage, channel improvements and channel rectifications.

(b) Lands, rights or interests in lands necessary for the construction, operation or maintenance of such storage, channel improvements and rectifications, including those necessary for flowage purposes, spoil areas, borrow pits or for access roads.

(c) The cost of the relocation, reconstruction or replacement of existing improvements, structures or utilities rendered necessary by such channel improvements and rectifications.

(d) Land enhancement costs, if any, charged to a public agency by a federal agency in connection with construction of a flood control project.

7. Owner Agency - Any county, city, district, or other public or private agency or individual that is the owner, operator or in control of affected works.

8. Sponsor - Any county, city, district, State agency, or other public agency organized under the laws of this State, which is required by law to give and which has given to the Federal Government, assurances that local cooperation will be furnished in connection with a flood control project.