

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Guidance Letter No. 15, Credit for Utility Relocation Costs on Navigation Projects -- Modification to Existing Local Cooperation Agreements (LCA's)

1. References:

- a. Supplemental Appropriations Act of 1985, approved August 15, 1985, P.L. 99-88,
- b. Water Resources Development Act of 1986, P.L. 99-662,
- c. Water Resources Development Act of 1988, P.L. 100-676,
- d. EC 1165-2-144, dated 1 June 1987, Subject: "Policy Guidance for New Start Construction Projects,"
- e. CECW-RN Policy Guidance Letter No. 8, dated 19 May 1988 Subject: New Start Construction Projects--Responsibility for Utility Relocations on Harbor Projects,
- f. CECW-RN Policy Guidance Letter No. 9, dated 13 June 1988 Subject: New Start Construction Projects--Responsibility for Relocation and Removal of Structures and Facilities on Navigation Projects, and
- g. CECW-RN Policy Guidance Letter No. 13, dated 25 January 1989, Subject: Use of Federal Funds to Meet Local Cost Sharing Requirements.

2. Section 101(a) (2) of the Water Resources Development Act of 1986 (WRDA) (reference 1.b.) requires an additional 10 percent repayment from the non-Federal sponsor of the cost of the general navigation features for authorized harbor projects governed by the Act. The 10 percent repayment provision is in addition to the basic non-Federal payment formula established in Section 101(a)(1). Section 101(a)(2) permits the additional 10 percent repayment to be paid with interest over a period not to exceed 30 years. Section 101(a) (2) also allows for specific credits to be applied against the additional 10 percent non-Federal repayment (but not towards the initial non-Federal cost share established in Section 101(a)(1)). Eligible credits include the value of lands, easements, rights-of-way, relocations (other than utility relocations), and dredged material disposal areas necessary for an authorized harbor project. Subsequently, the exclusion of credits for utility relocations was removed by the WRDA of 1988, and that change is discussed below.

3. Section 13 of the WRDA of 1988 (reference 1.c.) amended the 1986 Act to allow credit for the non-Federal sponsor's costs of utility relocations when required for an authorized project. Accordingly, credit for costs of utility relocations are to be applied against the additional 10 percent repayment in the same manner as credits are allowed for the value of lands, easements rights-of-way, relocation, and dredged material disposal areas.

4. As a result, guidance contained in references 1.d., 1.e., and 1.f. is amended as follows:

- a. Reference 1.d., section 7.k., Policy on Relocations, subsection (2) (b) on Navigation-Port Projects, Utility Relocations. Delete the last sentence in its entirety and substitute the following: "Non-Federal sponsors can receive credit for utility relocations necessitated by the construction of the navigation project. However, in the case of a deep draft harbor (i.e., a project with authorized depth in excess of 45 feet), the sponsor would only be eligible for credit for its one-half of the cost of the utility relocations, in accordance with Section 101(a)(4) of the WRDA of 1986. (See Appendix A)." Accordingly, for Appendix A, section 1.a. (5), revise the last sentence so that it reads "Credit is allowed for the value of lands, easements, rights-of-way, relocations (including utilities) and dredged material disposal areas (LERRD) against this additional 10 percent repayment."
- b. Reference 1.e., paragraph 5: Delete in its entirety and substitute the following: "The local sponsor is not entitled to any credit for utility relocation costs against the cost sharing required in Section 101(a)(1). However, the local sponsor may receive credit for utility relocation costs against the additional 10 percent repayment required under Section 101 (a) (2); except that in the case of deep draft harbors, the credit would be limited to one-half of the cost of utility relocations, in accordance with Section 101(a)(4)."
- c. Reference 1.f., paragraph 3, 4th sentence: Delete in its entirety and substitute the following: "The local sponsor may be entitled to credit for any relocations, including utilities, against the additional 10 percent repayment required under Section 101(a) (2), even if the sponsor has not actually paid for the relocations itself or reimbursed the owner for the work, except in the case of deep draft harbors where the credit would be limited to one-half of the cost of utility relocations, as provided for in Section 101(a)(4)."

5. You will need to review those navigation projects having existing executed Local Cooperation Agreements (LCA's) to establish whether the LCA's should be modified to incorporate credit for utility relocations. The following will need to be determined:

- a. Are utility relocations involved in accomplishing the project? If yes, then consider item b.
- b. If there are utility relocations required by the project, the agreement should be modified to allow credit for these utility relocations against the additional 10 percent repayment in accordance with the instructions in paragraphs 6 and 7 below.

