DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-PM

26 MAR 2001

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

SUBJECT: Implementation of Section 225 of the Water Resources Development Act of 2000

1. Section 225 of the Water Resources Development Act (WRDA) of 2000, (Public Law 106-541) amends Section 105(a)(1)(E) of WRDA 1986, to allow the sponsor to provide their entire share of feasibility study costs through the provision of in-kind services. Effective immediately, you are authorized to execute the model Feasibility Cost Sharing Agreements (FCSA) with non-Federal sponsors by deleting "25" and substituting "50" in Article II.B. of the model FCSA.

2. For ongoing feasibility studies with executed FCSAs, effective immediately, you are authorized to execute the enclosed Amendment without deviation, thereby allowing sponsors to provide their remaining study share through the provision of in-kind services. Since the Amendment applies only to remaining study efforts, non-Federal funds provided prior to the effective date of the Amendment shall not be subject to refund or reimbursement.

3. We will shortly issue an updated model FCSA that will include changes authorized by WRDA 2000, as well as optional language for your use in including, as needed, frequently requested changes to the model FCSA. All other deviations to the model FCSA must be submitted to CECW-P for approval.

FOR THE COMMANDER:

Encl

JAMES F. JOHNSON
Chief, Planning and Policy Division
Directorate of Civil Works

Section 105 of the Water Resources Development Act of 1986,
as amended by
Section 203 of WRDA of 1996, and
Section 225 of WRDA 2000

SEC. 105. FEASIBILITY STUDIES; PLANNING, ENGINEERING, AND DESIGN.
(a) FEASIBILITY STUDIES.-
(1) COST SHARING.--
(A) IN GENERAL.--The Secretary shall not initiate any feasibility study for a water resources project after November 17, 1986, until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost of the study.
(B) PAYMENT OF COST SHARE DURING PERIOD OF STUDY.--
During the period of the study, the non Federal share of the cost of the study payable under subparagraph (A) shall be 50 percent of the sum of
(i) the cost estimate of the study as contained in the feasibility cost-sharing agreement; and
(ii) any excess of the cost of the study over the cost estimate if the excess results from-
(I) a change in Federal law; or
(II) a change in the scope of the study requested by the non-Federal interests.
(C) PAYMENT OF COST SHARE ON AUTHORIZATION OF PROJECT OR TERMINATION OF STUDY.--
(i) PROJECT TIMELY AUTHORIZED.--Except as otherwise agreed to by the Secretary and the non-Federal interests and subject to clause (ii), the non-Federal share of any excess of the cost of the study over the cost estimate (excluding any excess cost described in subparagraph (B)(ii) shall be payable on the date on which the Secretary and the non-Federal interests enter into an agreement pursuant to section 101(e) or 103(j) with respect to the project.
(ii) PROJECT NOT TIMELY AUTHORIZED.--If the project that is the subject of the study is not authorized by the date that is 5 years after the completion of the final report of the Chief of Engineers concerning the study or the date that is 2 years after the termination of the study, the non-Federal share of any excess of the cost of the study over the cost estimate (excluding any excess cost described in subparagraph (B)(ii)) shall be payable to the United States on that date.
(D) AMENDMENT OF COST ESTIMATE.--The cost estimate referred to in subparagraph (B)(i) may be amended only by agreement of the Secretary and the non-Federal interests.
(E) IN-KIND CONTRIBUTIONS.--The non-Federal share required under this paragraph may be satisfied by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report., and
(2) APPLICABILITY--This subsection shall not apply to any water resources study primarily designed for the purposes of navigational improvements in the nature of dams, locks, and channels on the Nation's system of inland waterways.
(b) PLANNING AND ENGINEERING.- The Secretary shall not initiate any planning or engineering authorized by this Act for a water for a water resources project until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost of the planning and engineering during the period of planning and engineering.
(c) DESIGN. – Costs of design of a water resources project shall be shared in the same percentage as the purpose of such project.

MODEL FCSA AMENDMENT
TO MODIFY
PERCENTAGE OF IN-KIND SERVICES

January 2001

General Notes:

1. Remove all bold type notes from the amendment prior to signature by the sponsor.

2. The number assigned should sequentially follow the number of the last executed amendment to the FCSA for this project. Example; two previously executed amendments – this should be amendment 3.

3. If there is only one project sponsor, use option 1 of first paragraph. If the FCSA had multiple sponsors, each sponsor should be a party to the amendment. To include multiple sponsors:

   A. Use option 2 of first paragraph.

   B. Each occurrence of "Sponsor" should be revised to "Sponsors".

4. Include Whereas clause identifying amendments only if the FCSA has been amended previously. Do not include this clause if this is amendment no. 1.

   A. Include a Whereas clause for each previously executed amendment to the FCSA for this project. Sample language shown.

   B. The last two occurrences of "Agreement" should be revised to "Agreement, as amended,".

5. Verify the location of the language in your FCSA which is to be amended. Other clauses specific to your project could alter its location slightly. The language which is to be amended is located in Article II.B. of the model FCSA. Correct references to the Article number, as necessary.

