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| | Water Resources Policies and Authorities LOCAL COOPERATION AGREEMENTS FOR NEW START CONSTRUCTION PROJECTS | |
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DEPARTMENT OF ARMY
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No. 1165-2-131

15 April 1989

Water Resources Policies and Authorities
LOCAL COOPERATION AGREEMENTS FOR
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1. **Purpose.** This Engineer Regulation provides guidance on procedures and responsibilities for developing, submitting, and obtaining approval of Local Cooperation Agreements (LCAs) for specifically authorized new construction starts. This regulation does not apply to Continuing Authorities Projects.

2. **Applicability.** This regulation is applicable to all HQUSACE elements and all FOAs having Civil Works responsibilities.

3. **References.**

- a. P.L. 99-662, Water Resources Development Act of 1986.
- b. P.L. 100-676, Water Resources Development Act of 1988.
- c. ER 37-2-10: "Financial Administration, Accounting and Reporting - Civil Works Activities."
- d. ER 405-1-12: "Real Estate Handbook," Chapter 12, Local Cooperation."
- e. ER 1105-2-50: "Environmental Resources."
- f. ER 1165-2-18: "Reimbursement for Non-Federal Participation in Civil Works Projects."
- g. ER 1165-2-25: "Navigation Policy: Cost Apportionment of Bridge Alterations."
- h. ER 1165-2-29: "General Credit for Flood Control."
- i. ER 1165-2-30: "Acceptance and Return of Required, Contributed, or Advanced Funds for Construction or Operation."
- j. ER 1165-2-120: "Reimbursement for Advance Non-Federal Construction of Authorized Federal Harbor and Inland Harbor Improvements."

4. **Development of the LCA.**

a. **General.** LCA's are required for all authorized new start construction projects. For those projects to which the cost sharing provisions of P.L. 99-662 apply, an LCA must be executed between the local sponsor and the ASA(CW) prior to advertisement of the initial construction contract for the project. In addition, CECW-B will not allocate Federal construction funds for a project until ASA(CW) approves the financing plan and executes the LCA.

b. **Special Agreements.** In some instances a separate memorandum of understanding, memorandum of agreement, or similar

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arrangement may be proposed or required with another Federal agency to construct a usable element or feature of a new construction project. As in the case of LCA's, any such other agreement must be reviewed, approved, and executed by the ASA(CW) for the Department of the Army prior to the advertisement of any construction contract. Any proposal for such an agreement shall be submitted with the draft LCA for the project in accordance with the procedures set forth in paragraph 7 of this regulation.

c. Cost Sharing Applicability.

(1) **Cost Sharing for Navigation Projects (excluding inland navigation projects).** Section 101 (a)(1) of P.L. 99-662 sets forth new cost sharing requirements for navigation projects for harbors, inland harbors, or any separable element thereof, for which a contract for physical construction has not been awarded prior to the 17 November 1986 date of enactment of the Water Resources Development Act.

(2) **Cost Sharing for Flood Control and Other Purposes.** Section 103 of P.L. 99-662 specifies new cost sharing requirements for flood control projects and projects involving hydroelectric power, municipal and industrial water supply, agricultural water supply, recreation, hurricane and storm damage reduction, and aquatic plant control as project purposes. Subsection (e)(2) of Section 103 states that such cost sharing should not apply to the Yazoo Basin, MS Demonstration Erosion Control Program, authorized by P.L. 98-8, and for the Harlan, KY and Barbourville, KY elements of the project authorized by Section 202 of P.L. 96-367.

(3) **Cost Sharing for Unstarted Recreation Features.** The cost sharing provisions of Section 103 apply to any recreation features of projects on which physical construction was not initiated prior to April 30, 1986. Once funds have been budgeted for the recreation feature, the District Commander should negotiate an LCA with a local sponsor using as a guide the flood control model LCA contained as Appendix A to this regulation. An LCA package including a financing plan should be prepared consistent with the provisions of this regulation and submitted through the respective Division Office to CECW-O for processing to ASA(CW). The major change in the cost sharing of recreation features of authorized projects brought about by P.L. 99-662 is that the non-Federal cash requirements will now be made in proportion to the scheduled construction outlays on this project feature rather than being deferred until the recreation feature is completed and turned over to the local sponsor. Additionally, the value of Lands, Easements, Rights-of-Way, and Relocations (LERR) will be credited against the local sponsor's

fifty percent cost share. Accordingly, a Federal/non-Federal allocation of funds table should be prepared and included in the LCA package (see Appendix B.). This funding schedule should match the Feature 14 account on the PB-2a for the project and should also include associated E&D and S&A.

d. **Cost Sharing Policies.** Specific cost sharing policies for various project purposes are contained in a series of Engineer Circulars developed by CECW-RP which are updated annually.

e. **Pre-Construction Engineering and Design (PED) Costs.** All PED cost incurred subsequent to the feasibility study are considered a part of, and included in, the total project cost to be cost shared and included in the LCA. The PED costs to be repaid by the non-Federal sponsor are to be treated as a component of the first year construction costs and included in the non-Federal sponsor's first year cash requirements. An example of non-Federal sponsor's cash requirements for construction of a hypothetical structural flood control project is contained in Appendix B. The example includes the recovery of PED costs. On projects having separable elements, only those PED costs associated with the specific scheduled separable element will be included in the LCA for that element. PED costs for unscheduled elements are not cost shared unless and until those remaining elements are scheduled for construction. Additional guidance on PED costs is contained in separate guidance furnished by CECW-P.

f. **Drafting and Executing the LCA.**

(1) **General.** During the feasibility study, the full implications of the local cooperation requirements are discussed with the sponsor within the context of the current Model LCA. The first draft LCA, however, is prepared by the District Commander in conjunction with the local sponsor after completion of the feasibility phase and after funds are allotted to initiate PED. In all cases, the general design memorandum (GDM) for the project shall include the draft LCA. Ideally, the LCA will require only minor changes once the project is budgeted as a construction new start. No commitments relating to a construction schedule or specific provisions of the LCA can be made to the local sponsor on any aspect of a project or separable element until:

(a) The GDM is approved by the Division and reviewed by HQUSACE or approved by HQUSACE, as appropriate;

(b) The project is budgeted as a new Construction Start or construction funds are added by Congress, apportioned by OMB, and their allocation is approved by ASA(CW); and

(c) The draft LCA has been reviewed and approved by the OASA(CW).

(2) **Relationship to Scheduling Work and Funds.** Development of the LCA should occur consistent with the District Commander's goal to achieve a realistic study, construction, and funding schedule, to include early development of a forecast final cost estimate for construction based upon seamless (continuous) funding from initiation of the Feasibility Phase through completion of PED for cost shared projects. The non-Federal sponsor should be made aware of the required investment decision points associated with project authorization and construction funding. Early LCA negotiations and provision of a forecast final construction cost estimate facilitates: (a) a clear understanding and acceptance of Federal and non-Federal roles and responsibilities in implementing the project, (b) a solid basis by which the non-Federal sponsor can arrange financing to support an achievable construction and funding schedule, and hence, (c) an implementable project that meets the budget criteria for selection as a new start.

(3) **Execution.** Once a project has been selected as a new construction start, the District Commander shall begin final negotiations with the local sponsor and submit the draft LCA package (see paragraph 7.a.) for review by HQUSACE and approval by the ASA(CW). All LCA's covered by this regulation are to be signed by the local sponsor and the ASA(CW). The ASA(CW) will sign the LCA after the Agreement is signed by the local sponsor or concurrently with the sponsor at a signing ceremony. LCA's will be executed only after the GDM for the project is approved and an Appropriations Bill containing funds for the project is enacted into Law. However, an objective will be to obtain final approval of the LCA by the ASA(CW) and OMB between release of the President's budget and budget mark-up by the Congressional Appropriations Committees. Generally, this means that the GDM would be complete by the time the President makes his budget submission to Congress. With an approved GDM, processing and approval of the LCA can occur as soon as the project has been budgeted as a new construction start. All LCAs on budgeted New Construction Starts will then be ready to be signed when the initial construction funds are appropriated. For other potential new start candidates which have not been included in the President's budget, LCA's will be approved only after funds for such projects are specifically added by Congress and their allocation is approved by ASA(CW). Appendix C contains a flow diagram which depicts the new process. Construction can commence with the allocation of construction funds during the first quarter of the fiscal year. However, Federal construction funds will not be released for a project until the LCA is fully executed including approval of the financing plan by ASA(CW).

(4) **Separable Elements of Ongoing Construction Projects, Resumptions, and Unstarted Projects Previously Funded for Construction.**

The guidance contained in (3) above is also applicable to separable elements of ongoing construction projects, resumptions, and unstarted projects previously funded for construction. However, the budget requests for these projects or separable elements are very likely based on specific DM's or reevaluation reports because the GDM's for the parent projects are outdated. Furthermore, the feasibility reports for these projects/separable elements were in all likelihood accomplished at 100 percent Federal cost and as a result the projects have not previously been subject to any type of cost sharing market test under the cost sharing and financing provisions of P.L. 99-662. Therefore, while the development of a preliminary draft LCA may be undertaken during accomplishment of the specific DM or reevaluation report, it is especially important that no commitments relative to a construction schedule or specific provisions of the LCA be made to the local sponsor on any aspect of a project or separable element until:

(a) The DM or reevaluation report is approved by the Division and reviewed by HQUSACE or approved by HQUSACE as appropriate;

(b) The project/separable element is budgeted as a new work recommendation or construction funds are added by Congress and such allocations are approved by ASA(CW); and

(c) The draft LCA has been reviewed and approved by the OASA(CW).

(5) LCA Relationship to Engineering Technical Reports. In all cases for separable elements of ongoing construction projects, resumptions, and unstarted projects previously funded for construction, the specific DM's or reevaluation reports must readily:

(a) Serve as the basis for understanding and confirming the economic justification of the project and the breakdown of Federal and non-Federal project responsibilities;

(b) Provide a technical description of the project to be constructed; and

(c) Attest to the satisfaction of "NEPA requirements."

(6) **Congressional Adds.** Special instructions from CECW-B and/or CECW-RN will be provided relating to the development of draft LCA's for unbudgeted new start Congressional adds once they have

been approved by ASA(CW) for construction. These instructions will supplement the general guidance provided above.

g. **Ability to Pay--Flood Control Projects.** For all projects with flood control outputs, a "Whereas" clause shall be included in the LCA indicating that an ability to pay analysis was performed for the project and indicating whether the project is eligible for any reduction in the non-Federal cost sharing requirements as a result of the Ability to Pay analysis. Section 103(m) of P.L. 99-662 requires that any cost sharing agreement under Title 1 for flood control be subject to the ability of the non-Federal sponsor to pay. The ability of a non-Federal sponsor to pay shall be determined at the time of LCA development in accordance with procedures established by the ASA(CW). A further analysis of a local sponsor's "ability to pay" will not be made once the LCA for a project is executed. The procedures for applying the ability to pay analysis are published in 33 C.F.R., sections 241.1 - 241.6, entitled, "Flood Control Cost Sharing Requirements Under the Ability to Pay Provision." The model flood control agreement (Appendix A) contains contract language for projects for which (a) there is no cost sharing reduction under Section 103(m); and (b) where there is a cost sharing reduction as a result of the Ability to Pay Test.

h. **Cost Sharing Waiver for the Territories.** Local cost sharing requirements for all studies and projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territories of the Pacific Islands, will be reduced, up to \$200,000 for each study and project in accordance with Section 1156 of P.L. 99-662. Cost sharing for such studies and projects will be established using the general cost sharing criteria. The non-Federal cost for each study and/or project will then be reduced by \$200,000 or to zero if the non-Federal share is less than \$200,000. Waivers for studies and projects are considered separately. If the waiver for a study is less than the \$200,000 maximum, there is no "balance" remaining for transfer to a project waiver.

i. **Cost Sharing for Cultural Resources.** There may be instances where a project authorization does not contemplate and specifically provide for Federal and non-Federal cost sharing in connection with the preservation of (pre)historic properties and such properties are encountered after authorization of the project for construction. When such properties are encountered, all inventory, mitigation, and/or recovery costs associated with preservation shall be 100 percent Federal non-reimbursable costs up to the limit of one percent of the total Federal Appropriation required for construction, as provided in Section 7(a) the Archeological and Historic Data Preservation Act of 1974, P.L. 93-291.

If these costs will exceed the one percent limit, the District shall submit a waiver request through Division to HQUSACE (CECW-PP) for OASA(CW) approval with a recommendation for appropriate cost sharing. Additional guidance on cost sharing for cultural resources will be provided by CECW-RP in separate guidance.

5. **Budgeting and Accounting.**

a. **Integration with Budgetary Process.** The District Commander will fully inform the project sponsor on how funding of a project must be integrated into the Department of the Army's budget process in accordance with the annual program and budget request for Civil Works activities. The Civil Works program must be developed within the Administration's multi-year budget ceilings and within obligation ceilings for construction imposed by Congress. Currently there are such obligation ceilings prescribed in Section 901 of PL 99-662 for Fiscal Years 1989, 1990, and 1991.

b. **Budgetary Priorities.** For a project to be considered as a budgeted new construction start, it must meet the budgetary criteria contained in the annual program and budget EC released by CECW-B about March of each year.

c. **Release of Budgetary Information.** Budgetary information cannot be furnished to the local sponsor until the President releases his budget to Congress. However, the District Commander should be working with the local sponsor prior to a project being budgeted to insure that an optimum construction schedule is developed recognizing the local sponsor's financial capabilities and ability to acquire LERR, as well as Federal budgetary constraints. To assist in this process, preliminary project cost estimates and preliminary construction schedules and funding requirements can be made available to the local sponsor as long as budget recommendations developed for the budget year and following fiscal years are not made available outside the Department of the Army prior to the release of the President's budget. Further, detailed project schedules (PB2a's) can be made available to the local sponsor once the President's budget has been released. This same procedure should be used during each fiscal year to revise the project schedule and coordinate funding requirements with the local sponsor as appropriate.

d. **Cost Accounting Procedures.** Procedures currently used to track costs assignable to project sponsors and to the Federal share will be consistent with those used for "traditional" project cost accounting. CERM-FA is currently developing

procedures to be used for cost accounting on cost shared projects. Until those procedures are developed, procedures contained in Chapter 6, paragraphs 7 and 8 of ER 37-2-10 should continue to be followed.

e. **Non-Federal Costs.** Credit will be allowed for reasonable costs incurred by non-Federal sponsors which are directly related to the implementation of the authorized project, and which are included by the Federal Government as part of 'total project costs' as shown on the approved project cost estimate (PB-3). This policy means that project sponsors will be reimbursed or otherwise given credit for those reasonable direct and indirect costs which are properly allowable and allocable to their accomplishment of the non-Federal responsibilities for the project. Procedures for determining allowability of such costs are contained in OMB Circular No. A-87, Cost Principles for State and Local Governments.

f. **Maintaining Adequate Records.** The Government and the Local Sponsor shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred to execute the authorized project in such detail as will properly reflect total project costs. Both parties shall maintain such books, records, documents, and other evidence for inspections and audit by authorized representatives from either party. Section 10 of P.L. 100-676 requires the Secretary of Army to furnish periodic statements of project expenditures to project sponsors upon their request. Such statements shall include an estimate of all Federal and non-Federal funds expended by the District and a schedule of anticipated expenditures during the remaining period of construction.

g. **Audit Requirements.** The Government and the Local Sponsor shall make available at their offices at reasonable times, such books, records, documents and other evidence for inspection and audit by authorized representatives of each party to an LCA. The Government shall conduct such audits of the Local Sponsor's records for a project, as are appropriate, to ascertain the allowability, reasonableness, and allocability of its costs for inclusion as credit against the non-Federal share of project costs. Costs of the audit will be included in total project costs and cost shared accordingly. If the Local Sponsor is involved in an audit program governed by the Single Audit Act (P.L. 98-502), then the local sponsor is encouraged to include its records for the project with those records being tested for major Federal Assistance Programs. The Corps of Engineers will not duplicate audit work performed under the Single Audit Act

provisions. Any supplementary audit work conducted by the Corps of Engineers shall utilize the single audit findings. The costs of a supplementary audit will be included in total project costs and cost shared accordingly.

6. **Negotiability.**

a. **General.**

(1) LCA's are legally binding agreements that set forth the terms of the relationship between the Federal Government and a local sponsor interested in development of a water resources project. The negotiability of any LCA provision depends upon whether the item is specified by law, required to support an important Federal policy not related solely to water resources development, or needed to ensure consistency and uniformity among generic types of projects.

(2) All signed LCA's must reflect the project requirements set forth in P.L. 99-662 and any specific requirements set forth in individual project authorization. For those projects authorized by P.L. 99-662, these requirements are one and the same. LCA's that do not reflect the cost sharing requirements of P.L. 99-662, and any additional requirements contained in the law authorizing the project, will not be approved by the ASA(CW). Further, if a sponsor lacks the legal capability to provide the required cooperation and is not willing or able to obtain the necessary authority, an LCA cannot be executed. In recognition of this fact, no deviation whatsoever will be accepted to the "Certificate of Authority" contained as Exhibit A to the model LCA's or to the Release of Claims Article of the model LCA's. (See Appendices A and D.).

(3) Certain standard clauses--the so-called "boilerplate" provisions, reflect important Federal socioeconomic or contracting policies and are not subject to negotiation. Such provisions include participation in and compliance with applicable Federal flood plain management and flood insurance programs, compliance with the civil rights laws, project description, and the "Officials Not To Benefit" clause.

b. **Project Scope.**

(1) **General.** Before drafting of an LCA can begin, the Government and the sponsor should agree on two items: the scope of the project to be constructed; and the specific work to be covered by the LCA. Normally these items will be identical, but in some cases there could be substantial differences. The District Commander should obtain an

LCA for the project described in the GDM or latest Corps report, as appropriate. The project description section of the draft LCA must fully describe the project to be constructed and any underlying or baseline conditions that must be in place for the project to function as designed. Further, the "Obligations of Parties" section of the draft LCA must fully describe the respective responsibilities of the Government and the local sponsor as set forth in the authorizing documents. If the local sponsor's proposal differs from the project included in the President's budget, the District Commander may preliminarily negotiate project changes to the extent that the project remains consistent with the authorization and with Principles and Guidelines (P&G). The District Commander must ensure, however, that the local sponsor understands that final decisions concerning such changes rest with ASA(CW). If the modified project is not consistent with the authorization, the District Commander should inform the sponsor that additional authority is required and that an LCA is premature. In any event, negotiation of a deviation from the NED plan will require ASA(CW) approval, a requirement which applies to both reductions and increases in scope. Ideally, any such changes in project scope would be addressed in the GDM or latest Corps report accompanying the final draft LCA package. If the proposal is not consistent with the GDM or latest Corps report, a Letter Report should be prepared to accompany the revised draft LCA for the purpose of securing ASA(CW) approval to deviate from the previously approved plan.

(2) **Reduced Scope.** If the project sponsor desires a project of lesser scope than the current approved plan, its initial acceptability must be measured against established guidelines, (e.g., economic efficiency, safety, environmental acceptability, completeness, effectiveness, etc.). Since reductions in project scope will almost always be an attempt to reduce initial capital cost, care must be taken to ensure that the resulting project does not result in future uneconomic levels of maintenance and repair or potentially unsafe conditions.

