



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON DC 20314-1000

CECW-P

2 December 2020

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Updated Section 340 Environmental Infrastructure Assistance Program Model Agreements and Delegation of Approval and Execution Authority

1. This memorandum transmits the updated model agreements for providing assistance for non-federal water-related environmental infrastructure or resource protection and development projects in Southern West Virginia when the work is being performed by the non-federal sponsor under Section 340 of the Water Resources Development Act of 1992 (Public Law 102-580), as amended.
2. Work covered by a model agreement must be scoped so that federal funds provided for the project are sufficient to cover all U.S. Army Corps of Engineers (USACE) costs and reimbursements under the agreement.
3. Enclosed are two model agreements. One is for the provision of design assistance and the other is for the provision of design and construction assistance. Any previous versions of the model agreements for Section 340 should no longer be used. The updated model agreements are also available on the Headquarters USACE Project Partnership Agreements website.
4. The model agreement for design and construction assistance provides for the crediting of the value of real property interests acquired by the non-federal sponsor from private owners after the effective date of the agreement.
5. The responsibility for review and approval of a Section 340 agreement that does not deviate from the approved models is delegated to the Division Commander. This authority may not be further delegated. Division Counsel concurrence that the agreement does not deviate from the subject model, and is appropriate for use for the project, is required prior to approval.
6. The Division Commander also is delegated authority to approve non-substantive deviations to the model agreements. This authority may not be further delegated. Division Counsel concurrence that a deviation is non-substantive and recommendation that the deviation be approved is required prior to approval by the Division Commander. Where there is a question whether a deviation is substantive, the Headquarters Agreements Team is available for consultation. An agreement with substantive deviations, including deviations involving policy issues, unique circumstances, or controversial matters, must be forwarded for MSC review and then transmitted with the

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Division Commander's recommendations to the relevant Regional Integration Team for review and approval by the Director of Civil Works.

7. The District Commander is authorized to execute the agreement after its approval.

8. Any questions may be directed to Jeff Lin, HQUSACE Agreements Team, at 202-761-5220.



ALVIN B. LEE
Director of Civil Works

Encls

DISTRIBUTION:
COMMANDERS, REGIONAL BUSINESS AND PROGRAMS DIRECTORS,
GREAT LAKES AND OHIO RIVER DIVISION, CELRD
NORTH ATLANTIC DIVISION, CENAD



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

PE-P 21 Nov 94

REPLY TO
ATTENTION OF:

CECW-PE

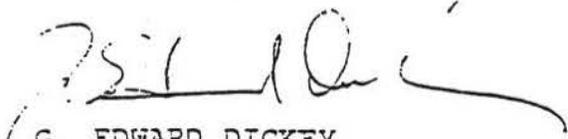
16 NOV 1994

MEMORANDUM FOR Commander, Ohio River Division

SUBJECT: Section 340 of the Water Resources Development Act
(WRDA 92)

Enclosed is the implementation guidance for the subject program. The guidance includes two model agreements. The first agreement can be used for preconstruction activities and the second can be used for construction activities. The District Counsel must certify legal sufficiency of the final agreement.

Encl


G. EDWARD DICKEY
Chief, Planning Division
Directorate of Civil Works

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, DC 20314-1000

"Southern West Virginia Environmental Restoration
Infrastructure and Resource Protection Development Pilot Program"

ENVIRONMENTAL INFRASTRUCTURE
IMPLEMENTATION GUIDELINES

1. PROGRAM OBJECTIVE: The primary objective of the Section 340 Pilot Program is to provide design and construction assistance to non-Federal interests for carrying out water related environmental infrastructure and resource protection and development projects in southern West Virginia, including projects for waste water treatment and related facilities, water supply, storage, treatment, and distribution facilities, and surface water resource protection and development.

2. AUTHORITY: The Environmental Infrastructure Program was authorized by Section 340 of the Water Resources Development Act of 1992 (Public Law No. 102-580):

"SEC. 340. SOUTHERN WEST VIRGINIA ENVIRONMENTAL
RESTORATION INFRASTRUCTURE AND RESOURCE PROTECTION
DEVELOPMENT PILOT PROGRAM

(a) ESTABLISHMENT OF PROGRAM. - The Secretary shall establish a pilot program for providing environmental assistance to non-Federal interests in southern West Virginia. Such assistance may be in the form of design and construction assistance for water-related environmental infrastructure and resource protection and development projects in southern West Virginia, including projects for waste water treatment and related facilities, water supply, storage, treatment, and distribution facilities, and surface water resource protection and development.

(b) PUBLIC OWNERSHIP REQUIREMENT. - The Secretary may provide assistance for a project under this section only if the project is publicly owned.

(c) LOCAL COOPERATION AGREEMENTS. -

(1) IN GENERAL. - Before providing assistance under this Act, the Secretary shall enter into a local cooperation agreement with a non-Federal interest to provide for design and construction of the project to be carried out with such assistance.

(2) REQUIREMENTS. - Each local cooperation agreement entered into under this subsection shall provide for the following:

(A) PLAN. - Development by the Secretary, in consultation with appropriate Federal and State officials, of a facilities or resource protection and development plan, including appropriate engineering plans and specifications.

