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

CECW-LRD

APR 2 7 2009

MEMORANDUM FOR COMMANDER, GREAT LAKES AND OHIO RIVER DIVISION (CELRD-PDS-P)

SUBJECT: Implementation Guidance for Section 5116 of the Water Resources Development Act of 2007 (WRDA 2007) – Cincinnati, Ohio

1. Section 5116 of WRDA 2007 provides discretionary authority for the Secretary to undertake the ecosystem restoration and recreation components of the Central Riverfront Park Master Plan, dated December 1999, at a total cost of $30,000,000. In addition, Section 5116 provides authority for the Secretary to credit, in accordance with Section 221 of the Flood Control Act of 1970 (hereinafter "Section 221"; 42 U.S.C. 1962d-5b), toward the non-Federal share of the cost of the project the costs of planning, design, and construction work carried out by the non-Federal interest for the project before the date of the partnership agreement for the project. A copy of Section 5116 is enclosed for information.

2. A Design Agreement (DA) addressing design of the Central Riverfront Park project was executed on 12 September 2005. The DA contains language regarding crediting toward the sponsor's share of design costs, pursuant to the Energy and Water Development Act for Fiscal Year 2004, Public Law 108-137, and Division H, Section 118 of the Consolidated Appropriations Act 2004, Public Law 108-199, for the cost of planning and design work for the project undertaken by the non-Federal interest both before and after execution of the DA.

3. The crediting provisions for the Cincinnati Central Riverfront Park project will be implemented as follows:

a. Pursuant to the Energy and Water Development Act for Fiscal Year 2004, Public Law 108-137, and Division H, Section 118 of the Consolidated Appropriations Act 2004, Public Law 108-199, credit for the cost of planning and design work undertaken before and after execution of the DA will be afforded toward the sponsor's share of design costs in accordance with the terms and conditions of the DA. These costs and credits afforded will be included in total project costs in the project partnership agreement (PPA).

b. Pursuant to Section 5116(b) of WRDA 07, credit for planning and design work that exceeds any credit afforded pursuant to the terms of the DA, and that was carried out by the non-Federal interest for the project before the effective date of the PPA, as well as credit for construction work that was carried out by the non-Federal interest for the project before the effective date of the PPA, will be afforded toward the sponsor's share of total project costs in accordance with the terms of the PPA. The guidance and procedures contained in Engineering Circular (EC) No. 1165-2-208 In-Kind Contribution Provisions of Section 221 should be used to

determine eligibility of credit for such planning, design, and construction work. For example, work undertaken prior to execution of the PPA will not be eligible for credit if such work is carried out prior to execution of an In-Kind memorandum of understanding (see paragraph 4 and Table 1 of the EC) and determined to be integral to the project (see paragraph 6 and Table 2 of the EC). The actual value of the eligible planning, design, and construction work and amount of credit afforded will be determined in accordance with the terms and conditions of the PPA for the project.

c. Neither of the credit authorities available for this project provide authority to afford credit for planning, design, or construction work carried out by the non-Federal interest after the execution of the PPA.

d. The total amount of credit afforded for planning, design, and construction work undertaken by the non-Federal interest shall not exceed the non-Federal cash requirement for the project.

4. Funds previously provided by Congress for this project may be utilized to complete activities necessary to move the project forward to construction and to prepare and execute a PPA. HQUSACE understands that the Louisville District is proceeding with the recreation component of the project to be cost shared at 50 percent Federal and 50 percent non-Federal, and documented in a letter report that, upon approval by the Division Commander, will support the PPA. The PPA will be submitted to HQUSACE for review and approval by ASA (CW). No additional work will be undertaken on this project unless funds are specifically provided for such work. Any additional funds provided by Congress will be utilized in accordance with current Civil Works program execution guidance.

FOR THE COMMANDER:

Encl

MICHAEL G. ENSCH
Chief, Regional Integration Team
Great Lakes and Ohio River Division
Directorate of Civil Works

Water Resources Development Act of 2007

SEC. 5116. CINCINNATI, OHIO.

(a) IN GENERAL.— The Secretary may undertake the ecosystem restoration and recreation components of the Central Riverfront Park Master Plan, dated December 1999, at a total cost of $30,000,000.

(b) CREDIT.—The Secretary shall credit, in accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), toward the non-Federal share of the cost of the project the cost of planning, design, and construction work carried out by the non-Federal interest for the project before the date of the partnership agreement for the project.