DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

MAY 2 6 2009

CEMP-POD

MEMORANDUM FOR COMMANDER, PACIFIC OCEAN DIVISION (CEPOD-PDC)

SUBJECT: Implementation Guidance for Section 3003 of the Water Resources Development Act of 2007 – King Cove Harbor, Alaska

1. Section 3003 of the Water Resources Development Act of 2007 increases the maximum amount of Federal funds that may be expended for King Cove Harbor, Alaska, implemented under Section 107 of the River and Harbor Act of 1960, as amended, (33 U.S.C. 577), from $4,000,000 to $8,000,000. A copy of Section 3003 is enclosed for information.

2. The King Cove Harbor project was implemented under Section 107 of the River and Harbor Act of 1960, as amended, (33 U.S.C. 577). A Project Cooperation Agreement (PCA) between the Department of the Army and the Aleutians East Borough was executed 1 April 1998 for creation of a new harbor southeast of the existing harbor. Construction was initiated in 1999 and completed in 2001. In accordance with the terms of the April 1998 PCA, the sponsor was responsible for all costs in excess of the $4,000,000 Federal per-project limit. The current estimate of total costs of planning, design, and construction of the project and additional work performed on behalf of the sponsor (including a $1,925,000 claim settlement paid from the DOJ Judgment Fund in June 2007) is $9,797,418. The sponsor's total contributions to date are $3,787,444.10.

3. The District will prepare an amendment to the April 1998 PCA to reflect the increased Federal per-project limit of $8,000,000. The POD Commander is authorized to approve an amendment drafted using the enclosed sample amendment. Division Counsel review of the amendment and recommendation to approve such amendment is required prior to approval by the POD Commander. Following notification of such approval, the Alaska District Commander is authorized to execute the amendment.

4. After execution of the amendment, the District will complete the final accounting of the project in accordance with the terms of the amended PCA to determine the final required shares of all work performed and each party's total contributions as of the date of such accounting. The amount of the claim settlement will be allocated, based on the quantities dredged, between the total costs of the general navigation features and the costs of the additional work performed on behalf of the sponsor. The Federal share of the claim settlement, currently estimated to be $762,632, that was paid out of the Judgment Fund will count toward the Federal per-project participation limit. Upon completion of the final accounting, the District will notify the sponsor of the additional contribution required to meet its share of all work performed, currently

estimated to be $174,649.90, and the sponsor will pay such amount in accordance with the terms of the amended PCA.

5. The District will seek sufficient Section 107 funds, currently estimated to be $987,718, to allow an equal amount of non-Federal funds to be deobligated and then Federal funds obligated to attain the correct Federal and non-Federal shares of the work performed. The deobligated non-Federal funds and additional contribution from the sponsor, currently estimated to be $1,162,368, will be deposited in the Treasury to cover the non-Federal share of the Treasury Claim Number Z6830960 that is the DOJ Judgment Fund bill.

FOR THE COMMANDER:

Encl

LLOYD D. PIKE
Chief, Pacific Ocean Division
Regional Integration Team
Directorate of Military Programs

SEC. 3003. KING COVE HARBOR, ALASKA

The maximum amount of Federal funds that may be expended for the project for navigation, King Cove Harbor, Alaska, being carried out under section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577), shall be $8,000,000.

Encl

SECTION 107– PUBLIC LAW 86-645, AS AMENDED

SAMPLE AMENDMENT

NOTES:

1. FORMAT. - Remove the cover pages, notes section, all bold type references to notes, and any bold type text from the amendment prior to forwarding for review.

2. AMENDMENT NUMBER. - The number assigned should sequentially follow the number of the last executed amendment to the PPA for this project.
(Example: If two previously executed amendments – this should be amendment 3)

3. NON-FEDERAL SPONSOR REPRESENTATIVE. – Insert the title of the sponsor's representative signing the amendment. Do not include the name, only the title. The title shown for the sponsor's representative should match the title shown on the signature page and should be preceded by "the" or "its", as appropriate, to match the title of the sponsor's representative. (Example: the Mayor)

4. FIRST WHEREAS CLAUSE. - The civilian format for the date should be used.
(Example: January 22, 2004)

5. LOCATION OF TEXT TO BE AMENDED. - Verify the location of the language in your PPA which is to be amended. Other clauses specific to your project could alter its location slightly. The language shown in the sample is the usual location for the items required to be changed. If the location is different, correct the number of the Whereas Clause or paragraph letter, as necessary. These corrections are not considered deviations from this sample.