AMENDMENT NO. **[INSERT NUMBER - SEE GENERAL NOTE - 2]**
TO
AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL SPONSOR(S) AS SHOWN ON EXECUTED FCSA]
FOR THE
[FULL NAME OF FEASIBILITY STUDY AS SHOWN ON EXECUTED FCSA]

[SEE GENERAL NOTE – 3]

OPTION 1

THIS AMENDMENT NO. **[INSERT NUMBER]** 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 FCSA]** (hereinafter the "Sponsor"), represented by the **[TITLE OF NON-FEDERAL SPONSOR REPRESENTATIVE SIGNING THIS AGREEMENT]**.

OPTION 2

THIS AMENDMENT NO. **[INSERT NUMBER]** 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"), the **[FULL NAME OF FIRST NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED FCSA]**, and the **[FULL NAME OF SECOND NON-FEDERAL SPONSOR AS SHOWN ON EXECUTED FCSA]** (hereinafter the "Sponsors"), represented by the **[TITLE OF FIRST NON-FEDERAL SPONSOR REPRESENTATIVE SIGNING THIS AGREEMENT]** and the **[TITLE OF SECOND NON-FEDERAL SPONSOR REPRESENTATIVE SIGNING THIS AGREEMENT]**, respectively.

WITNESSETH, THAT:

WHEREAS, the Government and the Sponsor entered into an Agreement on _____ to perform a feasibility study of **[FULL NAME OF FEASIBILITY STUDY AS SHOWN ON EXECUTED FCSA]** (hereinafter the "Study");

[SEE GENERAL NOTE – 4]

WHEREAS, the Government and the Sponsor entered into an Amendment to the Agreement on _____;

WHEREAS, Section 225 of the Water Resources Development Act of 2000, Public Law 106-541 (Section 225), amends Section 105(a)(1)(E) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2215(a)(1)(E)), to allow the Sponsor to provide their entire share of Study Costs through the provision of in-kind services; and

WHEREAS, the Government and the Sponsor desire to amend the Agreement to allow the increase in in-kind services provided by Section 225 to apply to work under this Agreement that has not yet been undertaken.

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

[SEE GENERAL NOTE – 5]

1. Article II.B. is changed by deleting "25" and substituting "50".

2. Notwithstanding the above, nothing in this Amendment requires the Government to refund or reimburse the Sponsor for funds previously contributed by the Sponsor to the Government for the Study.

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

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

DEPARTMENT OF THE ARMY	SPONSOR
BY:_____	BY:_____
DATE:_____	DATE:_____

DISTRIBUTION:
Commander, Mississippi Valley Division, CEMVD
Commander, Northwestern Division, CENWD
Commander, North Atlantic Division, CENAD
Commander, Great Lakes and Ohio River Division, CELRD
Commander, South Atlantic Division, CESAD
Commander, South Pacific Division, CESPD
Commander, Pacific Ocean Division, CEPOD
Commander, Southwestern Division, CESWD
Commander, Memphis District, CEMVM
Commander, New Orleans District, CEMVN
Commander, Rock Island District, CEMVR
Commander, St. Louis District, CEMVS
Commander, St. Paul District, CEMVP
Commander, Vicksburg District, CEMVK
Commander, Missouri River Regional HDQTRS, CENWD
Commander, North Pacific Regional HDQTRS, CENWD-NP
Commander, Kansas City District, CENWK
Commander, Omaha District, CENWO
Commander, Portland District, CENWP
Commander, Seattle District, CENWW
Commander, Walla Walla District, CENWW
Commander, Baltimore District, CENAB
Commander, New England District, CENAE
Commander, New York District, CENAN
Commander, Norfolk District, CENAO
Commander, Philadelphia District, CENAP
Commander, Buffalo District, CELRB
Commander, Chicago District, CELRC
Commander, Detroit District, CELRE
Commander, Huntington District, CELRH
Commander, Louisville District, CELRL
Commander, Nashville District, CELRN
Commander, Pittsburgh District, CELRP
Commander, Great Lakes Regional HQTRS, CELRD
Commander, Charleston District, CESAC
Commander, Jacksonville District, CESAJ
Commander, Mobile District, CESAM
Commander, Savannah District, CESAS
Commander, Wilmington District, CESAW
Commander, Albuquerque District, CESPA
Commander, Los Angeles District, CESPL
Commander, Sacramento District, CESPK
Commander, San Francisco District, CESPN
Commander, Far East (Korea) District, CEPOF
Commander, Japan District, CEPOJ
Commander, Honolulu District, CEPOH
Commander, Alaska District, CEPOA
Commander, Ft. Worth District, CESWF
Commander, Galveston District, CESWG
Commander, Little Rock District, CESWL
Commander, Tulsa District, CESWT