(3) **Increased Scope.** In some cases, local interests may prefer a plan that is larger than the recommended plan even though sufficient justification for Federal participation cannot be developed. The locally preferred plan could be an extension of the project, a larger integral project (i.e., higher degrees of protection) or a completely different plan. A typical reason for preferring another plan would be for economic development beyond that supportable by an analysis of NED benefits. The locally preferred project may be considered for implementation by the Corps if the locally preferred project is in compliance with Federal rules and statutes applicable to the Corps of Engineers developed project. In addition, the outputs from the locally

preferred plan must approximate, or be greater than the outputs from the plan that would have been recommended. The Federal participation is limited by what the Federal share of the recommended plan would have been.

(4) **Request for Additional Work on a Reimbursable Basis.** During negotiation of a draft LCA, the local sponsor may request that the scope of the scheduled work be increased to satisfy some local requirement or need. Such requests may be accommodated through the LCA process if the local sponsor is willing to provide 100 percent of the extra funding in advance of award of construction contracts for the additional work. However, a full explanation of the additional work to be performed and the justification for undertaking the work should be included in the transmittal letter of the final draft LCA package to HQUSACE. Work performed under this subparagraph should not be included in the total project costs and, therefore, will not be considered part of the Federal project.

c. **Separable Elements.**

(1) **General.** Section 103(f) of P.L. 99-662 defines separable element as a portion of a project:

(a) which is physically separable from other elements of the project, and

(b) which (1) achieves hydrologic effects or (2) produces physical or economic benefits that are separately identifiable from those produced by other portions of the project.

(2) **Development of Local Cooperation Agreements.** Draft LCA packages (including financing plans) should be prepared for all budgeted separable elements of ongoing construction projects, resummptions, and unstarted projects previously funded for construction. If the local sponsor desires to proceed with an element of an authorized project, a draft LCA can be developed on that basis as long as the element to be developed meets the definition of a separable element as contained in Section 103(f) of P.L. 99-662. Care must be taken, however, to insure that the element to be pursued can stand alone, is incrementally justified, and its construction will not adversely impact the engineering and economic feasibility of the remainder of the project.

d. **Project Cost Estimates.** Section 902 of P.L. 99-662 and Section 3 of P.L. 100-676 limit the total project cost for those projects authorized in these Acts and subsequent project authorizations to the authorized project cost. These project cost limitations may be

increased by the Secretary for modifications which do not materially alter the scope or function of the project authorized, but not by more than 20 percent of the authorized amount. The project cost limitations are to be automatically increased to account for inflation. The limit on total project cost growth expresses the concern of Congress for accurate project cost estimates and the subsequent management of cost growth. Every effort should be made to develop and document firm, updated, and accurate project cost estimates prior to negotiating a draft LCA with a local sponsor. Unexpected increases in project costs could have detrimental effects on the financial capability of the local sponsor to participate in the project. Therefore, to ensure understanding between the District and the local sponsor, District Commanders are encouraged to coordinate with local sponsors on the development of estimated total project costs on a regular basis to include a forecast final cost estimate (including inflation) based on an assumed design and construction schedule. The forecast final cost estimate, including inflation, is the estimate that is to be inserted in ARTICLE VI, METHOD OF PAYMENT, of the LCA under development. District Commanders are further encouraged to include a project cost engineer on the interdisciplinary team developing the LCA so that the elements which comprise the total project costs can be understood and explained to the local sponsor.

e. **Project Cost Increases after LCA Execution.** It is recognized that in spite of every effort to the contrary, project costs may increase after the LCA is executed. Accordingly, close coordination must be maintained with the local sponsor on all aspects of the project even after execution of the LCA. At the request of the local sponsor, the District Commander may include language in the Termination and Suspension article of the draft LCA to recognize the possibility of future project cost increases (i.e., "Cost Cap Clause"). This would allow the local sponsor the ability to request the District Commander to defer the award of any construction contract for the project which would result in total obligations and expenditures exceeding an agreed upon dollar amount. However, this amount cannot be less than the estimated cost of the project as reflected in the LCA. If the cost cap would be exceeded by the award of a contract and the local sponsor requests deferral of the award, the District Commander and local sponsor must develop a mutually agreeable procedure to resolve the inability to award remaining contract(s) on the project or to terminate work. In those cases where the cost cap would be exceeded, and the matter cannot be simply resolved by the local sponsor securing additional funds, the District Commander should transmit through the Division Commander

to HQUSACE (Attn: CECW-RN) for approval the proposed procedure to complete the project or terminate the work. It should be noted that cost caps can be applied to the award of future contracts but not to overruns or other cost increases pertaining to ongoing contracts already awarded by the District Commander.

f. **Federal Obligation to Complete Projects.** Although the Federal Government, when entering into an agreement to construct a water resources project, fully intends to complete the project, unforeseen circumstances can occur which would preclude the Federal Government from continuing the project as scheduled. The Federal Government cannot, therefore, guarantee completion. An LCA, therefore, will not contain any provision that could be viewed as imposing on the Government an absolute requirement to expend future appropriations on the project. Because a sponsor may need to satisfy outside interests that there is a significant likelihood of project completion, it may insist on provisions that the Government simply cannot accept. In such cases, the District Commander should assure the sponsor that the Government will use its best efforts to seek continued funding to complete the project.

g. **Construction Scheduling and Contracting.**

(1) **Construction Phasing.** Where phased construction is feasible and justified, the District Commander may contract for construction of the project in usable increments so project benefits are available at the earliest possible time. Construction phasing is presently used where incremental benefits are possible; however, the District Commander should advise the sponsor that incremental construction may increase total project costs, and therefore, could affect the economic justification for the project. As a general principle, the District Commander should work with the sponsor in order to maximize net economic benefits of the project.

(2) **Timing to Accommodate Sponsor's Funding Capability.** The primary factor controlling the initiation of construction will be the availability of Federal and non-Federal funds. Because substantial non-Federal funds will be needed, the capability of the local sponsor to supply those funds in a timely manner during construction will have a significant impact on construction scheduling. The District Commander may negotiate changes to the construction schedule, including acceleration, delays, or changes in the sequence of construction to accommodate the local sponsor's needs, provided the resulting schedule remains reasonable, efficient and does not significantly increase project costs. All changes are subject to review and approval by

CECW-B. The District Commander may also negotiate mechanisms to resolve funding problems which arise during construction as a result of contract acceleration, modifications, or slippages. Should such administrative claims require modifications of the LCA, such must be reviewed and approved by ASA(CW).

(3) **Firmness of Construction Schedules.** Sponsors may desire development of firm construction schedules. The Contracting Officer can include in the LCA, a statement that the Government will use its best efforts to complete the project on schedule. He may not agree, however, to any LCA provision that could be construed as a guarantee that the project will be constructed in accordance with any firm schedule. In this regard, our experience with schedules embodied in the LCA's that have been signed under the new cost sharing formulas is that many have been too optimistic. The problem frequently is our assumption that land will be available on, or relocations complete on, a schedule that is consistent with our ability to complete design and award construction contracts.

h. **Issues of Sponsorship.**

(1) **Definition.** In accordance with Section 221 of the 1970 Flood Control Act, a local sponsor must be a non-Federal interest which is defined in law as "a legally constituted public body with full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform." A local sponsor may be a State, County, City, Town, or any other political subpart of a State or group of States and includes any interstate agency and port authority established under a compact entered into between two or more states with the consent of Congress under Section 15 of Article 1 of the Constitution (e.g., Virginia Port Authority, Alabama State Docks Department, St. Tammany Levee District, Port Authority of New York and New Jersey, etc.) that has the legal and financial authority and capability to provide the necessary cash contributions and lands, easements, rights-of-way, and relocations necessary to construct the project.

(2) **Multiple Non-Federal Interests.**

(a) **General.** For those projects which have multiple non-Federal interests, the preferred option would be for one non-Federal sponsor to be designated to take the lead and to be responsible for executing the LCA with the Department of the Army. Execution of the LCA would not, however, take place until the necessary subagreements with other non-Federal interests have been signed.

(b) Third-Party Agreements. For those projects which rely on a "third party" agreement (i.e., an agreement between a local sponsor and a non-Federal interest which is not a signator to the LCA) for implementation in addition to an LCA, the third party agreement must be provided in the draft LCA package submitted to HQUSACE for review by HQUSACE and OASA (CW). Normally, third party agreements should be signed by the parties prior to the ASA(CW)'s signature on the approved LCA.

(3) Non-Federal Sponsors - Obligation of Future Appropriations.

(a) Some States have constitutional or statutory prohibitions against obligating future appropriations. Such states have been unable to enter into LCA's because Section 221 of the 1970 Flood Control Act, as enacted, does not permit States to condition their performance on the availability of future appropriations. Section 912 of P.L. 99-662 amends Section 221 by providing that:

In any (221) agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future State legislative appropriations for such performance and payment when obligating future appropriations would be inconsistent with State constitutional or statutory limitations.

(b) This provision provides relief to those States which are precluded by their constitution or statutes from fiscally obligating the appropriations of future legislatures. This provision applies only to direct appropriations made by state legislatures and does not affect other funding sources which may be available to a project sponsor. The provision does not relieve a State from its financial obligations entered into by signing an LCA. If future State appropriations do not adequately cover its financial obligations, other sources of revenue must be obtained by the State to fully meet its commitments in the executed LCA.

(c) The limitation of this provision should be fully explained to the local sponsor, and included in an LCA only if requested by the local sponsor and if it is determined by the District that the sponsor is deriving its funds directly from State legislative appropriations and the State is limited by its constitution or by

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State statutes from committing future State legislative appropriations. Under such conditions, an ARTICLE entitled OBLIGATION OF FUTURE APPROPRIATIONS may be added to the LCA as follows: "Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the [Legislature] of the State of []."

(4) As indicated in paragraph 6.e., Local Sponsors may request that a cost cap be placed in the LCA which would limit their ultimate financial obligation under terms of the LCA. Under no circumstances can a local sponsor limit its LERRD obligation. However, if the local sponsor requests it, a cost cap can be placed in the LCA under the TERMINATION OR SUSPENSION ARTICLE. This cap would limit the level of financial obligation that a local sponsor would incur to a level over the current project cost estimate. Under terms of this limitation, if the award of the next construction contract would exceed the amount of the cap, work cannot proceed unless both parties agree. If requested by the local sponsor, the following paragraph may be added to the TERMINATION OR SUSPENSION ARTICLE (terms in brackets to be selected based on project type under consideration):

Notwithstanding any other provision of this Agreement, if the award of any contract for construction of the [general navigation features of the] Project would result in the total obligations and expenditures for construction of the [general navigation features] [Project] exceeding \$_____ the award of that contract and subsequent contracts shall be deferred until such times as both parties to this Agreement agree to resume construction of the [general navigation features.] [Project.]

i. **Compliance with Flood Plain Management Regulations.** In the development of a draft LCA for a flood control or shoreline protection project, the District Commander should inform the local sponsor that it will be required, as a matter of local cooperation, to agree to participate in and comply with any applicable Federal flood plain management and flood insurance programs. The LCA should further indicate that the local sponsor will insure that any development in the project area will not adversely affect the physical integrity of the project or adversely affect the designed operation of the project. Such requirements as contained in the authorizing documents for the project should also be enumerated in ARTICLE II - OBLIGATIONS OF PARTIES, of the LCA.

7. **Procedures and Responsibilities.**

a. **District Responsibilities.**

(1) **Negotiation.** Once the GDM for the project is approved and the project is budgeted as a new construction start, the District Commander is responsible for negotiating and obtaining a draft LCA for review by HQUSACE and ultimate approval and execution by the ASA(CW). Such negotiations must be conducted so as to not commit the District Commander to a position unacceptable to the Chief of Engineers or the ASA(CW).

(a) Draft LCA's should be developed using the model agreements contained as Appendices A and D to this ER. When deviations from the models are felt appropriate due to the particular circumstances of the project or the local sponsor, those deviations should be highlighted and the rationale for the deviation should be furnished in the transmittal of the LCA package to HQUSACE. Model provisions should be followed to the greatest extent possible.

(b) If negotiations have proceeded with a local sponsor using a model agreement contained in EC 1165-2-144, dated 1 June 1987, and it is not possible to renegotiate the agreement, the model agreement contained in the EC may be used. However, the transmittal of the LCA package to HQUSACE should indicate that the negotiated draft LCA is based on the previous model agreements and the reason why conformance with the new model language is not recommended. It is suggested that this fact be conveyed to HQUSACE prior to actual transmittal of the LCA.

(2) **Interdisciplinary Teams.** HQUSACE uses an interdisciplinary team through the LCA Review Committee to facilitate the review and approval process for draft agreements at the Washington level. Because of the complexity of LCA's, FOA's are encouraged to establish an interdisciplinary team to develop the LCA. The interdisciplinary team should consist of the Project Manager and representatives from Planning, Audit, Engineering, Construction, Operations, Real Estate, Counsel, Programs, and Resource Management. The District Commander should select from this team those individuals who would conduct the negotiations with the non-Federal sponsor.

(3) **District Review.** The entire LCA package should be fully coordinated within the District prior to transmittal to the Division Commander. Draft LCA's shall be reviewed by the District Counsel for legal sufficiency prior to being transmitted to HQUSACE through the Division Commander. A certification

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signed by the District Counsel verifying that the District Office of Counsel has fully reviewed the draft LCA must be included with the LCA package.

(4) **Submission Requirements.** The complete LCA package shall include the draft LCA (including exhibits), milestone schedule, financial analysis, determination of the ability to pay for flood control projects, the sponsor's statement of financial capability (see Paragraph 8), an updated Detailed Project Schedule (ENG Form 2201a (PB 2a)) showing the Federal and non-Federal funding schedule, fact sheet, Federal/non-Federal allocation of funds (See Appendix B.), and the General Design Memorandum or latest Corps report providing the technical and economic basis for the project to be included in the LCA. The complete LCA package should be forwarded to the Division Commander for review. The cover letter transmitting the package to the Division Commander should list all deviations from the appropriate model LCA and provide the rationale for any deviation. It is imperative that all information contained in the LCA package be consistent and current. For instance, the estimated total project cost and non-Federal cash requirements shown in the draft LCA should be consistent with that shown in the project fact sheet, PB2a, and latest monthly life cycle management report. If the information presented is not consistent, the draft LCA package will be returned to the Division Office for revision. Further coordination between District and Division Commanders with HQUSACE should follow the point of contact procedures described in paragraph 7.c. of this regulation.

b. **Division Responsibilities.** The Division Commander should review the LCA package and transmit 12 copies of the package as received from the District together with his comments to CECW-RN for review and full coordination with all appropriate elements within HQUSACE.

c. **HQUSACE Responsibilities.** The processing procedures for LCA's within HQUSACE are shown in Appendix E. Draft LCA packages including financing plans should be submitted to CECW-RN which will serve as the point of contact throughout the HQUSACE review and approval process. CECW-RN also maintains a comprehensive data base on the status of all LCA's for regularly authorized new construction starts and separable elements. This data base has been available to all Division offices since 1 October 1987. The information is furnished via ONTYME the first and the fifteenth of each month. District offices can be linked to this telenet at their request. Following the approval of the draft LCA by OASA(CW), the approved draft agreement is sent to the Division and District Commanders by ON-TYME mail. Upon receipt of the draft agreement, the District should:

(1) Prepare copies of the approved LCA to be signed by both the local sponsor and ASA(CW). A minimum of four originals should be prepared for signature. Two originals will be kept by the District and two originals returned to the sponsor after execution by the ASA(CW).

(2) Obtain necessary signatures on all copies of the LCA and certificates of Authority. The non-Federal sponsor should be instructed to date the LCA at the time it signs the Agreements. (Exhibit A to the LCA).

(3) Forward all copies of the LCA signed by the local sponsor to CECW-RN for transmittal to ASA(CW) for signature.

d. **Signing Ceremony.** Should a signing ceremony be desired, the FOA and the local sponsor are responsible for organizing this event. This includes coordination with the appropriate regional Assistant Director of Civil Works on the scheduling of a date for a ceremony which is mutually agreeable to all affected parties. No commitments for the ASA(CW) to appear at a signing ceremony should be made until after coordination with OASA(CW). Whenever possible, interest in a signing ceremony should be addressed in the cover letter transmitting the LCA package to HQUSACE and should identify the Congressional District in which the project is located and the names of affected Congressional Representatives.

8. **Financial Capability of the Local Sponsor.**

a. **Financial Analysis.** An analysis of a local sponsor's financial capability to participate in a project is required for any project which involves non-Federal cost sharing. The purpose of the financial analysis is to ensure that the non-Federal sponsor has a reasonable and implementable plan for meeting its financial commitment. The financial analysis should include the non-Federal sponsor's statement of financial capability, its financing plan, and the District Commander's assessment of the non-Federal sponsor's financial capability. Financial considerations can be expected to affect project scale as well as construction, scheduling, and phasing. A financial analysis should accompany all draft LCA's which are submitted to HQUSACE and should be sent to HQUSACE (ATTN: CECW-RN).

b. **Schedule of Non-Federal Payments.** Section 101(d) of P.L. 99-662 requires that the non-Federal share of a harbor project be paid to the Government and that the non-Federal payments be made during construction on an annual basis beginning no later than one year after construction is initiated. Section

103(1) of P.L. 99-662 further provides that the ASA(CW) may permit delay of the first year's payment up to one year from initiation of construction on harbor projects as well as projects involving flood control and other purposes. Any such delays are subject to interest charges for up to six months at a rate determined by the Secretary of the Treasury. A proposal by the non-Federal sponsor for a delay of the first year's payment must be approved by the ASA(CW). Documentation and justification must be part of the LCA package to support the delay and must include a repayment schedule for the non-Federal share. (See also paragraph 9.a.(3) and 9.d.(2)(e).)

9. Cost Sharing Policy and the Provision of Non-Federal Funds.

a. **General.** The non-Federal cost sharing and financing responsibilities contained in P.L. 99-662 are summarized in Appendix F. Appendix G provides additional guidance on computing cost sharing for navigation projects.

(1) The LCA shall provide that prior to the obligation of Federal funds for the construction of the project, the local sponsor shall have either paid directly to the Government its share of the estimated total project costs or placed those funds without the control of the project sponsor in an escrow account or other account deemed acceptable to the Government or otherwise provided some irrevocable commitment of payment.

(2) The non-Federal sponsor has considerable flexibility to determine whether to make the total estimated non-Federal share of construction costs available at the beginning of construction or to provide its share of construction costs incrementally over the period of construction. Non-Federal funds should be available to the Contracting Officer for deposit in the Treasury prior to the award of each construction contract. The non-Federal sponsor is not required to provide the total estimated non-Federal share for construction of the total project before construction begins unless the project will be constructed under a single contract, obligated in full at the beginning of construction. To the extent possible, structural projects should be constructed in a way that permits an incremental obligation of funds, both Federal and non-Federal, and cash contributions should be provided in the same proportion. Therefore, the non-Federal cash contribution should be provided in the same proportion as the scheduled construction (see Appendix B).

(3) During the LCA negotiating process, available options should be explained to the local sponsor. The sponsor should indicate whether it prefers to make the total estimated non-Federal share available at the beginning of construction,

incrementally during the period of construction, or, in certain circumstances, after construction has been completed. Post-construction or deferred payments are only permitted in limited circumstances. During the payment negotiation process, the District Commander should make every effort to secure provisions for full payment during the construction period beginning with the first year of construction. (See paragraphs 9.d.(1) and 9.d.(3).) The District Commander may enter into discussions with the project sponsor about deferred payments, but shall not commit to a deferred payment plan without the approval of ASA(CW).