6. CERTIFICATE OF AUTHORITY. - The attorney signing the Certificate of Authority cannot be the signatory to the amendment. The attorney signing the Certificate of Authority is certifying that the signatory to the amendment has the authority to sign for the sponsor. Do not forget to fill in the name in the first line prior to execution of the amendment.

7. PREPARING AMENDMENT FOR SIGNATURE.

A. When printing the amendment for execution: 1) remove the cover page, notes section, bold type references to notes, and any bold type text from the amendment; 2) ensure that the appropriate information has been included in all blanks in the amendment and the Certificate of Authority; and 3) ensure that there are no page breaks which allow half empty pages.

B. Since this is a civilian document use the civilian version of the District Engineer's signature block.

C. Before signature by the Government representative, ensure that the sponsor signs and dates a minimum of four copies of the amendment, and Certification Regarding Lobbying, and that the Certificates of Authority are signed and dated by the appropriate people. The date on the first page should be filled in by the Government representative signing the amendment, not the sponsor.

D. The Government should retain two copies of the fully executed amendment. All other copies should be provided to the sponsor. A photocopy or a pdf file (as determined by the MSC) of the fully executed amendment should be provided to the MSC within 7 days after execution of the amendment.

AMENDMENT NO. **[SEE NOTE - 2]**
TO
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED PPA]
FOR
CONSTRUCTION
OF THE
[FULL NAME OF PROJECT AS SHOWN ON EXECUTED PPA]

THIS AMENDMENT NO. **[SEE NOTE - 2]** is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, _____ District (hereinafter the "District Engineer"), and the **[FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED PPA]** (hereinafter the "Non-Federal Sponsor"), represented by the **[SEE NOTE - 3]**.

WITNESSETH, THAT:

[SEE NOTE - 4]

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement on _____ (hereinafter the "Agreement") for construction of the **[FULL NAME OF PROJECT AS SHOWN ON EXECUTED PPA]** (hereinafter the "Project");

WHEREAS, Section 3003 of the Water Resources Development Act of 2007, Public Law 110-114, increased the statutory limitation on the Government's financial participation in the planning, design, and construction of the Project to $8,000,000.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the Agreement as follows:

[SEE NOTE – 5]

1. Delete the sixth Whereas Clause of the Agreement.

2. Delete Article XIX of the Agreement titled Limitations of Government Expenditures and replace with the following:

"In accordance with Section 107 of Public Law 86-645, as amended, and as further modified by Section 3003 of the Water Resources Development Act of 2007, Public Law 110-114, the

Government's financial participation in the Project is limited to $8,000,000 which shall include all Federal funds expended by the Government for planning, design, and implementation of the Project except for costs incurred on behalf of the Non-Federal Sponsor pursuant to Article II.B. or Article II.D. of this Agreement. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this amount."

3. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. **[SEE NOTE – 2]** which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY	NAME OF NON-FEDERAL SPONSOR
BY:_____	BY:_____
DATE:_____	DATE:_____

[SEE NOTE – 6]

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal office of the **[FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED PPA]**, that the **[FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED PPA]** is a legally constituted public body with full authority and legal capability to perform the terms of Amendment No. **[SEE NOTE - 2]**, between the Department of the Army and the **[FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED PPA]** in connection with the **[FULL NAME OF PROJECT AS SHOWN ON EXECUTED PPA],** and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed Amendment No. **[SEE NOTE - 2]** on behalf of the **[FULL NAME OF NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED PPA]** have acted within their statutory authority.

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

_____

NAME

TITLE

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

_____

NAME
TITLE OF SIGNATORY TO AMENDMENT

DATE:_____