6. We have provided at enclosure 1 a list of harbor projects with executed cost sharing agreements which you should review as discussed above. Where modification of an agreement is required you should draft such a modification in coordination with the non-Federal sponsor. Enclosure 2 provides a sample modification to assist you in drafting a modification in this regard. Our sample modification agreement assumes the Model Agreement appended to reference 1.d. is the agreement being modified. Your draft modification should be submitted to CECW-RN for a coordinated HQUSACE and

OASA(CW) review and approval prior to seeking signature by the non-Federal sponsor and the Assistant Secretary of the Army (Civil Works).

7. You should also incorporate the provisions of Reference 1.g. (i.e., restrictions on use of other Federal funds to satisfy local sponsor cost sharing requirements) while you are drafting the modification to permit credit for utility relocations against the additional 10 percent repayment, as discussed above.

8. We have incorporated the policy revisions reflected in this letter in the upcoming ER 1165-2-131 and appended Model LCA's.

FOR THE COMMANDER:

2 Encls

PATRICK J. KELLY

Brigadier General, USA

Director of Civil Works

Navigation Projects

Potential Local Cooperation Agreements

Requiring Modification to Reflect Revised

Utility Relocations Crediting Policy

Fiscal Year 1985S

Baltimore Harbor

Barnegat Inlet

Freeport

Jonesport Harbor

Kill van Kull

Mississippi River Ship Channel

Mobile Harbor

Moriches Inlet

Norfolk Harbor

Port Ontario Harbor

Savannah Harbor

Tampa Harbor

Fiscal Year 1987

Black Warrior - Tombigbee

Delaware River

Ponce Harbor

Portsmouth Harbor

Fiscal Year 1988

Charleston Harbor *

* Modification can be reflected in Wando Supplemental LCA or reflected in basic Charleston Harbor LCA.

Enclosure 1

MODIFICATION NO. 1 TO THE AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND [FULL NAME OF LOCAL SPONSOR] FOR LOCAL COOPERATION ON THE [FULL NAME OF PROJECT] NAVIGATION PROJECT

THIS MODIFICATION, entered into this _____ day of [month] 19____, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), represented by the Assistant Secretary of the Army (Civil Works), and the [full name of local sponsor] (hereinafter referred to as the "Local Sponsor"),

WITNESSETH THAT:

WHEREAS, by an agreement dated [Month Day, Year], the Government and the [Local Sponsor] shall cooperate in the construction of the [full name of project], project (hereinafter referred to as the "Project"); and WHEREAS, the Congress of the United States, in the Water Resources Development Act of 1986 (Public Law 99-662), and the Water Resources Development Act of 1988 (Public Law 100-676), enacted into law changes in cost sharing applicable to the Project; and

WHEREAS, the Government and the Local Sponsor desire to amend the referenced agreement; NOW, THEREFORE, the parties agree to amend the referenced agreement as follows:

1. ARTICLE II - OBLIGATIONS OF THE PARTIES, Sections d. and e., page __, are deleted in their entirety and replaced with:

The Local Sponsor shall provide to the Government all lands, easements, and rights-of-way, including dredged material disposal areas, and perform, or assure performance of, all alterations and relocations of facilities and utilities (except relocations or alterations of highway bridges and railroad bridges), determined by the Government to be necessary for construction, operation, or maintenance of the Project. [IN THE CASE OF A DEEP-DRAFT HARBOR (AUTHORIZED FOR DEEPER THAN 45 FEET) PROJECT, ADD THE FOLLOWING: "One-half of the cost of utility relocations or alterations shall be borne by the Local Sponsor, and one-half shall be borne by the utility owner."]

2. ARTICLE II - OBLIGATIONS OF THE PARTIES, Add a new Section i. to read: No Federal funds may be used to meet the local sponsor share of project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the granting agency.

3. ARTICLE IV - VALUE OF LANDS AND FACILITIES, Section b., page __, delete in its entirety and replace with:

The costs of alterations or relocations of facilities and utilities incurred by the Local Sponsor that will be credited towards the additional 10 percent of total costs which the Local Sponsor must repay pursuant to Article II. g., of this Agreement shall be that portion of the actual costs determined as set forth below, and approved by the Government:

1. Highways: Only that portion of the cost as would be necessary to construct substitute highways to the design standard that the State of _____ would use in constructing a new highway under similar conditions of geography and traffic loads.

2. Facilities and Utilities: Actual relocation costs less depreciation, less salvage value, plus the cost of removal, less the cost of betterments. With respect to betterments, new materials shall not be used in any alteration or relocation if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be credited to the Local Sponsor's share.

4. ARTICLE IV - VALUE OF LANDS AND FACILITIES, Section c., page __, delete in its entirety and replace with:

Credit may be given for costs relating to alterations or relocations of utilities.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY THE LOCAL SPONSOR

BY: _____ BY: _____
[signature] [signature]

[typed name] [typed name]

[title in full] [title in full]

DATE: _____ DATE: _____