(a) Deferral of the first year payment by ASA(CW) will be allowed only when extenuating circumstances can be documented. A request to negotiate a deferred payment plan should be submitted to HQUSACE(CECW-RN) for approval by ASA(CW) as soon as the local sponsor gives evidence that its circumstances warrant consideration of a deferred payment plan. When deferred payment is approved, the amount on which payment is calculated will include interest. Appendix B, page B-2, provides an illustration for computing interest on a deferred payment plan. (See also paragraphs 8.b. and 9.d.(2)(e).)

(b) On commercial navigation projects, the provisions of Section 101(a)(2) of P.L. 99-662 allow more latitude in arranging the non-Federal payment of the additional 10 percent of the cost of general navigation features. Congress provided for such repayments to be made with interest over a period not to exceed 30 years. This provision allows the non-Federal sponsor's repayment of the additional 10 percent to correlate more closely with the increased revenue stream anticipated with a harbor development project. The District Commander should develop the implications of the alternative payment options under Section 101(a)(2) and review them with the local sponsor during discussions of the non-Federal payment plan.

(4) If the non-Federal sponsor elects to provide the funds during construction, payment may be in the form of (a) direct payments to the Government, (b) payments to an acceptable escrow account or provision of an irrevocable letter of credit, or (c) such other payment method that would make the funds available to the Government at such times and in such amounts as are necessary to meet Government in house and contractual obligations as they are incurred. Non-Federal sponsors may elect to place their funds in interest-bearing escrow accounts which allow the Federal Government to withdraw only those funds needed. Funds will be transferred from the escrow account to the Treasury prior to the actual obligation of funds.

(5) If the non-Federal sponsor provides funds in excess of the cash payment requirements determined subsequent to contract bid opening by the Contracting Officer (i.e., bids are lower than the Government estimate), such excess funds may be returned to the non-Federal sponsor after award of the Contract.

b. **Source of Non-Federal Funds.** There are occasions when local sponsors may wish to meet their cost sharing responsibilities at least in part with funds they have received from the Federal Government. As a general rule, non-Federal shares of project costs are to be satisfied through the use of non-Federal funds. Accordingly, all LCA's shall contain the following provision under ARTICLE II - OBLIGATION OF THE PARTIES:

No Federal funds may be used to meet the local sponsor's 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.

The Corps can accept Federal funds from a local sponsor only if the statute under which the funds were provided (or are to be provided) to the local sponsor specifically authorizes use of the funds for that purpose. The burden is on the local sponsor to demonstrate that such an authorization exists. The local sponsor can meet this requirement by providing the District Commander with a letter from the Federal Agency that administers the Federal funds in question, approving use of the Federal funds to satisfy the items of local cooperation for the project. Such an analysis should be undertaken as part of the financing plan required for the LCA. This same policy applies to the use of Federal funds used by the local sponsor to acquire any LERRD required for the project. No Federal funds may be used to acquire LERRD unless specifically approved in writing for that purpose by the Federal Agency which administers those funds.

c. **Methods for Providing Non-Federal Funds.** Several sources or methods of providing non-Federal cash requirements are available to the local sponsor. It is incumbent on the District Commander to work closely with the local sponsor to determine which method is most suitable to the local sponsor while protecting the Government's interests. Some of the more common methods are indicated below:

(1) **Direct Cash Payment.** For projects involving a single contract to be completed in one year or a project that itself will be completed in one year, the local sponsor shall provide its full cash requirement prior to awarding the

construction contract by delivering a check payable to the District's Finance and Accounting Officer for deposit in the U.S. Treasury.

(2) **Escrow Accounts.** Local sponsors may wish to establish escrow accounts to finance their share of a project. With an escrow account, non-Federal funds would be deposited in an interest bearing account by the local sponsor. Funds could then be withdrawn by the Federal Government as necessary to finance construction of the project. Approval from HQUSACE (CECC-J) must be received prior to the establishment of an escrow account. See Appendix H for a sample escrow agreement.

(3) **Letter of Credit.** The local sponsor may wish to provide an irrevocable letter of credit for its share of project costs. A letter of credit is similar to an escrow account. With a letter of credit, a financial institution guarantees to the Federal Government that funds are available from the local sponsor to meet the required cash outlays. As with escrow accounts, the letter of credit must be reviewed and approved by HQUSACE (CECC-J).

(4) **Federal Repayment Districts.** Section 916 of P.L. 99-662, as amended, provides that the ASA(CW) may enter into a contract with a Federal Repayment District or other political subdivision of a state for the payment or recovery of an appropriate share of the cost of a project prior to the construction, operation, improvement, or financing of a project. To that end, Section 916(b) requires the approval by ASA(CW) of a study from the state or political subdivision which demonstrates that revenues to be generated from the Federal Repayment District will equal or exceed the cost recovery requirements over the term of repayment. Any proposal that would involve the potential use of a Federal Project Repayment District should be referred to CECW-RN describing the specific proposal prior to preparation of a draft LCA. CECW-RN will coordinate with ASA(CW); advise the FOA whether a specific study is warranted; and give specific guidelines for preparation of the study. Any study that is subsequently prepared should precede the draft LCA package for approval by the ASA(CW).

d. **Deferred Payments.**

(1) **General.** Section 103 of P.L. 99-662 contains provisions concerning options available for delaying payments of non-Federal cash requirements for non-navigation projects and under certain circumstances for harbor projects. Payments may be delayed in special circumstances, but only where the deferred payment plan is approved in advance by the ASA(CW). It is

preferred that non-Federal contributions be provided during construction in proportion with the outlays of Federal funds on the project. Any deferral of non-Federal contributions will require repayment with interest.

(2) **Applicability.** The following summarizes the applicability of the payment provisions of Section 103 of P.L. 99-662 to new construction start projects.

(a) **Sec. 103(a)(4) of P.L. 99-662 - Deferred Payment of Amounts Exceeding 30 Percent.** This provision permits the local sponsor of a structural flood control project to defer payment of that portion of the contribution which is in excess of 30 percent of the costs assigned to flood control over a 15 year or shorter period if agreed to by the ASA(CW) and non-Federal interests beginning at the date construction of the project is completed. Any cash requirements deferred under this provision will be assessed an interest charge at a rate determined pursuant to Section 106 of P.L. 99-662, by the Secretary of the Treasury. (See paragraph 2 of Appendix I for guidance on deferred payments.) This provision is available for all structural flood control projects at the discretion of the local sponsor.

(b) **Section 103(b) of P.L. 99-662 - Nonstructural Flood Control Projects.** Additional funds needed to bring non-Federal contributions pursuant to Section 103 up to 25 percent of the cost assigned to nonstructural flood control may be paid over a 15 year or shorter period, if agreed to by the ASA(CW) and non-Federal interests. Repayment shall begin on the date construction of the project or separable element is completed, and must include interest at a rate determined pursuant to Section 106 of P.L. 99-662. (See paragraph 2 of Appendix I for detailed guidance on computing interest on deferred payments.)

(c) **Sec. 103(g) of P.L. 99-662 - Deferral of Payment.** This paragraph defers payment by a non-Federal sponsor of its share of project costs until November 17, 1989 for the following authorized projects:

- Boeuf and Tensas Rivers, Tensas Basin, LA and AR, authorized by the Flood Control Act of 1946
- Eight Mile Creek, AR, authorized by P.L. 99-88
- Rocky Bayou Area, Yazoo Backwater Area, Yazoo Basin, MS, authorized by the Flood Control Act approved August 18, 1941

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This section does not exempt these projects from the cost sharing provisions of P.L. 99-662. It merely delays initiation of payment of the non-Federal share of project costs for three years after passage of P.L. 99-662.

(d) **Sec. 103(k) of P.L. 99-662 - Payment Options.** This provision gives the ASA(CW) limited discretion to authorize a non-Federal project sponsor to extend its payment for a project over a period not to exceed thirty years after completion of construction. This provision is principally intended to allow extended payments of non-Federal cash requirements for projects with vendible outputs such as M&I water supply and hydropower. Section 103(k) of P.L. 99-662 will not be applied to flood control projects. (See paragraphs 9.d.(2)(a) and 9.d.(2)(b) above for deferred payment provisions which apply to flood control purposes.)

(e) **Section 103(l) of P.L. 99-662 - Delay of Initial Payment.** This Section authorizes the Secretary to permit a non-Federal interest to delay the initial cash payment required under Sections 101 and 103 for up to one year after construction on a project is begun. Any delayed initial payment will be combined with the second year's payment and paid to the Government at the beginning of the second year of construction. In addition, the delay of the initial payment would be subject to interest charges for one-half the period of delay at a rate determined by the Secretary of Treasury under the provision of Section 106 of P.L. 99-662.

(3) **Negotiation.** Any recommendation for a delay in payment of the non-Federal cash requirement as provided for in Section 103 should be clearly explained in the transmittal letter of the draft LCA package to HQUSACE with full justification for why a delay of payments should be incorporated into the LCA. No commitments should be made to a local sponsor on delaying their cash contribution until the draft LCA containing such provision has been reviewed and approved by ASA(CW).

(4) **Procedures.** Appendix I provides procedures for determining interest on deferred payments.

10. **Work Performed by Local Sponsors.**

a. **Flood Control:** Section 104 of P.L. 99-662. Policies and procedures for determining whether work performed by local interests is compatible with a project for flood control under the provisions of Section 104 of P.L. 99-662 have been developed and are provided in ER 1165-2-29 entitled, "General Credit for

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Flood Control." Questions and issues concerning credits associated with flood control projects under Section 104 should be referred to CECW-RR for resolution.

b. **Commercial Navigation: Section 204 of P.L. 99-662.** Policies and procedures for determining reimbursement for construction of navigational improvements in harbors or inland harbors of the United States, or separable elements thereof, to be undertaken by non-Federal interests in accordance with Section 204(e) of P.L. 99-662 are provided in ER 1165-2-120 entitled, "Reimbursement for Advance Non-Federal Construction of Authorized Federal Harbor and Inland Harbor Improvements." Questions and issues concerning Section 204 should be referred to CECW-RP for resolution.

c. **Advance Work: Section 215.**

(1) Section 215 of the Flood Control Act of 1968, P.L. 90-483, as amended, authorizes local interests to receive credit or reimbursement for work they wish to perform on a Federally authorized project in advance of Federal construction. The 1968 Act was amended by Section 12 of P.L. 100-676 which limits Federal credit or reimbursement for a single project to \$3,000,000 or one percent of total project costs for the authorized project, whichever is greater, except that the amount of reimbursement or credit for a single project may not exceed \$5,000,000 in any fiscal year. The ASA(CW) is authorized to allot not to exceed \$10,000,000 for such purposes or any one fiscal year, subject to the availability of appropriations. It is Corps of Engineers policy to recommend use of this authority only when it can be clearly shown that it is in the Government's interest to enter into a Section 215 Agreement. The Government's interest is normally shown through a reduction in Federal cost for the project or through an acceleration of the overall completion schedule for the project.

(2) Generally, a Section 215 Agreement will not be pursued on projects that are specifically budgeted as a new construction start unless extenuating circumstances can be demonstrated to justify a Section 215 Agreement in addition to the LCA for the project. The desire of a local sponsor to perform a portion of a budgeted new construction start in advance of the Federal construction schedule for that element of work is not adequate justification by itself to enter into a Section 215 Agreement.

(3) In those cases where the District and Division Commanders can demonstrate that use of a Section 215 Agreement is warranted, non-Federal entities shall be given a credit for the value of the work performed which shall be applied against other

local cooperation required by the project authorization. Cash reimbursement will be allowed only to the extent that the value of the sponsor's work exceeds the total of required non-Federal contributions against which credit may be given, and payment will be subject to the availability of appropriations for that purpose. On flood control projects, no credit can be given against the 5 percent cash contribution toward total project costs during construction of the project. Credit can be given against all other requirements of local cooperation (i.e., LERRD required for the authorized project and any additional cash to meet the 25 percent minimum non-Federal cost share.) Non-Federal costs in connection with LERRD which are local cooperation items required by the project authorization are not subject to reimbursement under a 215 Agreement (and do not count against the Federal limitation on Section 215 reimbursement or credit). The costs for provision/accomplishment of LERRD for the work covered by a 215 Agreement will be credited, to the extent appropriate, when the Federal project is undertaken (i.e., credit will be acknowledged in the LCA for the Federal project).

(4) Specific guidance on Section 215 Agreements is contained in ER 1165-2-18.

11. Policy on Relocations.

a. Relocations. The term "relocations" shall mean raising and lowering, altering, adjusting, or protecting a facility, as well as changing its location. As shown in Appendix F, the local sponsor shall perform or assure performance of relocations for most projects. (See paragraphs 11.c.(4) and 11.d.(3) for policies on removals).

b. Local Responsibilities. Upon notification from the Government, the local sponsor shall accomplish or arrange for accomplishment at no cost to the Government all alterations and relocations of buildings, highways, railroads, bridges for non-navigation projects (other than railroad bridges and approaches thereto), public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), pipelines, aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for construction of the project.

c. Flood Control and Other Purposes. See Appendix F for specific policies governing cost sharing for highway and railroad bridges.

(1) **Highway Bridges.** Alteration of highway bridges necessitated by a flood control project are considered part of the LERR requirements for the project and, therefore, are the responsibility of non-Federal interests. Alterations to provide for the structural integrity of highway bridge foundations, piers, or abutments that are to remain in place should be included as part of the basic project and cost shared accordingly. For instance, when deepening channels below footings of existing bridge piers is required, the piers may be reinforced, underpinned, or reconstructed as part of the basic project to be cost shared.

(2) **Railroad Bridges.**

(a) **Alterations/Relocations.** Alterations or modifications to existing railroad bridges, such as temporary detours, alterations to foundations and abutments for the bridges that are to remain in place, and approaches thereto, including trackage that must be altered/modified as a result of any project related bridge alteration/modification, will be considered a part of the project construction cost and will be cost shared in accordance with the cost sharing applicable to the project purposes. Any trackage not directly related to a particular railroad bridge alteration/modification will be considered a part of LERR to be performed or paid for by the non-Federal sponsor.

(b) **New Railroad Bridges.** As with alterations or modifications of existing railroad bridges, the cost of new railroad bridges, required as a result of project construction in fastlands or new channel alignments, will only be considered a project cost and cost shared in accordance with the basic project purpose when the original authorizing documents reflect the proposed new bridge as a Federal cost. The cost of new railroad bridges required in fastlands or new channel alignments not treated as a project cost in authorizing documents will be considered as part of the LERRD requirements of the project.

(3) **Utilities and Facilities.** Normally, utility and facility relocations, including sewer lines, required as part of a project are a local responsibility and should be performed at 100 percent non-Federal expense. The local sponsor in some instances will be entitled to credit for any relocations for which it pays. The local sponsor also may receive credit for relocations even though it has not actually paid for the relocations or reimbursed the owner for the work that has actually been accomplished. Credit eligibility in such cases will be based on responsibility for the relocation. If the

sponsor is actually responsible for the relocation, credit will be given even though the owner of the utility or facility volunteers to relocate the facility at no cost to the sponsor. If, however, the sponsor has authority to require the relocation at no cost to the sponsor, no credit will be allowed.

(4) **Removals.** The cost of removal of utilities and facilities (i.e., those not being relocated) are considered to be a part of the total project cost and are cost shared accordingly. The cost of acquiring such utilities or facilities, leading to their eventual removal, is the responsibility of the non-Federal sponsor and should be considered as part of LERR.

d. **Navigation-Harbor Projects.**

(1) **Highway and Railroad Bridges.** Alteration of highway or railroad bridges necessitated by navigation-harbor projects are considered as part of project construction costs; not as components of lands, easements, rights-of-way, relocations, and disposal areas (LERRD). Cost sharing policy for bridge alterations is governed by the provisions of the Bridge Alteration Act of 21 June 1940 (Truman-Hobbs), as described in ER 1165-2-25. Truman-Hobbs procedures provide for allocating alteration costs between the bridge owner and the navigation project. Those bridge alteration costs assigned to the navigation project are then considered part of the General Navigation Feature (GNF), and cost shared with the local sponsor on the same basis as other GNF costs.

(2) **Structures and Facilities (Non-Utility).** For navigation projects, Section 101(a)(3) of P.L. 99-662 requires that the non-Federal interests shall provide the lands, easements, rights-of-way, relocations (other than utility relocations which are separately discussed under paragraph 11.d.(4) and (5)), and dredged material disposal areas necessary for the project. It must be understood by all involved in the project that it is the basic responsibility of the local sponsor to assure that relocations of structures, facilities, and all improvements are to be performed at non-Federal expense. This does not affect any ability of the sponsor to arrange with the structure or facility owner to perform the work and absorb the costs of such work. The local sponsor will be entitled to credit for any relocations necessitated by the project that it pays for against the 10 percent repayment required under Section 101(a)(2) of P.L. 99-662. As in the case of utilities, the local sponsor also may receive credit for relocations even though it has not actually paid for the relocations nor reimbursed the owner for the work that has been accomplished. Credit eligibility in such cases will be based on responsibility for the relocation. If the sponsor is actually responsible for the relocation, credit will

be given even though the owner of all structures and facilities volunteers to relocate the facility at no cost to the sponsor. If, however, the sponsor has authority to require the relocation at no cost to the sponsor, no credit would be allowed.

(3) **Removals.** The cost of removal of facilities (i.e., those not being relocated) is considered to be a part of the cost of general navigation features (GNF), to be cost shared based on project depth when such facilities are located on fastlands. But the cost of acquiring such facilities, leading to their eventual removal, are the responsibility of the non-Federal sponsor and should be considered as part of LERRD. The cost of removal of items located within the Navigation Servitude are considered to be an owner responsibility, and the owners should be informed by the sponsor or, if necessary, by the Government, that they are to remove such items prior to the commencement of construction. If individual items exist which are partially located on fastlands and partially within the Navigation Servitude Line, a reasonable allocation of the cost of removal should be made between that which is owner responsibility and that which is part of GNF. The removal of debris, as well as items for which no owner can be found, is a dredging cost to be cost shared as a part of the cost of GNF.

(4) **Utility Relocations on Harbor or Inland Harbor Navigation Projects--Depth Less Than 45 Feet.** For navigation projects authorized for less than or equal to 45 feet in depth, Section 101(a)(4) of P.L. 99-662 requires that the non-Federal interest "... shall perform or assure the performance of all relocations of utilities necessary to carry out the project." It is the basic responsibility of the local sponsor to assure that utilities are relocated at non-Federal expense. This does not obviate the ability of the sponsor to arrange with the utility owner to perform and absorb the costs, if willing, of the relocation. Section 13 of P.L. 100-676 amended Section 101(a)(2) of P.L. 99-662 by allowing the local sponsor a credit for utility relocations against the required 10 percent repayment. Credit, however, would be based on responsibility for the relocation. If the sponsor is actually responsible for the relocation, credit will be given even in cases where the owner of the utility volunteers to relocate the utility at no cost to the sponsor. If, however, the sponsor has legal authority to require the relocation at no cost to itself, no credit would be allowed.

(5) **Utility Relocations on Harbor or Inland Harbor Navigation Projects--Depth in Excess of 45 Feet.** For navigation projects authorized for greater than 45 feet in depth, Section 101(a)(4) of P.L. 99-662 further provides that one-half of the cost of each utility relocation be borne by the utility owner and one-half by the local sponsor. Again, as in paragraph 11.d.(4),

it is still the basic responsibility of the sponsor to assure that utilities are relocated at non-Federal expense. Credit will be provided against the local sponsor's required 10 percent repayment for one-half of the relocations cost borne by the sponsor for each such utility being relocated.

(6) Use of Federal Authority to Accomplish Relocations, Acquisitions or Removals.

(a) In those cases where the local sponsor has, despite every reasonable effort, failed to reach agreement with affected owners regarding relocations or removals, and further, lacks the authority to force such actions, the Federal Government may elect to exercise Federal authorities to compel the relocation or removal where such authorities exist.

(b) The exercise of Federal powers in this regard shall not relieve the local sponsor of its statutory responsibility to assure the relocations or the acquisition of lands and items to be removed, at no expense to the Federal Government. Consequently, any Federal expenses incurred in compelling the relocation or acquisition including administrative and litigation expenses will be borne entirely by the local sponsor. Federal funds will not be made available to conduct the actual relocation or acquisition. Moreover, any Federal action shall in no way determine the ultimate apportionment of the relocation or acquisition costs between the owners and the local sponsor. The question of how relocation or acquisition costs are shared is to be resolved between the local sponsor and the owners of the facilities in question (except for utility relocations on deep draft navigation projects which will be borne 50/50 between the utility owner and the local sponsor).

(c) Notwithstanding the above, continued construction on a navigation project should not be compromised by the refusal of an owner of items or facilities located in property subject to the Navigation Servitude to remove or pay the cost of removal of such items. As a last resort, the forced removal of any item subject to the Navigation Servitude may proceed using funds made available jointly by the Federal Government and the local sponsor, in proportion to the cost sharing appropriate for the project. The District Counsel should explore and develop all available means for the full recovery of such expenditures for removals from the appropriate owners, including any necessary coordination with the local United States Attorney. Such costs would include all necessary administrative and litigation expenses. Upon recovery of these costs, the Local Sponsor shall be reimbursed for its share.

e. **Method for Crediting Relocations.** The model LCA's provide a specific formula for crediting relocations. (See ARTICLE IV--VALUE OF LANDS AND FACILITIES of the model Flood Control LCA, Appendix A, and ARTICLE IV of the model Harbor LCA, Appendix D). Generally, the value to be given the construction, relocation, alteration or modification of utilities, shall be that portion of the actual costs incurred by the local sponsor.

f. **Navigation-Inland Waterway Projects.** Cost sharing is not applicable for those navigation projects located on the Inland Waterways System in which the Inland Waterways Trust Fund will be used to pay 50% of the construction cost. Accordingly, no LCA is required. However, the District Commander should make every effort to manage and budget for a continuous no-gap schedule from completion of the Feasibility Phase through PED. The forecast final cost estimate for construction should be based on this seamless (continuous) funding schedule.

12. **Lands, Easements, Rights-of-Way and Dredged Material Disposal Areas.**

a. **General.** In addition to cash requirements, non-Federal sponsors are required under P.L. 99-662, to provide all lands, easements, rights-of-way, and dredged material disposal areas (LERD) necessary for the construction, operation and maintenance of the project. It is preferred that all LERD for the project, or at a minimum, all LERD for a useable segment thereof, be provided by the local sponsor prior to the advertisement of any construction contract for the project. However, in limited circumstances, construction may proceed even though all the necessary real estate interests for the project have not been acquired, provided that for each construction contract, a valid right of entry has been obtained for the interests necessary to support such construction contract prior to award of the contract. Where there is only one construction contract for the entire project, all LERD necessary for construction of the project must have been acquired by the local sponsor prior to the award of the construction contract.

b. **Donated LERD.** There may be cases where the local sponsor wishes to make available to the Federal Government LERD that it owns or controls without receiving credit for its value. Notwithstanding the local sponsor's desires, the fair market value of the LERD will be included in total project costs. Accordingly, the local sponsor will receive credit for the donated LERD based on its fair market value as of the date of award of the first construction contract.

c. Value of LERD. Under P.L. 99-662 cost sharing provisions, a value must be given to LERD's to determine the credit to be applied toward the non-Federal share. The model LCA's provide specific guidance on crediting LERD's. The credit for lands which the local sponsor owned prior to the award of the first Government construction contract will be the fair market value as of the date of award of the first construction contract. For acquisitions by the local sponsor which occur after the award of the first construction contract, the relevant time for credit purposes is the date of the acquisition. The fair market value shall be determined by an appraisal to be obtained by the local sponsor. The appraisal will be prepared by an independent and qualified appraiser who is acceptable to both the local sponsor and the Federal Government. The Government shall review and approve the appraisal.

(1) For LERD acquired by the sponsor within the five year period prior to the date the LCA is signed, or any time after the LCA is signed, the value of the credit shall include the actual associated costs of acquiring the interest (e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, mapping costs) plus reasonable, allocable, and allowable indirect costs that can be shown to be necessary to the accomplishment of the local sponsor's responsibilities for the project. The local sponsor shall also receive credit for any relocation assistance payments made in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended.

(2) In the event of an involuntary acquisition which occurs within a one-year period preceding the date this Agreement is signed or which occurs after the date this Agreement is signed, the value assigned to the LERD credit shall be based on court awards, or on stipulated settlements that have received prior Government approval.

(3) If, after the first Government construction contract is awarded, the sponsor finds it will have to pay in excess of the appraised fair market value to voluntarily acquire the property, the sponsor may be entitled to a credit for the entire purchase price if it has received the prior written approval of the Government of its offer to purchase such land.

(4) There may be certain cases where the valuation methods in the model LCA's do not fairly reflect the sponsor's actual contribution of LERD. For example, where the sponsor has acquired improved land but demolishes the improvements prior to making the land available to the Government, the fair market formula specified in the LCA would not account for the cost to the sponsor of the improvements but, rather, only the value of

the underlying land. Other situations may involve the contribution of rapidly depreciating land (e.g., farmland) for the project. In such cases, the District may request HQUSACE approval through the Division Commander for the contributed LERD to be given an alternate valuation. These cases will be the exception rather than the rule and the decision to use this alternate crediting provision will be made on a case by case basis. In such cases, the value of the LERD will be the sum of: (a) actual purchase price paid by the sponsor, plus (b) associated acquisition cost (e.g., title and closing costs such as appraisal costs, survey costs, attorney's fees, and mapping costs) provided these costs are reasonable, allocable, and allowable. In any event, the non-Federal sponsor shall be given credit for costs it incurs as a result of implementing the Uniform Relocations Assistance and Real Property Acquisition Policies Act, P.L. 99-646, as amended.

(5) Where the value of LERRD in a structural flood control project is greater than 45 percent of the total project cost, the LCA should be prepared to reflect that agreement has been reached on the most efficient and practical means for acquisition of the LERRD over 45 percent. If there is no Government acquisition, the District Commander should budget for the value of the LERRD exceeding 45 percent. The LCA should then provide a mechanism for the Government to reimburse the local sponsor this difference upon completion of construction. (See paragraph d. of ARTICLE II - OBLIGATIONS OF PARTIES and explanatory note in paragraph b.3. of Option II, ARTICLE VI - METHOD OF PAYMENT of the model Flood Control LCA, Appendix A).

(6) Where the estimated value of the LERRD for a structural project is close to the 45 percent level at the time the LCA is drafted, the language in paragraph b.3. of ARTICLE VI-METHOD OF PAYMENT of the model Flood Control LCA, Appendix A, should be used.

(7) Where the value of the LERRD for a non-structural project is forecasted to be less than 25 percent, the non-Federal sponsor can request one of three payment options. One option is to ask a non-Federal sponsor to voluntarily contribute cash during construction. Section 103(b) of P.L. 99-662, prohibits requiring the non-federal sponsor to pay cash during construction. A second option for the non-Federal interest is to make payment at the completion of the project and after the final accounting is performed. Interest will be charged on the deferred cash payments at a rate determined pursuant to Section 106 of P.L. 99-662. (See paragraph 2.a., 2.b., and 2.e. of Appendix I, Deferred Payments by Non-Federal Interests.) The

third option is to make deferred payments with interest, as discussed in paragraph 9.d.(2)(b) above. The amount of the cash payment (or of the principal owed) will be determined by the difference between the value of LERRD and the value representing 25 percent of the total project cost.

(8) Where the value of LERRD for a non-structural project is forecasted to be greater than 25 percent, the non-Federal sponsor can request one of two options. The first option provides for the non-Federal sponsor to acquire all LERRD and seek reimbursement for the difference between the value of LERRD and the 25 percent non-Federal cost share for the project. The second option is to transfer to the Government the financial responsibility for paying for that portion of the LERRD whose value will cause the non-Federal sponsor's cost share to exceed 25 percent. Legal responsibility for accomplishing the acquisition of LERRD remains with the non-Federal sponsor.

(9) The District will need to account for the implications of the payment option selected by the non-Federal sponsor in paragraph (8) or (9) above when budgeting for project funding.

13. Operation, Maintenance, Repair, Replacement, and Rehabilitation (OMRR&R).

a. **Navigation Projects.** The Federal Government is responsible for the operation and maintenance (O&M) of the "general navigation features" of commercial navigation projects, except that in the case of a deep draft harbor, the non-Federal interests shall be responsible for an amount equal to 50 percent of the incremental cost of operation and maintenance for depths greater than 45 feet (Section 101(b) of P.L. 99-662). The non-Federal sponsor is responsible for the OMRR&R of all public berthing areas; public terminals, wharves, and transfer facilities; and dredged material dikes, bulkheads, spillways and embankments necessary for the project. The U.S. Coast Guard is responsible for OMRR&R of all aids to navigation. On projects having commercial and recreational features, the non-Federal sponsor is responsible for 100 percent of the OMRR&R cost allocated to recreation. On projects involving prevention or mitigation of erosion or shoaling attributed to Federal navigation, the non-Federal sponsor is responsible for 100 percent of the OMRR&R costs including all project mitigation measures. The OMRR&R on fish and wildlife enhancement measures, however, is cost shared 25 percent non-Federal and 75 percent Federal.

b. **Other Projects.** Except for the OMRR&R on enhancement lands, the non-Federal sponsor is responsible for 100 percent of the OMRR&R cost for all non-navigation projects. On fish and wildlife enhancement lands the non-Federal sponsor is responsible for 25 percent of the OMRR&R costs.

c. **Forecasting OMRR&R Costs for Local Sponsor.** During the negotiation of an LCA, the local sponsor should be made aware of activities it will be required to undertake in the performance of its OMRR&R responsibilities. This involves providing an estimated annual cost to perform its operation and maintenance functions and to establish the necessary reserves to satisfy future repair, rehabilitation, and replacement requirements. Sponsors should be made aware that the estimated annual OMRR&R costs will be refined as the final project design is completed and will be adjusted to constant dollars after the project is transferred to the local sponsor. This constant dollar estimate should be provided to the project sponsor at the time the forecast final construction cost estimate is determined based on a seamless (continuous) funding schedule.

14. **Environmental Considerations.**

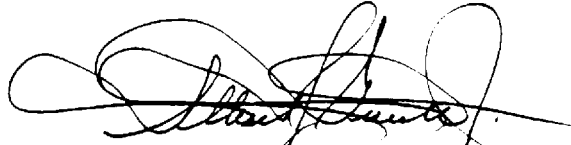
a. **NEPA Requirements.** LCA's will not be executed nor will construction be initiated (award of initial construction contract or acquisition of real estate by the Federal Government) on any new start construction project until NEPA, Clean Water Act, Coastal Zone Management Act, Endangered Species Act, Fish and Wildlife Coordination Act, and National Historic Preservation Act planning phase requirements are met. The final NEPA requirement culminates with either a Record of Decision (ROD) to be signed by the Corps official approving the project on filing the final Environmental Impact Statement (EIS) or by the signing of a Finding of No Significant Impact (FONSI) by the District Commander on Projects having an Environmental Assessment (EA). Specific guidance is contained in the following:

- (1) National Environmental Policy Act: ER 200-2-2
- (2) Clean Water Act: ER 1105-2-50
- (3) Fish and Wildlife Coordination Act: ER 1105-2-50
- (4) National Historic Preservation Act: ER 1105-2-50

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b. **Fish and Wildlife.** Specific cost sharing policies for fish and wildlife mitigation and enhancement features are contained in a series of Engineer Circulars developed by CECW-RP which are updated annually.

FOR THE COMMANDER:



ALBERT J. GENETTI, JR.
Colonel, Corps of Engineers
Chief of Staff

APPENDICES:

- A - Model LCA for Structural Flood Control Projects
- B - Example of Federal/non-Federal Allocation of Funds
- C - Schedule for Execution of LCA's
- D - Model LCA for Harbor Projects
- E - HQUSACE LCA Processing Procedures
- F - Cost Sharing Provisions of P.L. 99-662
- G - Navigation Example
- H - Model Escrow Agreement
- I - Deferred Payments by Non-Federal Interests

APPENDIX A

MODEL LOCAL COOPERATION AGREEMENT

STRUCTURAL FLOOD CONTROL PROJECT

LOCAL COOPERATION AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

_____ [full name of Local Sponsor]

FOR CONSTRUCTION OF THE

_____ [full name of Project]

THIS AGREEMENT, entered into this _____ day of _____, 19____, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and

_____ [Local Sponsor]

(hereinafter referred to as the "Local Sponsor"), acting by and through

_____ [title of person signing this Agreement]

WITNESSETH, THAT:

WHEREAS, construction of the _____

[name of Project]

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at _____
[specific location of Project]

(hereinafter referred to as the "Project", as defined in Article I.a. of this Agreement), was authorized by _____;
_____ ; and,
[cite authority]

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project; and,

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project; and,

[ONLY ONE OF THE TWO FOLLOWING "WHEREAS" CLAUSES WILL APPLY; DELETE THE ONE WHICH DOES NOT APPLY]

WHEREAS, the Local Sponsor qualifies for a reduction of the maximum non-Federal cost share pursuant to the guidelines which implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, published in 33 C.F.R., sections 241.1 - 6, entitled "Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision"; and,

WHEREAS, the Local Sponsor does not qualify for a reduction of the maximum non-Federal cost share pursuant to the guidelines which implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, published in 33 C.F.R., sections 241.1 - 6, entitled "Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision"; and,

[OTHER WHEREAS CLAUSES AS NEEDED]; and,

WHEREAS, the Local Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost-sharing and financing in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "Project" shall mean _____

[DESCRIBE THE WORK TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IN SUFFICIENT DETAIL AS IS NECESSARY TO AVOID ANY CONFUSION OVER WHAT WORK IS OR IS NOT INCLUDED. REFERENCE THE APPROVED GDM, RE-EVALUATION REPORT, OR OTHER PROJECT REPORT, IF APPROPRIATE. IF A SEPARABLE ELEMENT OF AN AUTHORIZED PROJECT IS PROPOSED TO BE UNDERTAKEN, SPECIAL CARE SHOULD BE EXERCISED TO ENSURE THAT THE WORK IS ACCURATELY DESCRIBED.]

b. The term "total project costs" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the Project. Such costs shall include, but not necessarily be limited to, continuing planning and engineering costs incurred after October 1, 1985; costs of applicable engineering and design; actual construction costs; supervision and administration costs; costs of contract dispute settlements or awards; and the value of lands, easements, rights-of-way, utility and facility alterations or relocations, and dredged material disposal areas provided for the Project by the Local Sponsor, but shall not include any costs for betterments, operation, repair, maintenance, replacement, or rehabilitation.

c. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time of acceptance of the Project by the Contracting Officer.

d. The term "Contracting Officer" shall mean the U.S. Army Engineer for the _____ District, or his designee.

e. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public or private road or way.

f. The term "relocations" shall mean alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing: railroads, highways, bridges, railroad bridges and approaches thereto, buildings, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation and maintenance of the Project.

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g. The term "fiscal year" shall mean one fiscal year of the United States Government, unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

h. The term "involuntary acquisition" shall mean the acquisition of lands, easements, and rights-of-way by eminent domain.

i. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Contracting Officer to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of construction of the entire Project.

[INCLUDE THE FOLLOWING TERM IN PROJECTS WHICH HAVE RECREATION FEATURES.]

j. The term "separable cost of recreation features" shall mean all separable costs incurred by the Local Sponsor and the Government for construction of the project recreation features (excluding betterments and operation and maintenance costs). Such recreation costs shall include, but not necessarily be limited to, continuing planning and engineering costs incurred after October 1, 1985; costs of applicable engineering and design; actual construction costs; supervision and administration costs; costs of contract dispute settlements or awards; and the value of any separable lands necessary for access, parking, public health, and safety.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds provided by the Local Sponsor and appropriated by the Congress of the United States, shall expeditiously construct the Project (including relocations of railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Local Sponsor shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bid. The Local Sponsor will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the Local Sponsor, but award of contracts, modifications or change orders, and

performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

b. When the Government determines that the Project or a functional portion of the Project is complete, the Government shall turn the completed Project or functional portion over to the Local Sponsor, which shall accept the Project or functional portion and be solely responsible for operating, repairing, maintaining, replacing, and rehabilitating the Project or functional portion in accordance with Article VIII hereof.

c. As further specified in Article VI hereof, the Local Sponsor shall provide, during the period of construction, a cash contribution of 5 percent of total project costs allocated to structural flood control.

d. As further specified in Article III hereof, the Local Sponsor shall provide all lands, easements, rights-of-way, and dredged material disposal areas, and perform all relocations (excluding railroad bridges and approaches thereto) determined by the Government to be necessary for construction of the Project. At its sole discretion, the Government may perform relocations in cases where it appears that the Local Sponsor's contributions will exceed the maximum non-Federal cost share set out in Article VI.f.

e. If the value of the contributions provided under paragraphs c. and d. of this Article represents less than 25 percent of total project costs, the Local Sponsor shall provide, during the period of construction, an additional cash contribution in the amount necessary to make its total contribution equal to 25 percent of total project costs.

[INCLUDE THE FOLLOWING PARAGRAPH FOR PROJECTS WHICH HAVE SEPARABLE RECREATION FEATURES]

f. As further specified in Article VI hereof, the local sponsor shall provide during the period of construction, a cash contribution of 50 percent of total project costs allocated to separable recreation features.

g. 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.

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h. The Local Sponsor agrees to participate in and comply with applicable Federal flood plain management and flood insurance programs.

[ADD ADDITIONAL PARAGRAPHS AS NEEDED TO REFLECT SPECIAL REQUIREMENTS OF LOCAL COOPERATION SPECIFIED IN THE AUTHORIZING DOCUMENTS, FOR EXAMPLE:

i. No less than once each year the Local Sponsor shall inform affected interests of the limitations of the protection afforded by the Project.

j. The Local Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their guidance and leadership in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.]

ARTICLE III - LANDS, FACILITIES, AND PUBLIC LAW 91-646 RELOCATION ASSISTANCE

a. The Local Sponsor shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Government to be necessary for the construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way may be provided incrementally, but all lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of the construction contract.

b. The Local Sponsor shall provide or pay to the Government the cost of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, that may be required at any dredged material disposal areas necessary for construction of the Project.

c. Upon notification from the Government, the Local Sponsor shall accomplish or arrange for accomplishment at no cost to the Government all relocations (excluding railroad bridges and approaches thereto) determined by the Government to be necessary for construction of the Project.

d. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way for construction and subsequent operation and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. The value of the lands, easements, and rights-of-way to be included in total project costs and credited towards the Local Sponsor's share of total project costs will be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date the first construction contract for the Project is awarded, the credit shall be the fair market value of the interest provided to the Government by the Local Sponsor at the time of such award. The fair market value shall be determined by an appraisal, to be obtained by the Local Sponsor, which has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Government.

2. If the lands, easements, or rights-of-way are to be acquired by the Local Sponsor after the date of award of the first construction contract for the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1. of this Agreement. If the Local Sponsor pays an amount in excess of the appraised fair market value, it may be entitled to a credit for the excess if the Local Sponsor has secured prior written approval from the Government of its offer to purchase such interest.

3. If the Local Sponsor acquires more lands, easements, or rights-of-way than are necessary for project purposes, as determined by the Government, then only the value of such portions of those acquisitions as are necessary for project purposes shall be included in total project costs and credited towards the Local Sponsor's share.

4. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions which occur within a

one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements that have received prior Government approval.

5. Credit for lands, easements, or rights-of-way acquired by the Local Sponsor within a five-year period preceding the date this Agreement is signed, or at any time after this Agreement is signed, will also include the actual incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

b. The costs of relocations which will be included in total project costs and credited towards the Local Sponsor's share of total project costs shall be that portion of the actual costs as set forth below, and approved by the Government:

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

2. Utilities and Facilities (including railroads): 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 included in total project costs.

ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication between the Local Sponsor and the Government during the period of construction, the Local Sponsor and the Government shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to construction of the Project. The Local Sponsor will be informed of any changes in cost estimates.

b. The representatives appointed above shall meet as necessary during the period of construction and shall make such recommendations as they deem warranted to the Contracting Officer.

c. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to construction of the Project, but the Contracting Officer, having ultimate responsibility for construction of the Project, has complete discretion to accept, reject, or modify the recommendations.

[FOR ARTICLE VI USE OPTION I IF CONSTRUCTION OF THE PROJECT WILL BE COMPLETED WITHIN ONE YEAR.]

OPTION I

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, cash payments required to meet its obligations under Article II of this Agreement. Total project costs are presently estimated to be \$_____. In order to meet its cash payment requirements, the Local Sponsor must provide a cash contribution presently estimated to be \$_____. The dollar amounts set forth in this Article are based upon the Government's best estimates which will reflect projection of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The required cash contribution shall be provided as follows:
 [At least 30] calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's estimated share of project costs, including its share of costs attributable to the Project incurred prior to the initiation of construction. Within [half the above number] calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, _____" to the Contracting Officer representing the Government. In the event that total project costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Local Sponsor of the additional contribution the Local Sponsor will be required to make to meet its share of the revised estimate. Within no more

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than 45] calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the additional required contribution.

[FOR ARTICLE VI USE OPTION II IF CONSTRUCTION OF THE PROJECT WILL EXTEND TO MORE THAN ONE YEAR, UNLESS THE LOCAL SPONSOR WISHES TO MAKE ITS CONTRIBUTION IN FULL AT THE OUTSET. NOTE: ARTICLE VI.b.2. OFFERS THE LOCAL SPONSOR THREE OPTIONS FROM WHICH TO CHOOSE IN DECIDING HOW TO PROVIDE ITS CONTRIBUTION TO THE FEDERAL GOVERNMENT. THE LOCAL SPONSOR SHOULD INDICATE ITS CHOICE DURING THE COURSE OF NEGOTIATING THE AGREEMENT. ONLY ONE FUNDING MECHANISM SHOULD BE INCLUDED IN THE DRAFT AGREEMENT SENT FORWARD FOR REVIEW AND APPROVAL.]

OPTION II

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the cash payments required under Article II of this Agreement. Total project costs are presently estimated to be \$_____. In order to meet its share, the Local Sponsor must provide a cash contribution presently estimated to be \$_____. The dollar amounts set forth in this Article are based upon the Government's best estimates which will reflect projection of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The Local Sponsor shall provide its required cash contribution in proportion to the rate of Federal expenditures during the period of construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Local Sponsor by [specific date] of each year of the estimated funds that will be required from the Local Sponsor to meet its share of total project costs for the upcoming fiscal year.

2. No later than [30-60] calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's share of total project costs, including its share of costs attributable to the Project incurred prior to the initiation of construction, for

the first fiscal year of construction. No later than [half the above number] calendar days thereafter, the Local Sponsor shall [SELECT ONLY ONE OF THE FOLLOWING FUNDING MECHANISMS] [1] provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, _____" to the Contracting Officer representing the Government. [2] verify to the satisfaction of the Government that it has deposited the requisite amount in an escrow account acceptable to the Government, with interest accruing to the Local Sponsor. [3] present to the Government an irrevocable letter of credit acceptable to the Government in an amount sufficient to meet the Local Sponsor's obligation.

3. For the second and subsequent fiscal years of project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of the Local Sponsor's share of total project costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement. As construction of the Project proceeds, the Government shall adjust the amounts required to be provided under this paragraph to reflect actual costs. [EXPLANATORY NOTE: IF, AS PROJECT CONSTRUCTION PROCEEDS, IT APPEARS THAT THE PROJECT COST ESTIMATES ARE OFF BECAUSE THE VALUE OF LERR OR THE COST OF CONTRACTS IS NOT WHAT THE GOVERNMENT EXPECTED, ADJUSTMENTS CAN BE MADE UNDER THIS PARAGRAPH AS OPPOSED TO WAITING UNTIL THE FINAL ACCOUNTING. THIS MECHANISM WILL ALSO BE IMPORTANT IN CASES WHERE IT APPEARS THAT THE LOCAL SPONSOR'S TOTAL CONTRIBUTION WILL EXCEED THE 50% CAP OF THE LOCAL SPONSOR'S SHARE.]

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Local Sponsor, the Government shall so notify the Local Sponsor, and the Local Sponsor, no later than 45 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

[CLAUSE c. ONLY APPLIES TO ARTICLE VI, OPTION II.]

c. The Government will draw on the [DRAFT AGREEMENT SENT FORWARD FOR REVIEW AND APPROVAL SHOULD REFLECT ONLY ONE OF THE THREE FOLLOWING OPTIONS, CONSISTENT WITH THE FUNDING MECHANISM SELECTED IN ARTICLE VI.b.2] [1] funds [2] escrow account [3] letter of credit provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and

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in-house fiscal obligations attributable to the Project as they are incurred, as well as costs incurred by the Government prior to the initiation of construction.

[CLAUSES d., e., AND f., APPLY TO BOTH OPTIONS I AND II IN ARTICLE VI.]

d. Upon completion of the Project and resolution of all relevant contract claims and appeals, the Government shall compute the total project costs and tender to the Local Sponsor a final accounting of the Local Sponsor's share of total project costs. In the event the total contribution by the Local Sponsor is less than its minimum required share of total project costs, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its minimum required share of total project costs.

e. In the event the Local Sponsor has made cash contributions in excess of 5 percent of total project costs allocated to structural flood control which result in the Local Sponsor's having provided more than its required share of total project costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of appropriations, return said excess to the Local Sponsor; however, the Local Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.c. of this Agreement.

f. If the Local Sponsor's total contribution under this Agreement (including lands, easements, rights-of-way, and relocations, and dredged material disposal areas provided by the Local Sponsor) exceeds [EITHER 50% OR THE APPROPRIATE ABILITY TO PAY PERCENTAGE] _____ percent of total project costs, the Government shall, subject to the availability of appropriations for that purpose, refund the excess to the Local Sponsor no later than 90 calendar days after the final accounting is complete.

ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

[ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND
REHABILITATION]

a. After the Government has turned the completed Project, or functional portion of the Project, over to the Local Sponsor, the Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the completed Project, or functional portion of the Project, in accordance with regulations or directions prescribed by the Government.

b. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Local Sponsor for any reason is failing to fulfill its obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If the Local Sponsor persists in such failure for 30 calendar days after receipt of the notice, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Local Sponsor of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS

The Government and the Local Sponsor shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the Local Sponsor shall maintain such books, records, documents, and other evidence for a minimum of three

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years after completion of construction of the Project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit when appropriate of the Local Sponsor's records for the Project to ascertain the allowability, reasonableness, and allocability of its costs for inclusion as credit against the non-Federal share of project costs.

ARTICLE XII - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations, including section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE XIII - RELATIONSHIP OF PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

The Local Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Local Sponsor for the purpose of securing business. For breach or violation of this warranty,

the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Secretary of the Army shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears, unless the Secretary of the Army determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

b. If the Government fails to receive annual appropriations for the Project in amounts sufficient to meet project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After 60 calendar days either party may elect without penalty to terminate this Agreement pursuant to that Article or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI. of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

ARTICLE XVII - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

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If to the Local Sponsor:

[full address]

If to the Government:

[full address]

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

ARTICLE XVIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

[ARTICLE XIX SHOULD BE ADDED FOR THOSE PROJECTS AUTHORIZED BY P.L. 99-662, P.L. 100-676, AND SUBSEQUENT AUTHORIZATION ACTS]

ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

The [Local Sponsor] has reviewed the provisions set forth in Section 902 of P.L. 99-662, as amended, and understands that Section 902 establishes a maximum construction cost for the project. For purposes of this Agreement, the Section 902 cost limit is \$_____ as calculated on _____, _____. [The dollar figure to be inserted should be derived as provided

in ER 1105-2-176, "Maximum Cost of Projects."] This amount shall be adjusted to allow for appropriate increases for inflation and changes in the project cost as provided in Section 902. Should this cost maximum be reached, no additional funds may be expended on the project until additional authority is obtained from Congress.

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: _____
[signature]

BY: _____
[signature]

[typed name]

[typed name]

[title in full]

[title in full]

DATE: _____

DATE: _____

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CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the [local sponsor], that the [local sponsor] is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the [local sponsor] in connection with the Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the [local sponsor] have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ Day of _____ 19____.

[Signed]
Title

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CERTIFICATION OF LEGAL REVIEW

The draft Local Cooperation Agreement for [name of project] has been fully reviewed by the Office of Chief Counsel, USAED, _____.

District Counsel

APPENDIX B

Example of Federal/Non-Federal Allocation of Funds

The following example shows the allocation of Federal and non-Federal funds during construction for a hypothetical single-purpose flood control project. In the example shown, LERRD is assumed to be 36 percent of total project costs resulting in a non-Federal cash requirement of 5 percent. If LERRD represented less than 20 percent of total project costs, the non-Federal cash requirement would be that amount required to make the non-Federal share equivalent to 25 percent of total project costs. In the example provided, PED costs are assumed to be \$1,285,000.

| <u>Col</u> | <u>1</u> | <u>2</u> | <u>3</u> | <u>"</u> | <u>4</u> | <u>5</u> | <u>6</u> |
|-------------------------------|---------------|----------------------|--------------------|----------|----------------------|------------------------|--------------------|
| <u>Yr</u> | <u>TPC 1/</u> | <u>Non-Fed LERRD</u> | <u>Sched Const</u> | <u>"</u> | <u>Percentage 3/</u> | <u>Non-Fed Cash 5/</u> | <u>Fed Cash 6/</u> |
| Prior to yr 1 of construction | 3,749,800 | 2,464,800 | 1,285,000 2/ | " | NA | NA | 1,285,000 |
| 1 | 2,924,200 | 2,008,900 | 915,300 | " | 24.3 | 171,700 7/ | 743,600 |
| 2 | 2,356,400 | 614,400 | 1,742,000 | " | 19.3 | 136,300 | 1,605,700 |
| 3 | 3,145,300 | NA | 3,145,300 | " | 34.8 | 245,800 | 2,899,500 |
| 4 | 1,952,700 | NA | 1,952,700 | " | 21.6 | 152,600 | 1,800,100 |
| Total | 14,128,400 | 5,088,100 | 9,040,300 | " | 100 | 706,400 4/ | 8,333,900 |

Givens: Non-Fed LERRD (Col 2) and Sched Const (Col 3)

1/ TPC = Non-Fed LERRD (Col 2) plus Sched Const (Col 3)

2/ Represents all "sunk" PED costs

3/ The percentage is based on the proportion of scheduled construction cost to total construction cost. e.g., (yr 3) = \$3,145,300/\$9,040,300 = 34.8

4/ Total non-Fed cash \$706,400 = TPC (14,128,400) x 5%

5/ Non-Fed Cash based on total non-Fed Cash (706,400) x percentage (Col 4)
e.g., non-Fed Cash (yr 3): \$706,400 x (.348) = \$245,800

6/ Fed Cash = Sched Const (Col 3) - Non-Fed Cash (Col 5)

7/ Includes proportionate non-federal share of sunk PED costs

APPENDIX B

FED\NON-FED CASH BASED ON CONSTRUCTION SCHEDULE
SCHEDULE A (MILLIONS \$) PAID AT BEGINNING OF FY

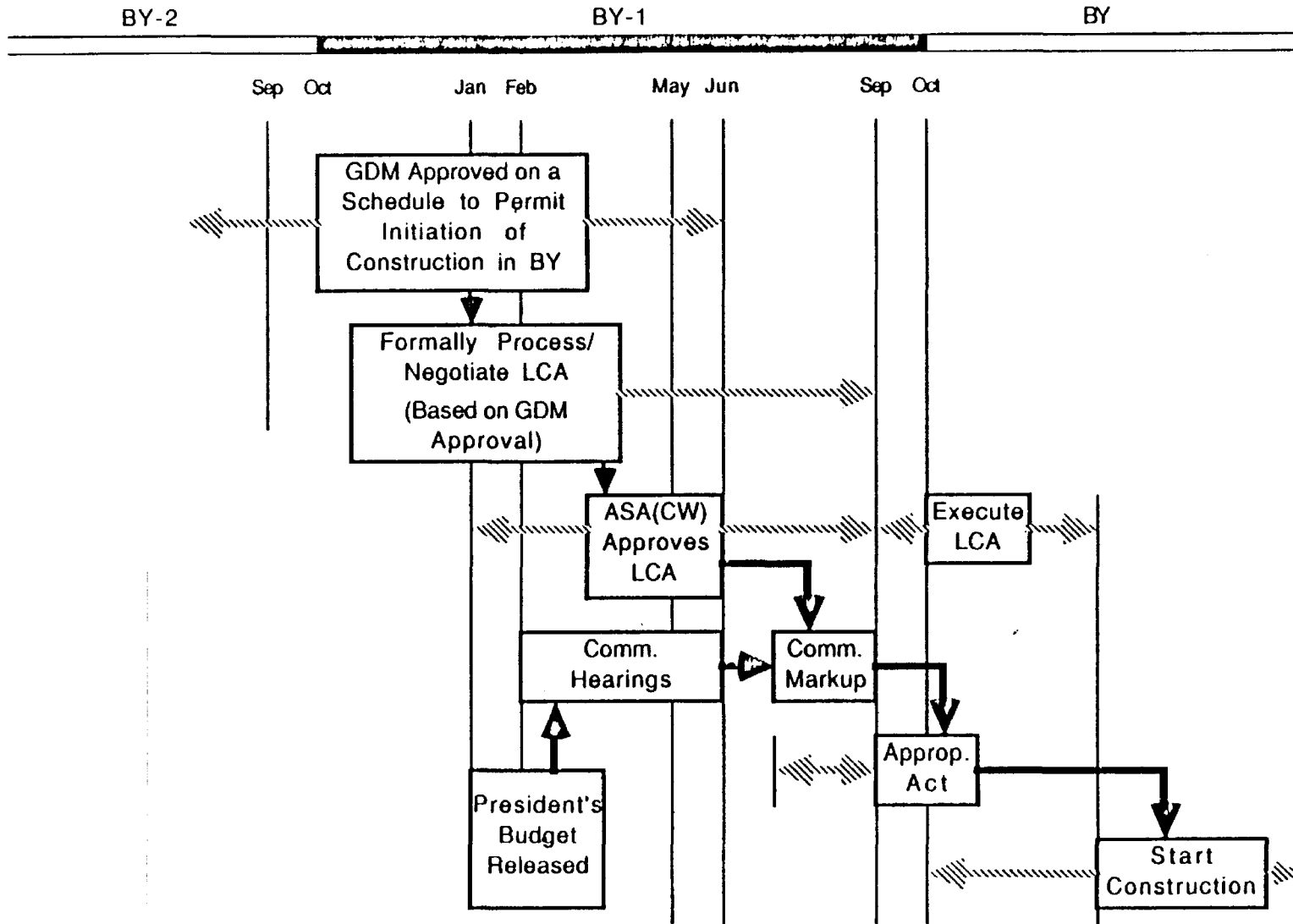
| <u>YR</u> | <u>TPC</u> | <u>NON-FED LERRD</u> | <u>CONST</u> | <u>%</u> | <u>CASH</u> | |
|------------------|------------|----------------------|--------------|----------|----------------|------------|
| | | | | | <u>NON-FED</u> | <u>FED</u> |
| PRIOR TO YR 1 | 3.7498 | 2.4648 | 1.285 | NA | --- | 1.285 |
| 1 | 2.9242 | 2.0089 | .9153 | 24.3 | .1717 | .7436 |
| 2 | 2.3564 | .6144 | 1.742 | 19.3 | .1363 | 1.6057 |
| 3 | 3.1453 | 0 | 3.1453 | 34.8 | .2458 | 2.8995 |
| 4 | 1.9527 | 0 | 1.9527 | 21.6 | .1526 | 1.8001 |
| TOTAL | 14.1284 | 5.0881 | 9.0403 | 100 | .7064 | 8.3339 |

FED\NON-FED CASH BASED ON DEFERRAL
SCHEDULE B (MILLIONS \$) PAID AT BEGINNING OF FY

| <u>YR</u> | <u>TPC</u> | <u>NON-FED LERRD</u> | <u>CONST</u> | <u>%</u> | <u>CASH</u> | | |
|----------------------|------------|----------------------|--------------|----------|----------------|------------|----|
| | | | | | <u>NON-FED</u> | <u>FED</u> | |
| PRIOR TO YR 1 | 3.7498 | 2.4648 | 1.285 | NA | --- | 1.285 | |
| 1 | 2.9242 | 2.0089 | .9153 | NA | 0 | .9153 | |
| INTEREST ON DEFERRAL | ----- | | | | | .0065 | NA |
| 2 | 2.3564 | .6144 | 1.742 | NA | .3145 | 1.4275 | |
| 3 | 3.1453 | 0 | 3.1453 | NA | .2458 | 2.8995 | |
| 4 | 1.9527 | 0 | 1.9527 | NA | .1526 | 1.8001 | |
| TOTAL (w/Int) | 14.1284 | 5.0881 | 9.0403 | NA | .7129 | 8.3274 | |

* Based on current cost estimate and schedule A above, \$171,700 is deferred to the beginning of YR 2; 6 month's interest, at the existing 6 month rate (7 3/8 % in this situation) plus 1/8%, all compounded monthly, will be charged. Interest is applied towards YR 2 Fed Construction cost.

Typical Construction Funding vs. LCA Execution Process



C-1

APPENDIX C

APPENDIX D

MODEL LOCAL COOPERATION AGREEMENT

HARBOR PROJECT

LOCAL COOPERATION AGREEMENT

BETWEEN

THE DEPARTMENT OF THE ARMY

AND

[full name of Local Sponsor]

FOR CONSTRUCTION OF THE

[full name of Project]

THIS AGREEMENT, entered into this _____ day of _____, 19__,
by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the
"Government"), acting by and through the Assistant Secretary of the Army
(Civil Works), and

[Local Sponsor]

(hereinafter referred to as the "Local Sponsor"), acting by and through

[title of person signing this Agreement]

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WITNESSETH, THAT:

WHEREAS, construction of the _____

[name of Project]

at _____

[specific location of Project]

(hereinafter referred to as the "Project", as defined in Article I.a. of this Agreement), was authorized by _____

_____ ; and,

[cite authority]

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project; and,

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project; and,

[OTHER WHEREAS CLAUSES AS NEEDED]; and,

WHEREAS, the Local Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost-sharing and financing in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "general navigation features of the Project" shall mean _____

[DESCRIBE THE GENERAL NAVIGATION FEATURES TO BE UNDERTAKEN PURSUANT TO THIS AGREEMENT IN SUFFICIENT DETAIL AS IS NECESSARY TO AVOID ANY CONFUSION OVER WHAT WORK IS OR IS NOT INCLUDED. REFERENCE THE APPROVED GDM, RE-EVALUATION REPORT, OR OTHER PROJECT REPORT, IF APPROPRIATE. IF A SEPARABLE ELEMENT OF AN AUTHORIZED PROJECT IS PROPOSED TO BE UNDERTAKEN, SPECIAL CARE SHOULD BE EXERCISED TO ENSURE THAT THE WORK IS ACCURATELY DESCRIBED.]

b. The term "total cost of construction of general navigation features assigned to commercial navigation" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the general navigation features of the Project. Such costs shall include, but not necessarily be limited to, continuing planning and engineering costs incurred after October 1, 1985; costs of applicable engineering and design; actual construction costs, including costs of relocations not performed by or on behalf of the Local Sponsor; supervision and administration costs; and costs of contract dispute settlements or awards, but shall not include the value of lands, easements, rights-of-way, and dredged material disposal areas, relocations performed by or on behalf of the Local Sponsor, non-Federal dredging of public or private channels and berthing areas, and aids to navigation.

c. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time of acceptance of the general navigation features of the Project by the Contracting Officer.

d. The term "Contracting Officer" shall mean the U.S. Army Engineer for the _____ District, or his designee.

e. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public or private road or way.

f. The term "relocations" shall mean alterations, modifications, lowering or raising in place, and/or new construction related to but not limited to, existing: railroads, highways, bridges, railroad bridges and approaches thereto, buildings, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation and maintenance of the Project.

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g. The term "fiscal year" shall mean one fiscal year of the United States Government, unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

h. The term "involuntary acquisition" shall mean the acquisition of lands, easements, and rights-of-way by eminent domain.

i. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Contracting Officer to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of construction of the entire Project.

j. The term "separable cost of recreation features" shall mean all separable costs incurred by the Local Sponsor and the Government for construction of the project recreation features (excluding betterments and operation and maintenance costs). Such recreation costs shall include but not necessary be limited to continuing planning and engineering costs incurred after October 1, 1985; costs of applicable engineering and design; actual construction costs; supervision and administration costs; costs of contract dispute settlements or awards; and the value of any separable lands necessary for access, parking, public health, and safety.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds provided by the Local Sponsor and appropriated by the Congress of the United States, shall expeditiously construct the general navigation features of the Project (including alterations or relocations of highway bridges and railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Local Sponsor will be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bid. The Local Sponsor will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the Local Sponsor, but award of contracts and performance of work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

b. The Government shall operate and maintain the general navigation features of the Project assigned to commercial navigation. [IN THE CASE OF A DEEP-DRAFT PROJECT, ADD THE FOLLOWING: "The Local Sponsor shall pay to the Government one-half of the excess of the cost of the operation and maintenance of the general navigation features of the Project assigned to commercial navigation over the cost which the Government determines would be incurred for operation and maintenance if the Project had a depth of 45 feet".]

c. The Local Sponsor shall provide and maintain, at its own expense, all project features other than those for general navigation [WHERE APPROPRIATE ADD: ", including dredged depths commensurate with those in related general navigation features in berthing areas and local access channels serving the general navigation features."]

d. The Local Sponsor shall provide to the Government the non-Federal share of all other costs of construction of the Project, including: [LIST ALL TERMS AS SET OUT IN THE PROJECT DOCUMENTS.]

e. 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 and approaches thereto), 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."]

f. The Local Sponsor shall provide, during the period of construction, a cash contribution equal to the following percentages of the total cost of construction of the general navigation features assigned to commercial navigation:

1. 10 percent of the costs attributable to the portion of the Project which has a depth not in excess of 20 feet;
2. 25 percent of the costs attributable to the portion of the Project which has a depth in excess of 20 feet but not in excess of 45 feet; and,
3. 50 percent of the costs attributable to the portion of the Project which has a depth in excess of 45 feet.

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[LOOK TO PARAGRAPH 5.a. OF EC 1165-2-141, DATED 15 MARCH 1988, SUBJECT: "Harbor and Inland Waterways Project Cost Sharing and Related Guidance" FOR INCREMENTAL COST-SHARING DETERMINATIONS.]

[INCLUDE THE FOLLOWING PARAGRAPH FOR PROJECTS WHICH HAVE SEPARABLE RECREATION FEATURES]

g. As further specified in Article VI hereof, the Local Sponsor shall provide during the period of construction, a cash contribution of 50 percent of total project costs allocated to separable recreation features.

h. As further specified in Article VI hereof, the Local Sponsor shall repay with interest, over a period not to exceed 30 years following completion of the period of construction of the Project, an additional 0 to 10 percent of the total cost of construction of general navigation features assigned to commercial navigation, depending on the value of the credit, as calculated under Article IV hereof, of items provided pursuant to Article II.e. If the credit allowed for such items is less than 10 percent of the total cost of construction of the general navigation features, the Local Sponsor shall repay a percentage of said total cost equal to the difference between 10 percent of the total cost and the percentage of the total cost represented by the value of such items. If the credit allowed is equal to or greater than 10 percent of said total cost, the Local Sponsor shall not be required to repay any additional percentage of the total cost.

i. 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.

[ADD ADDITIONAL PARAGRAPHS AS NEEDED TO REFLECT SPECIAL REQUIREMENTS IN THE AUTHORIZING DOCUMENTS.]

ARTICLE III - LANDS, FACILITIES, AND PUBLIC LAW 91-646 RELOCATION ASSISTANCE

a. The Local Sponsor shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Government to be necessary for the construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-way to such lands.

The necessary lands, easements, and rights-of-way may be provided incrementally, but all lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of the construction contract.

b. The Local Sponsor shall provide, or pay to the Government the cost of providing, all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, determined by the Government to be necessary for construction, operation, or maintenance of the general navigation features of the Project.

c. Upon notification from the Government, the Local Sponsor shall accomplish or arrange for accomplishment at no cost to the Government all alterations and relocations of buildings, highways, railroads, storm drains, and other facilities, structures, and improvements, determined by the Government to be necessary for construction, operation, or maintenance of the general navigation features of the Project.

d. Upon notification from the Government, the Local Sponsor shall perform or assure performance of all necessary alterations and relocations of pipelines, cables, and other utilities. Nothing herein shall be deemed to affect the ability of the Local Sponsor to seek compensation from other non-Federal entities for costs it incurs under this paragraph. For projects authorized to be constructed to depths greater than 45 feet, the cost of necessary alterations or relocations shall be shared equally between the Local Sponsor and the owner of the affected utility.

e. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way for construction and subsequent operation and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUE OF LANDS AND FACILITIES

a. The value of the lands, easements, and rights-of-way to be credited towards the additional 10 percent of total costs the Local Sponsor must repay pursuant to Article II.h. will be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date the first construction contract for the general navigation features of the Project is awarded, the credit shall be the fair market value of the interest provided to the Government at the time of such award. The fair market value shall be determined by an appraisal, to be obtained by the Local Sponsor, which has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Government.

2. If the lands, easements, or rights-of-way are to be acquired by the Local Sponsor after the date of award of the first construction contract for the general navigation features of the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1. of this Agreement. If the Local Sponsor pays an amount in excess of the appraised fair market value, it may be entitled to a credit for the excess if the Local Sponsor has secured prior written approval from the Government of its offer to purchase such interest.

3. If the Local Sponsor acquires more lands, easements, or rights-of-way than are necessary for project purposes, as determined by the Government, then only the value of such portions of those acquisitions as are necessary for project purposes shall be included in total project costs and credited towards the Local Sponsor's share.

4. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements that have received prior Government approval.

5. Credit for lands, easements, or rights-of-way acquired by the Local Sponsor within a five-year period preceding the date this Agreement is signed, or at any time after this Agreement is signed, will also include the actual incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

b. 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 the Local Sponsor must repay pursuant to Article II.h. 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. Utilities and facilities: 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.

ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication between the Local Sponsor and the Government during the period of construction, the Local Sponsor and the Government shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to construction of the Project. The Local Sponsor will be informed of any changes in cost estimates.

b. The representatives appointed above shall meet as necessary during the period of construction and shall make such recommendations as they deem warranted to the Contracting Officer.

c. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to construction of the Project, but the Contracting Officer, having ultimate responsibility for construction of the Project, has complete discretion to accept, reject, or modify the recommendations.

[FOR ARTICLE VI USE OPTION I IF CONSTRUCTION OF THE PROJECT WILL BE COMPLETED WITHIN ONE YEAR.]

OPTION I

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the percentages of the total cost of construction of the general navigation features assigned to commercial navigation specified in Article II.f. of this Agreement. The total cost of construction of the general navigation features assigned to commercial navigation is presently estimated to be \$_____. In order to meet its share of such costs, the Local Sponsor must provide an initial cash contribution presently estimated to be \$_____. The dollar amounts set forth in this Article are based upon the Government's best estimates which will reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based in cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The required cash contribution shall be provided as follows:
[At least 30] calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's estimated share of project costs, including its share of costs attributable to the Project incurred prior to the initiation of construction. Within [half the above number] calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, " to the Contracting Officer representing the Government. In the event that the total cost of construction of the general navigation features assigned to commercial navigation is expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Local Sponsor of the additional contribution the Local Sponsor will be required to make to meet its share of the revised estimate. Within 45 calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the additional required contribution.

[USE OPTION II IF CONSTRUCTION OF THE PROJECT WILL EXTEND TO MORE THAN ONE YEAR, UNLESS THE LOCAL SPONSOR WISHES TO MAKE ITS CONTRIBUTION IN FULL AT THE OUTSET. NOTE: ARTICLE VI.b.2. OFFERS THE LOCAL SPONSOR THREE OPTIONS FROM WHICH TO CHOOSE IN DECIDING HOW TO PROVIDE ITS CONTRIBUTION TO THE FEDERAL GOVERNMENT. THE LOCAL SPONSOR SHOULD INDICATE ITS CHOICE DURING THE COURSE OF NEGOTIATING THE AGREEMENT. ONLY ONE FUNDING MECHANISM SHOULD BE INCLUDED IN THE DRAFT AGREEMENT SENT FORWARD FOR REVIEW AND APPROVAL.]

OPTION II

ARTICLE VI - METHOD OF PAYMENT

a. The Local Sponsor shall provide, during the period of construction, the percentages of the total cost of construction of general navigation features assigned to commercial navigation specified in Article II.f. of this Agreement. The total cost of construction of the general navigation features assigned to commercial navigation is currently estimated to be \$_____. In order to meet its share of such costs, the Local Sponsor must provide an initial cash contribution currently estimated to be \$_____. The dollar amounts set forth in this Article are based upon the Government's best estimates which will reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based on cost actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The Local Sponsor shall provide its required cash contribution in proportion to the rate of Federal expenditures during the period of construction in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Local Sponsor by [specific date] of each year of the estimated funds that will be required from the Local Sponsor to meet its share of project costs for the upcoming fiscal year.

2. No later than [30-60] calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's share of project costs, including the Local Sponsor's share of costs attributable to the Project incurred prior to the initiation of construction, for the first fiscal year of construction. No later than [half the above number] calendar days thereafter, the Local Sponsor shall [SELECT ONLY ONE OF THE FOLLOWING FUNDING MECHANISMS] [1] provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, _____" to the Contracting Officer representing the Government. [2] verify to the satisfaction of the Government that it has deposited the requisite amount in an escrow account

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acceptable to the Government, with interest accruing to the Local Sponsor. [3] present to the Government an irrevocable letter of credit acceptable to the Government in an amount sufficient to meet the Local Sponsor's obligation.

3. For the second and subsequent fiscal years of project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the Local Sponsor of the Local Sponsor's share of project costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Local Sponsor shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2. of this Agreement. As construction of the Project proceeds, the Government shall adjust the amounts required to be provided under this paragraph to reflect actual costs.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the Local Sponsor, the Government shall so notify the Local Sponsor, and the Local Sponsor, no later than 45 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

[CLAUSE c. ONLY APPLIES TO ARTICLE VI OPTION II.]

c. The Government will draw on the [DRAFT AGREEMENT SENT FORWARD FOR REVIEW AND APPROVAL SHOULD REFLECT ONLY ONE OF THE THREE FOLLOWING OPTIONS, CONSISTENT WITH THE FUNDING MECHANISM SELECTED IN ARTICLE VI.b.2.] [1] funds [2] escrow account [3] letter of credit provided by the Local Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as costs incurred by the Government prior to the initiation of construction.

[CLAUSES d., e., AND f. APPLY TO BOTH OPTIONS I AND II IN ARTICLE VI.]

d. Upon completion of the general navigation features and resolution of all relevant contract claims and appeals, the Government shall compute the total cost of construction of the general navigation features assigned to commercial navigation and tender to the Local Sponsor a final accounting of the Local Sponsor's share of project costs. In the event the total contribution by the Local Sponsor is less than its initial required share, the Local Sponsor shall, no later than 90

calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its initial required share of project costs.

e. In the event the Local Sponsor has made excess cash contributions which result in the Local Sponsor's having provided more than its initial required share of project costs, the Government shall first credit the excess to the additional amount the Local Sponsor must repay pursuant to Article II.h. of this Agreement. In the event the excess cash contribution exceeds the additional amount the Local Sponsor must repay pursuant to Article II.h., the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of appropriations, return said excess to the Local Sponsor.

f. The Local Sponsor shall repay the additional amount required pursuant to Article II.h. of this Agreement, reduced by any excess cash contribution made during the period of construction, in equal annual installments over a period of [not more than 30] years from the completion of the period of construction of the general navigation features. Such repayment shall include interest at a rate to be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the repayment period, during the month preceding the fiscal year in which costs for construction of the Project are first incurred, or, in the case of recalculating, the fiscal year in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The interest rate shall be recalculated by the Secretary of the Treasury at five-year intervals. Nothing herein shall preclude the Local Sponsor from repaying this additional amount in full upon receipt of the final accounting. Should this full repayment be made within 90 days from receipt of the final accounting, there shall be no charges for interest or transaction costs.

ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND
REHABILITATION

a. The Local Sponsor shall operate, maintain, repair, replace, and rehabilitate all project features other than the general navigation features assigned to commercial navigation in accordance with regulations or directions prescribed by the Government.

b. The Government shall operate and maintain the general navigation features assigned to commercial navigation. [IF A DEEP-DRAFT PROJECT, ADD THE FOLLOWING: "No later than 60 calendar days prior to the beginning of each fiscal year for which the Government will incur costs for operating and maintaining the general navigation features assigned to commercial navigation, the Government shall notify the Local Sponsor of its estimated share of operation and maintenance costs required pursuant to Article II.b. of this Agreement. Within 30 calendar days thereafter, the Local Sponsor shall provide the requisite amount by delivering a check made payable to "FAO, USAED, _____", to the Contracting Officer representing the Government".]

c. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Local Sponsor for any reason is failing to fulfill its obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If the Local Sponsor persists in such failure for 30 calendar days after receipt of the notice, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement or rehabilitation of the Project by the Government shall operate to relieve the Local Sponsor of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS

The Government and the Local Sponsor shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the Local Sponsor shall maintain such books, records, and documents, and other evidence for a minimum of three years after completion of construction of the Project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit when appropriate of the Local Sponsor's records for the Project to ascertain the allowability, reasonableness, and allocability of its costs for inclusion as credit against the non-Federal share of project costs.

ARTICLE XII - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations, including section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.II issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE XIII - RELATIONSHIP OF PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

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

ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Local Sponsor fails to make the payments required under this Agreement, the Secretary of the Army shall terminate or suspend work on the Project until the Local Sponsor is no longer in arrears, unless the Secretary of the Army determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

b. If the Government fails to receive annual appropriations for the Project in amounts sufficient to meet project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After 60 calendar days either party may elect without penalty to terminate this Agreement pursuant to this Article or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall

conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI. of this Agreement. In the event that either party elects to defer future performance under this Agreement, pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

ARTICLE XVII - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Sponsor:

[full address]

If to the Government:

[full address]

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered or seven days after it is mailed, as the case may be.

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ARTICLE XVIII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

[FOR THOSE PROJECTS AUTHORIZED BY P.L. 99-662, P.L. 100-676, AND SUBSEQUENT AUTHORIZATION ACTS, ARTICLE XIX SHOULD BE ADDED]

ARTICLE XIX - SECTION 902 PROJECT COST LIMITS

The [Local Sponsor] has reviewed the provisions set forth in Section 902 of P.L. 99-662, as amended, and understands that Section 902 establishes a maximum construction cost for the project. For purposes of this Agreement, the Section 902 cost limit is \$_____ as calculated on _____, _____. [The dollar figure to be inserted should be derived as provided for in EC 1105-2-176, "Maximum Cost of Projects."] This amount shall be adjusted to allow for appropriate increases for inflation and changes in the project cost as provided in Section 902. Should this cost maximum be reached, no additional funds may be expended on the Project until additional authority is obtained from Congress.

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: _____
[signature]

BY: _____
[signature]

[typed name]

[typed name]

[title in full]

[title in full]

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the [local sponsor], that the [local sponsor] is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the [local sponsor] in connection with the Project, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, and that the persons who have executed this Agreement on behalf of the [local sponsor] have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____, 19____.

[Signed]
Title

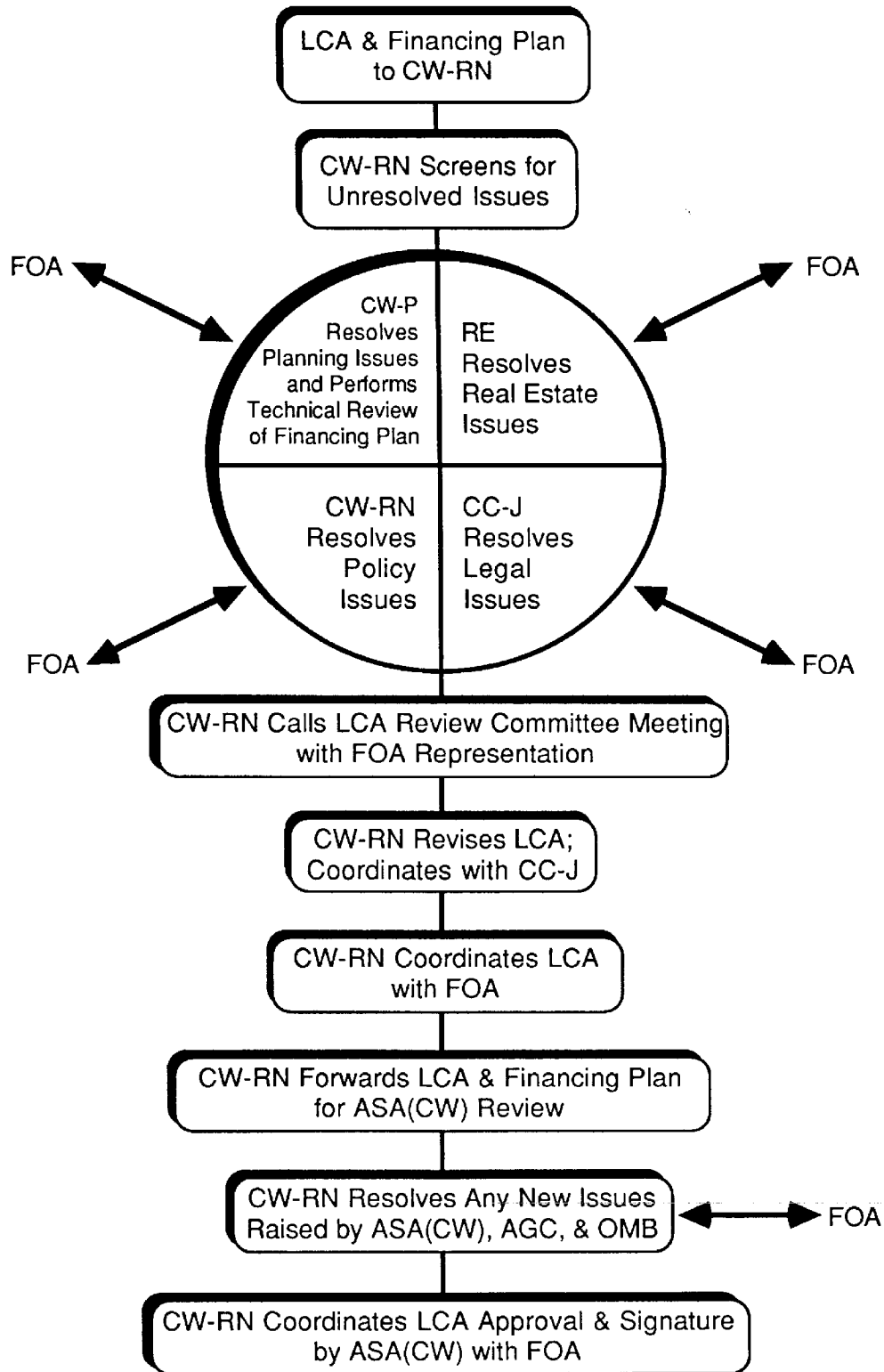
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CERTIFICATION OF LEGAL REVIEW

The draft Local Cooperation Agreement for [name of project] has been fully reviewed by the Office of Chief Counsel, USAED,

District Counsel

Appendix E HQUSACE LCA PROCESSING PROCEDURES



APPENDIX - F
SUMMARY OF WATER PROJECT COST SHARING
AS MODIFIED BY
THE WATER RESOURCES DEVELOPMENT ACT OF 1986 (PL 99-662)
AND
THE WATER RESOURCES DEVELOPMENT ACT OF 1986 (PL 100-676)
NON-FEDERAL RESPONSIBILITIES

Non-Federal Interests Are Responsible For:

F-1. Commercial Harbors (Section 101). (See Attached Examples Illustrating Cost Sharing Principles.)

a. Construction.

(1) 10 percent of the cost of general navigation features (GNF) for depths not in excess of 20 feet, paid during construction (PDC).

(2) 25 percent of the cost of GNF for increment greater than 20 feet but not in excess of 45 feet, PDC.

(3) 50 percent of cost of GNF for increment over 45 feet, PDC.

(4) For projects consisting of GNF that do not modify project depths, a non-Federal contribution required of 10 percent, 25 percent, or 50 percent of the cost of GNF, based upon the depth of existing project. Contributions of paragraphs 1.a.(5), (6), and (7) also apply to such projects.

(5) An additional 10 percent of the cost of GNF repaid over a period not to exceed 30 years. Credit is allowed for the value of lands, easements, rights-of-way, relocations and dredged material disposal areas (LERRD) against this 10 percent, including utility relocation costs.

(6) LERRD

(7) Perform or assure the performance of all relocations of utilities necessary to carry out the project. Note: An exception is made for deep-draft harbors and for projects implemented by non-Federal interests under Section 204, where one-half of the cost of each such relocation shall be borne by the owner of the facility being relocated and one-half of the cost of each such relocation shall be borne by the non-Federal interest.

b. Bridge Modifications.

Costs not assigned the bridge owner, using Truman-Hobbs principles, are project costs considered to be a part of the GNF.

c. Operation and Maintenance.

(1) For deep harbors, 50 percent of the excess of the cost over the cost that would be incurred if the project had a depth of 45 feet.

(2) LERRD needed for operation and maintenance.

(3) The 0.04 percent tax on commercial cargo is appropriated to the Harbor Maintenance Trust Fund. Appropriations from this fund provide up to 40 percent of systemwide O&M costs.

d. Prevention or Mitigation of Erosion or Shoaling Attributed to Federal Navigation.

(1) Construction shared in same proportion as the cost sharing provisions applicable to the project causing the shore damage.

(2) Operation, Maintenance, Repair, Replacement, & Rehabilitation (OMRR&R).

100 percent.

F-2. Inland Waterways (Section 102). (See Attached Examples Illustrating Cost Sharing Principles.)

a. Construction.

(1) Projects specifically authorized to be funded in part by Inland Waterways Trust Fund (IWWTF). 50 percent of the

costs through fuel taxes paid into the IWWTF when specifically authorized. Projects in Title IV in PL 99-88; Title III, Section 1103(j) and 844, in PL 99-662; and Section 3(a)(6) in PL 100-676 have been authorized to use trust funds. Note that construction costs defined by Section 102 of PL 99-662 include planning, engineering, surveying, and acquisition of all LERRD.

(2) Cost sharing for projects not authorized to use funds from the IWWTF will be in accordance with the provisions of the authorizing legislation.

b. Operation and Maintenance.

(1) None for projects authorized to be funded in part from IWWTF.

(2) LERRD, if required for projects not funded from IWWTF.

F-3. Flood Control (Section 103). (See Attached Examples Illustrating Cost Sharing Principles.)

a. Construction (Structural).

(1) Cash payment of 5 percent of the costs assigned to flood control (FCC), PDC.

(2) LERRD, except alterations of railroad bridges and their approaches, which are FCC.

(3) Added cash contribution needed to make total non-Federal share equal to 25 percent of FCC, PDC.

(4) Contributions in excess of 30 percent of FCC, i.e., 5 percent cash plus 25 percent LERRD may be reimbursed over a period not to exceed 15 years.

(5) Maximum contribution is 50 percent of FCC, i.e., 5 percent cash plus 45 percent LERRD.

(6) Cost sharing subject to ability to pay under 103(m).

b. Construction (Non-Structural).

(1) LERRD, limited to 25 percent of FCC.

(2) Added contribution to make total equal to 25 percent of FCC.

Note: Applies when LERRD is less than 25 percent of FCC.

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(3) Cost sharing subject to ability to pay under 103(m).

c. OMRR&R.

100 percent.

F-4. Hydroelectric Power (Section 103). * #

a. Construction.

100 percent of the joint and separable costs.

b. OMRR&R.

100 percent.

F-5. Municipal and Industrial Water Supply (Section 103). *

a. Construction.

100 percent of the joint and separable costs, PDC. **

b. OMRR&R.

100 percent.

F-6. Agriculture Water Supply (Section 103). *

a. Construction. (New Projects).

(1) 35 percent of the joint and separable costs assigned to agriculture water supply, PDC. **

(2) Cost sharing subject to ability to pay under Section 103(m).

b. OMRR&R. (New Projects).

100 percent.

c. Interim Use of M&I Water Supply Storage for Agriculture.

(1) 35 percent of the annual payment required of an M&I sponsor.

(2) 100 percent of the OMRR&R allocated to the contracted storage.

F-7. Recreation (Section 103).

a. Construction.

(1) 50 percent of the separable costs, PDC. **

(2) 50 percent of joint and separable costs allocated to recreational navigation at harbor and inland waterway projects, PDC.**

b. OMRR&R.

100 percent.

F-8. Hurricane and Storm Damage Reduction (Section 103). *

| <u>Shore Ownership and Project Purpose</u> | <u>Maximum Level of Non-Federal Participation</u> | |
|--|---|--------------------|
| | <u>Construction</u> | <u>Maintenance</u> |

a. Federally-owned

| | | |
|---------------------------------------|---|---|
| Hurricane & Storm Damage Reduction | 0 | 0 |
| Loss of Land | 0 | 0 |
| Recreation (Separable Cost) | 0 | 0 |

b. Publicly and privately-owned
(protection results in public
benefits)

| | | |
|-----------------------------|-----|------|
| Hurricane & Storm Damage | 35% | 100% |
| Loss of Land | 50% | 100% |
| Recreation (Separable Cost) | 50% | 100% |

c. Privately-owned, use limited
to private interests

| | | |
|---------------------------------------|------|------|
| Hurricane & Storm Damage Reduction | 100% | 100% |
| Loss of Land | 100% | 100% |
| Recreation (Separable Cost) | 100% | 100% |

F-9. Aquatic Plant Control (Section 103).

50 percent of control operations, PDC.

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F-10. Fish Wildlife Mitigation (Section 906). (See Attached Examples for Commercial Harbors and Flood Control Projects Illustrating Cost Sharing Principles.)

Construction and OMRR&R costs are allocated among project purposes and shared or reimbursed to the same extent as such other project costs are shared or reimbursed.

F-11. Fish and Wildlife Enhancement (Section 906).

a. Construction.

(1) None, if the action:

- Provides benefits to species identified by the National Marine Fisheries Service as of national economic importance, species that are subject to treaties or international convention to which the United States is a party, and anadromous fish;

- Is designed to benefit species that have been listed as threatened or endangered by the Secretary of the Interior; or

- Is located on lands managed as a national wildlife refuge.

(2) 25 percent of the joint and separable costs assigned to fish and wildlife enhancement, if benefits are other than shown in paragraph 11.a.(1).

b. OMRR&R.

25 percent.

F-12. Studies (Section 105).

a. Reconnaissance.

None.

b. Feasibility (Other Than Inland Waterways).

50 percent during study period and not more than one-half may be made by provision of services, materials, supplies, or in-kind services necessary to prepare feasibility report.

c. Feasibility (Inland Waterways).

None.

F-13. Preconstruction Engineering and Design (PED).

a. Authorized for Construction.

Shared in the same percentage as the purpose(s) of the project. The Federal government finances the non-Federal share, with adjustments to reimburse costs during the first year of construction.

b. Authorized for PED (Section 105).

50 percent of the cost of planning and engineering, during planning and engineering.

F-14. Design (Section 105).

Shared in the same percentage as the purposes of the project. The Federal government finances the non-Federal share of design, with adjustments to reimbursable costs during the first year of construction.

F-15. Dam Safety Modifications to Existing Dams (Section 1203).

a. Construction.

15 percent of modification costs to be assigned to project purpose(s) in accordance with the cost allocation in effect when construction or modification is initiated. Costs so assigned are then shared in accordance with the cost sharing in effect for each purpose when the initial project was constructed. Payment will be in accordance with existing contracts for the reimbursable purposes. An exception is made for costs assigned to irrigation which the Secretary of the Interior is for recovering in accordance with repayment provisions of PL 98-404.

b. OMRR&R.

Shared the same as basic project OMRR&R.

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F-16. Waiver of Cost Sharing for the Territories (Section 1156).

Local cost sharing requirements for all studies and projects in American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands, will be reduced by an amount up to a cap of \$200,000, for each study and \$200,000 for each project, in accordance with Section 1156. A non-Federal share for each study or project will be determined using the general cost sharing criteria, and then reducing this amount by \$200,000, or to zero if the non-Federal share is less than \$200,000.

F-17. Ability to Pay for Flood Control and Agriculture Water Supply (Section 103m).

Alternative provisions have been developed to cover the two possible outcomes of the ability to pay test. The first case is where a project fails the ability to pay test and the second case is where the test results in a determination that a reduction in the non-Federal cost share is warranted. The two provisions are included as alternative "Whereas Clause" options in the Model LCA for Structural Flood Control at Appendix D.

FOOTNOTES:

* Non-Federal interests for these projects purposes shall provide LERRD, except to the extent limited by the cost sharing provisions applicable to each purpose. The value of these contributions shall be credited toward the non-Federal share for each project purpose.

Section 103(c)(1) provides that cost sharing for hydropower projects shall be in accordance with existing law, which anticipates recovery of project costs after project completion through rates set by the appropriate power marketing agency (PMA). Projects constructed using voluntary contributions of funds provided by project sponsors during construction will require separate agreements between the sponsors, the Department of the Army, and the appropriate PMA.

** Section 103(k) permits the Secretary to recover these costs with interest over a period not to exceed 30 years. Every effort should be made to obtain payment during the construction period and any exception will require prior ASA(CW) approval.

FLOOD CONTROL COST SHARING
EXAMPLES OF STRUCTURAL PROJECTS

| | CASE I 5% plus LERRD less than 25% | CASE II 5% plus LERRD equal to 25% | CASE III 5% plus LERRD between 25-30% | CASE IV 5% plus LERRD between 30-50% | CASE V 5% plus LERRD exceeds 50% |
|--|--|--|---|--|--|
| 1. Basic Project (w/o F&WL Mitigation) | | | | | |
| a. Construction | 850 | 740 | 700 | 570 | 380 |
| b. LERRD | <u>80</u> | <u>165</u> | <u>160</u> | <u>250</u> | <u>460</u> |
| c. Subtotal | 930 | 905 | 860 | 820 | 840 |
| 2. F&WL Mitigation | | | | | |
| a. Construction | 50 | 60 | 70 | 80 | 70 |
| b. LERRD | <u>20</u> | <u>35</u> | <u>70</u> | <u>100</u> | <u>90</u> |
| c. Subtotal | 70 | 95 | 140 | 180 | 160 |
| 3. Total Project | | | | | |
| a. Construction | 900 | 800 | 770 | 650 | 450 |
| b. LERRD | <u>100</u> | <u>200</u> | <u>230</u> | <u>350</u> | <u>550</u> |
| c. Subtotal | 1000 | 1000 | 1000 | 1000 | 1000 |
| 4. Non-Federal Contribution - During Construction | | | | | |
| a. 5% Cash | 50 | 50 | 50 | 50 | 50 |
| b. LERRD | 100 | 200 | 230 | 350 | 550 |
| c. Additional Cash | <u>100</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> |
| d. Subtotal | 250 | 250 | 280 | 400 | 600 |
| e. Adjusted Non-Federal Share | | | | | |
| | 250 | 250 | 280 | 400* | 500* |
| - Cash | 150 | 50 | 50 | 50 | 50 |
| - Minimum LERRD at Construction | 100 | 200 | 230 | 250 | 250 |
| - Maximum subject to Repayment** (Up to 15 years) | 0 | 0 | 0 | 100 | 200 |
| 5. Non-Federal Contribution - OMRR (All O&M Costs, Including Mitigation, Are Non-Federal) | | | | | |

* Because of the 30% option under Section 103(a)(4) and the 50% limit on the non-Federal contribution under Section 103(a)(3), the Corps of Engineers may be required to finance that portion of the accomplishment of LERRD that exceeds these amounts.

** Appropriate interest charges (including interest during the construction period) will be added to a deferred payment or to an amount repaid over a period of time. The interest rate shall be determined by the Secretary of Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods of maturity of one year or equal to the reimbursement period, whichever is greater, during the month preceding the fiscal year in which costs for the construction of the project are first incurred plus a premium of one-eighth of one percentage point for transaction costs. Repayment contracts shall provide for recalculation of the interest rate at five-year intervals.

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FLOOD CONTROL COST SHARING
EXAMPLES OF STRUCTURAL PROJECTS

CECW-RP

| | CASE I abc's less than 25% | CASE II abc's equal to 25% | CASE III abc's exceed 25% |
|---|----------------------------------|----------------------------------|---------------------------------|
| 1. Basic Project (w/o F&WL Mitigation) | | | |
| a. Construction | 850 | 690 | 380 |
| b. LERRD | <u>80</u> | <u>195</u> | <u>460</u> |
| c. Subtotal | 930 | 885 | 840 |
| 2. F&WL Mitigation | | | |
| a. Construction | 50 | 60 | 70 |
| b. LERRD | <u>20</u> | <u>55</u> | <u>90</u> |
| c. Subtotal | 70 | 115 | 160 |
| 3. Total Project | | | |
| a. Construction | 900 | 750 | 450 |
| b. LERRD | <u>100</u> | <u>250</u> | <u>550</u> |
| c. Subtotal | 1000 | 1000 | 1000 |
| 4. Non-Federal Contribution - During Construction | | | |
| a. LERRD | 100 | 250 | 550 |
| b. Additional Contribution | <u>150</u> | <u>0</u> | <u>0</u> |
| c. Subtotal | 250 | 250 | 550 |
| d. Adjusted Contribution | 250 | 250 | 250* |
| - Minimum LERRD at Construction | 100 | 250 | 250 |
| - Maximum subject to Repayment** (Up to 15 years) | 150 | 0 | 0 |
| 5. Non-Federal Contribution - OMRR (All O&M Costs, Including Mitigation, Are Non-Federal) | | | |

* Since non-Federal contribution is limited to 25%, the Corps of Engineers will be required to finance the non-Federal accomplishment of LERRD that exceeds 25% (300) unless non-Federal interests are willing to accomplish the total LERRD and be subsequently reimbursed by the Corps.

** Interest (Section 106 rate) will be added to the amount repaid over time.

Navigation Cost Sharing

| | <u>Harbor Improvement Increments</u> | | | <u>Illustrative Harbor Projects</u> | | <u>Inland Waterways</u> | |
|--|--------------------------------------|------------------|-------------|---|---|---|--|
| | (1) ≤20' | (2) >20' <45' | (3) >45' | (4) Channel from 15' to 25' <u>1/</u> | (5) Channel from 42' to 50' <u>2/</u> | (6) Trust Fund Appropriations Authorized | (7) No Trust Fund Authorization |
| 1. Basic Project (w/o Mitigation) | | | | | | | |
| a. Construction | 900 | 900 | 900 | 1800 | 1800 | 600 | 600 |
| b. LERRD | 0 | 25 | 50 | 25 | 75 | 100 | 100 |
| c. Utility Relocation | <u>0</u> | <u>25</u> | <u>25</u> | <u>25</u> | <u>50</u> | <u>NA</u> | <u>NA</u> |
| d. Subtotal | 900 | 950 | 975 | 1850 | 1925 | 700 | 700 |
| 2. F&W Mitigation | | | | | | | |
| a. Construction | 100 | 100 | 100 | 200 | 200 | 50 | 50 |
| b. LERRD | 0 | 25 | 50 | 25 | 75 | 50 | 50 |
| c. Utility Relocation | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>0</u> | <u>NA</u> | <u>NA</u> |
| d. Subtotal | 100 | 125 | 150 | 225 | 275 | 100 | 100 |
| 3. Erosion or Shoaling Prevention | | | | | | | |
| a. Construction | 30 | 40 | 40 | 70 | 80 | NA | NA |
| b. LERRD | <u>10</u> | <u>15</u> | <u>20</u> | <u>25</u> | <u>35</u> | <u>NA</u> | <u>NA</u> |
| c. Subtotal | 30 | 55 | 60 | 95 | 115 | NA | NA |
| 4. Total Project | | | | | | | |
| a. Construction | 1030 | 1040 | 1040 | 2070 | 2080 | 650 | 650 |
| b. LERRD | 10 | 65 | 120 | 75 | 185 | 150 | 150 |
| c. Utility Relocation | <u>0</u> | <u>25</u> | <u>25</u> | <u>25</u> | <u>50</u> | <u>NA</u> | <u>NA</u> |
| d. Subtotal | 1040 | 1130 | 1185 | 2170 | 2315 | 800 | 800 |
| 5. Non-Federal Contribution during Construction | | | | | | | |
| a. Construction | 103 | 260 | 520 | 363 | 780 | 0 | 0 |
| b. LERRD | 10 | 65 | 120 | 75 | 185 | 0 | 150 |
| c. Utility Relocation | <u>0</u> | <u>25</u> | <u>25</u> | <u>25</u> | <u>50</u> | <u>NA</u> | <u>NA</u> |
| d. Subtotal | 113 | 350 | 665 | 463 | 1015 | 0 | 150 |
| 6. Non-Federal Contribution Over 30 years <u>3/</u> | | | | | | | |
| a. Additional 10% of Construction less credit for LERRD | 93 | 39 | 0 | 132 | 23 | NA | NA |

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Navigation Cost Sharing

| | Harbor Improvement Increments | | | Illustrative Harbor Projects | | Inland Waterways | |
|------------------------------------|-------------------------------|------------------|-------------|---|---|---|--|
| | (1) ≤20' | (2) >20' <45' | (3) >45' | (4) Channel from 15' to 25' <u>1/</u> | (5) Channel from 42' to 50' <u>2/</u> | (6) Trust Fund Appropriations Authorized | (7) No Trust Fund Authorization |
| 7. Total OMRR | | | | | | | |
| a. Project w/o Mitigation | 50 | 80 | 50 | 130 | 130 | 10 | 10 |
| b. F&W Mitigation | 10 | 10 | 10 | 20 | 20 | 10 | 10 |
| c. LERRD | 5 | 5 | 5 | 10 | 10 | 4 | 4 |
| d. Erosion or shoaling prevention | <u>3</u> | <u>6</u> | <u>6</u> | <u>9</u> | <u>12</u> | <u>NA</u> | <u>NA</u> |
| e. Subtotal | 68 | 101 | 71 | 169 | 172 | 24 | 24 |
| 8. Non-Federal Contribution - OMRR | | | | | | | |
| a. Project w/o Mitigation | 0 | 0 | 25 | 0 | 25 | 0 | 0 |
| b. F&W Mitigation | 0 | 0 | 5 | 0 | 5 | 0 | 0 |
| c. LERRD | 5 | 5 | 5 | 10 | 10 | 0 | 4 |
| d. Erosion or shoaling prevention | <u>3</u> | <u>6</u> | <u>6</u> | <u>9</u> | <u>12</u> | <u>NA</u> | <u>NA</u> |
| e. Subtotal | 8 | 11 | 41 | 19 | 52 | 0 | 4 |

1/ For this illustration, the costs in column (1) are assumed to represent the cost of modifying the project from 15' to 20' plus the costs in column (2) are assumed to represent the costs of modifying the project from 20' to 25'.

2/ For this illustration, the costs in column (2) are assumed to represent the cost of modifying the project from 42' to 45' plus the costs in column (3) are assumed to represent the cost of modifying the project from 45' to 50'. Note that the costs in line 6a are not additive because of the formula for credit for LERRD; Line 6a = (0.10 x line 4a) - line 5b.

3/ See flood control examples for discussion of interest charges and 5-year recalculations that also apply to this repayment.

Note: Interest during construction is not required on the added 10% contribution on harbor improvements.

APPENDIX G
NAVIGATION
COST SHARING EXAMPLE

1. Without Project Condition. Where practiced, overdepth dredging becomes part of the without project condition, necessary for the efficient maintenance of the existing project. The removal of material within the dimensions of the "old" existing project, including material in the overdepth zone should be treated as part of the O&M for the existing project. This principle applies only to that portion of the channel where advance overdepth dredging has historically been required to economically maintain the "old" existing project.

2. Cost Sharing Percentages Applicable to Various Project Depths. The policy for the sharing of construction cost of the general navigation features of a project or separable element is as follows;

- a. No deeper than twenty feet: 10 percent non-Federal;
- b. Deeper than twenty feet, but no deeper than forty-five feet: 25 percent non-Federal; and
- c. Deeper than forty-five feet: 50 percent non-Federal.

In addition, the non-Federal sponsor must agree to pay 10 percent of the cost of the general navigation facilities within 30 years of the project's completion and 50 percent of the incremental cost of operation and maintenance over 45 feet.

3. Unless the project to be constructed is confined within one of the three depths the cost of the project must be determined at each boundary depth. Where overdepth dredging is practiced, the cost of the project relates to the depth of the authorized project, including the overdepth dredging.

4. Cost Sharing Example. Figure 1 represents a channel cross-section. The area shown (a, c, d, f, a) represents an existing 40' channel. The example assumes a 50' project is authorized for construction. The problem is to determine the appropriate non-Federal cost for the increase in project depth from 40' to 50'.

5. Since the Channel in Figure 1 is in need of routine maintenance, the first order of business is to estimate the cost to bring the channel to its fully maintained state. This cost to

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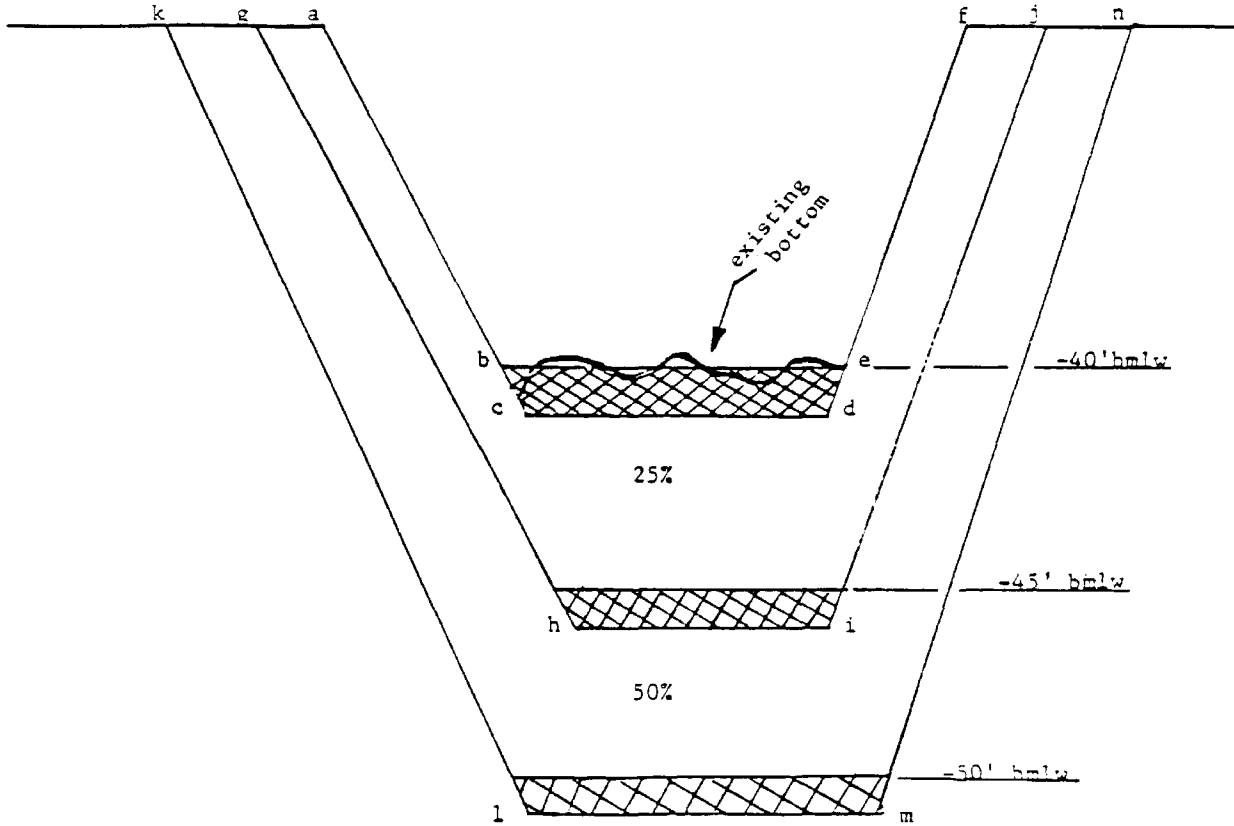
dredge the area (a, c, d, f, a), including the overdepth (b, c, d, e, b), is a maintenance cost; cost sharing for this maintenance would be in accordance with the O&M cost sharing for the existing project.

6. The next step is to determine the cost of a forty-five foot channel. It is, in this example, determined that overdepth dredging is required (the cross-hatched area in Figure 1). The 25 percent cost sharing would apply to the cost to dredge the area (g, h, i, j, f, d, c, a, g). Please note that overdepth dredging below 45 feet is determined as a design criteria for the 45 foot project, and cost shared accordingly.


7. The final calculation is to determine the incremental cost of dredging a 50' channel from the previously defined, fully maintained, 45' channel. The 50 percent construction cost sharing would apply to the area (k, l, m, n, j, i, h, g, k). The sum of the two non-Federal cost increments represents the amount the non-Federal sponsor must provide during the period of construction of such a project.

8. An additional 10 percent of the total cost of construction of the general navigation features of the project assigned to commercial navigation must be repaid (with interest) to the Federal Government within 30 years following completion of the project. The Secretary of the Army must permit a non-Federal sponsor to include towards such sums to be reimbursed the value of lands, easements, rights-of-way, relocations (including utility relocations), and dredged material disposal areas.

Figure 1
Existing Project 40" Authorized Depth
New Project 50' Authorized Depth



O & M = acdf
25% Cost Sharing = acdfjihga
50% Cost Sharing = ghijnmlkg

 = Overdepth dimensions

APPENDIX H

MODEL ESCROW AGREEMENT

This Agreement, made and entered into this ____ day of _____, 19__, by and between _____ (hereinafter referred to as the "Local Sponsor"), the Department of the Army (hereinafter referred to as the "Government") and the [FULL NAME OF INSTITUTION], (hereinafter referred to as the "Bank"), WITNESSETH THAT:

WHEREAS, on [EFFECTIVE DATE OF LCA], the Local Sponsor and the Government entered into a Local Cooperation Agreement for the construction of [NAME OF PROJECT]; and,

WHEREAS, pursuant to the Local Cooperation Agreement, the Local Sponsor is required to contribute, over the period of construction of the Project, a cash contribution calculated in accordance with said Agreement; and,

WHEREAS, the Local Sponsor and the Government have agreed that the required contribution may be deposited into an escrow account and held therein until the Government withdraws the funds in accordance with the Local Cooperation Agreement; and,

WHEREAS, the Bank has agreed to serve as depository for the escrow account and to accept appointment as escrow agent;

NOW, THEREFORE, the parties agree as follows:

1. The Bank is hereby appointed as the escrow agent for the Local Sponsor and is designated the depository for the monies delivered by the Local Sponsor pursuant to the aforementioned Local Cooperation Agreement. The Bank shall establish " Project Construction Fund" (hereinafter referred to as the "Escrow Account") into which shall be deposited the funds delivered by the Local Sponsor.

2. In accordance with the method of payment provisions of the Local Cooperation Agreement, the Local Sponsor shall absolutely and irrevocably deliver to the Bank the funds required to be provided to the Government during the construction period.

3. The funds held in the Escrow Account shall earn interest at a rate as the Bank and the Local Sponsor may mutually agree. To the extent the Local Sponsor authorizes the Bank to

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invest the funds in any instrument other than an interest-bearing account, savings certificate, or certificate of deposit of the Bank itself, such investment shall be only in direct obligations of the Government of the United States of America or in obligations of agencies or insurers that are guaranteed by the Government of the United States of America. Any instrument must be subject to redemption on or prior to the dates the funds will be needed by the Government. Interest on the funds deposited shall accrue and belong to the Local Sponsor, and shall be payable to the Local Sponsor as the Bank and the Local Sponsor may agree.

4. The Government, acting pursuant to the terms of the Local Cooperation Agreement, shall have the sole and unrestricted right to draw upon all or any part of the funds deposited in the Escrow Account. A written demand for withdrawal shall be made to the Bank by the District Engineer, USAED, _____, or his designee, with a copy of said demand provided to the Local Sponsor. Within 10 days of receipt of the demand, the Bank shall pay to the Government the amount requested to the extent such amount does not exceed the balance available in the Escrow Account. All payments shall be in the form of bank drafts payable to the "FAO, USAED, _____", and shall be mailed or otherwise delivered to the Government as specified below in Article 9.

5. Upon receipt of signed certification by the Government that no further demand for payment of money will be made, the Bank shall complete a final accounting of other obligations required under this Agreement, and pay over any remaining balance to the Local Sponsor.

6. The fee to be paid to the Bank for the services provided hereunder shall be as the Bank and the Local Sponsor may mutually agree. Any fee paid to the bank shall be the sole responsibility of the Local Sponsor. The Bank shall have no right to deduct monies from the principal escrow sum to pay for its services. In the event the Local Sponsor fails to make payment to the Bank for its services, all claims for such payment shall be made directly against the Local Sponsor. The Government shall not be responsible for any costs attributable to the establishment, maintenance, administration, or any other aspect of the Escrow Account.

7. Account statements shall be rendered by the Bank to the Local Sponsor and the Government once monthly, and shall show deposits, disbursements, and balances, and the dates thereof.

Upon receipt by the Bank of the certification specified in paragraph 5 above, the Bank shall prepare a final accounting showing all transactions relating to the Escrow Account and provide said accounting to the Local Sponsor and the Government at the addresses shown in paragraph 9.

8. It is understood and agreed that the Bank shall not be liable or responsible to ascertain the terms or conditions of any provision of the aforementioned Local Cooperation Agreement between the Local Sponsor and the Government. It is further understood and agreed that if any controversy arises between the Government and the Local Sponsor, or with any other party with respect to the subject matter of this Agreement, the Bank is authorized, unless precluded by order of a court of competent jurisdiction, to disburse monies to the Government in accordance with the terms of this Agreement.

9. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the Local Sponsor:

[full address]

If to the Government:

[full address]

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If to the Bank:

[full address]

10. Nothing in this Agreement shall be considered as vesting title in the Bank to the amount deposited, except as Trustee for the Local Sponsor and the Government for the purposes set forth herein. Title to said funds shall not vest in the Government until payment to the Government is made as provided herein.

11. This Agreement shall take effect upon the initial deposit of funds into the Escrow Account by the Local Sponsor and shall continue in full force until the certification specified in paragraph 5 hereof is received by the Bank and the balance remaining is returned to the Local Sponsor, unless earlier terminated by the written mutual agreement of the Local Sponsor and the Government.

12. This Agreement may not be amended, except by written modification signed by the parties hereto.

IN WITNESS WHEREOF, the Local Sponsor, the Government, and the Bank have executed this Agreement on the date first above written.

The Local Sponsor

ATTEST: _____ BY: _____

The Department of the Army

ATTEST: _____ BY: _____
District Engineer

The Bank

ATTEST: _____ BY: _____

APPENDIX I

DEFERRED PAYMENTS
BY NON-FEDERAL INTERESTS

1. The cost sharing established by Public Law 99-662 (P.L. 99-662) specifies: (1) Non-Federal payments to the Federal Government for its share of the cost of works accomplished under Federal control; and (2) Non-Federal accomplishment of certain activities such as acquisition of lands, easements and rights-of-way. The general concept to be followed is for each party to provide its share of the funds for cost shared work prior to initiation of that work and for each party to produce its separate work activities in a timeframe that permits efficient accomplishment of the overall effort (pay-as-you-go). P.L. 99-662, however, does make provision for deferral of certain non-Federal payments, most of which are at the discretion of the Secretary. The following conventions have been adopted for computing interest charges for non-Federal payments made after they would have been made under the "pay-as-you-go" concept described above. To be consistent and equitable, the Federal Government should finance its share of works accomplished under the control of non-Federal interests.

2. Interest on Deferred Payments

a. Deferred payment reimbursed during the construction period. Interest will be charged on each Federal expenditure made in lieu of non-Federal contributions for the period between the expenditure and the reimbursement, except as noted in Paragraph 2e below.

b. Deferred payments reimbursed over a period of time following completion of construction (reference Sections 103(a)(4), 103(b), and 103(k)). Interest will be charged for each Federal expenditure (first costs) made in lieu of non-Federal contributions for the period between the expenditure and the end of construction. The first costs plus this interest will then be amortized over the selected period.

c. Repayment under Section 101(a)(2). Repayment of up to 10 percent required under this section will not include any interest for the construction period only.

d. Expenditures each month will be totalled and interest computed as though all the expenditures were made at the mid-point of the month. Interest will be compounded annually on the anniversary of the expenditure. Periods of less than one

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year will be converted to a fraction of a year (interest charge = principal at beginning of period x interest rate x fraction of a year).

e. Delay of initial payment under Sections 101(d) and 103(l). Interest will be charged on the full amount for one-half the delay period.

3. Rate of Interest to be Applied to Deferred Payments

a. Reimbursements during the construction period. The interest rate will be determined by using the Section 106 formula with the maturity period equal to length of time between the Federal expenditure and the reimbursement.

b. Reimbursement after completion of construction. The rate of interest to be used in computing interest for the construction period and to amortize the total obligation at the start of the repayment period (first cost plus interest) will be the rate determined using the Section 106 formula. For example, when the repayment period is 30 years, the interest rate shall be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United State with remaining periods of maturity of 30 years during the month preceeding the fiscal year in which costs for the construction of the project are first incurred plus a premium of one-eighth of one percentage point for transaction costs.

4. Payment Schedule. The payments, where reimbursement is made after completion of construction, shall be in equal consecutive annual installments, the first of which shall be due and payable within 30 days after the non-Federal interest is notified by the contracting officer that the project or project modifications is completed and operational for the purpose(s) for which repayment is being made. Annual installments thereafter will be due and payable on the anniversary date of the date of notification. Except for the first payment which will be applied solely to the retirement of principal, all installments shall include accrued interest on the unpaid balance at the rate provided above. The last installment shall be adjusted upward or downward when due to assure repayment of all of the indebtedness.

5. Five-year Recalculation of the Interest Rate Applicable to Deferred Payments. The formula used to determine the interest rate under paragraph 3b above will be used for each recalculation. For example, if the original maturity period is 30 years, then each recalculation will use this same maturity period.

6. Expenditures between Feasibility Studies and Construction. Federal expenditures not covered by the FCSA for feasibility studies and made prior to the LCA for construction (PED) will be treated as first year construction costs subject to interest charges based on the proceeding paragraphs as though the expenditures were made at the beginning of the first year of construction.

7. Projects Authorized for Planning, Engineering and Design: Planning and engineering will be cost shared 50-50 in accordance with Section 105(b). Expenditures for design will be treated in accordance with paragraph 6 above.