(B) LEGAL AND INSTITUTIONAL STRUCTURES. - Establishment of each such legal and institutional structures as are necessary to assure the effective long-term operation of the project by the non-Federal interest.

(3) COST-SHARING. - Total project costs under each local cooperation agreement entered into under this subsection shall be shared at 75 percent Federal and 25 percent non-Federal. The non-Federal interest shall receive credit for lands, easements, rights-of-way, and relocations toward its share of project costs but not to exceed 25 percent of total project costs. Operation and maintenance costs shall be 100 percent non-Federal.

(d) APPLICABILITY OF OTHER FEDERAL AND STATE LAWS. - Nothing in this section shall be construed as waiving, limiting, or otherwise affecting the applicability of any provision of Federal or State law which would otherwise apply to a project to be carried out with assistance provided under this section.

(e) REPORT. - Not later than December 31, 1998, the Secretary shall transmit to Congress a report on the results of the pilot program carried out under this section, together with recommendations concerning whether or not such program should be implemented on a national basis.

(f) SOUTHERN WEST VIRGINIA DEFINED. - For purposes of this section the term "Southern West Virginia" means Raleigh, Wayne, Cabell, Fayette, Lincoln, Summers, Wyoming, Webster, Mingo, McDowell, Logan, Boone, Mercer, Pocahontas, Greenbrier, and Monroe Counties, West Virginia.

(g) AUTHORIZATION OF APPROPRIATIONS. - There is authorized to be appropriated to carry out this section \$5,000,000 for fiscal years beginning after September 30, 1992. Such sums shall remain available until expended.

3. APPROPRIATIONS:

A. Fiscal Year 1994. The Energy and Water Development Appropriations Act for Fiscal Year (FY) 1994 (Public Law No. 103-126) included funds for the Corps of Engineers to initiate the Environmental Infrastructure Program. The relevant section from the accompanying House Report is reproduced below.

"Southern West Virginia Environmental Restoration Infrastructure and Resource Protection Development Pilot Program, West Virginia. - Section 340 of the Water Resources Development Act of 1992 authorized a pilot program for providing environmental assistance to non-Federal interests in southern West Virginia. The assistance to be provided includes design and construction assistance for water-related environmental infrastructure and resource protection and development projects. The committee has provided \$3,500,000 for the program in Fiscal Year 1994.

B. Fiscal Year 1995. The Energy and Water Development Appropriations Act for FY 1995 (Public Law No. 103-316) included additional funds amounting to \$1,500,000 for the Corps of Engineers to continue this program.

4. USES OF FY 94 FUNDS:

A. Distribution of Funds. From the \$3,500,000 appropriated in FY 94, the Huntington District is to utilize \$250,000 to develop a general management plan to further implement this pilot program and \$3,250,000 to provide design and construction assistance within southern West Virginia as defined in paragraph 2.(f) above.

B. The General Management Plan. The General Management plan will be funded at full Federal expense. The General Management plan shall be developed in consultation with appropriate Federal and State agencies.

5. USES OF FY 95 FUNDS:

A. Distribution of Funds. Funds provided in FY 95 should be used to finalize negotiations and agreements with the Oakvale Road Public Service District for design and construction assistance for a water distribution system in Mercer County, West Virginia. Remaining program funds should be used to

negotiate agreements with a non-Federal sponsor(s) for completing design and potential construction assistance for a second project in southern West Virginia.

6. PROJECT COOPERATION AGREEMENTS:

A. Project Specific Design and Construction Assistance. Before providing cost-shared project specific design and construction assistance under section 340, the Army shall enter into a project cooperation agreement with an appropriate non-Federal sponsor. Total project costs under each agreement shall be shared 75 percent Federal and 25 percent non-Federal. The non-Federal interest shall receive credit for lands, easements, rights-of-way, and relocations toward its share of project costs but not to exceed 25 percent of total project costs. Operation and maintenance costs shall be 100 percent non-Federal. Up to \$25,000 may be expended at full Federal expense to develop appropriate technical documentation and to negotiate an initial project cooperation agreement for a specific project.

B. Model Agreements. A project cooperation agreement between the Army and the sponsor will be executed by the Army and the sponsor prior to starting work under this program. A model agreement for project design assistance is provided at Appendix A and a model agreement for construction assistance is provided at Appendix B. The District Engineer is delegated the authority to execute the model design agreement. Any deviations to the model design agreement must be submitted to HQUSACE for review and approval prior to execution. The Assistant Secretary of the Army for Civil Works will execute all construction agreements for the Army. District Counsel must certify legal sufficiency of the final agreement. The agreement will include an explicitly defined Scope of Work (SOW) and an itemized breakdown of each party's responsibilities, including cost. The cost of preparing the agreement and supporting technical documentation, which will not normally exceed \$25,000, will be 100 percent Federal. Any additional expenditures beyond this amount must be approved by HQUSACE. Written justification for the increased cost should be furnished to CECW-PE for review and approval.

7. COMMON CHARACTERISTICS OF ENVIRONMENTAL INFRASTRUCTURE PROJECTS.

Each project will address a unique set of needs and opportunities; however, the following characteristics should be common to every project:

A. Public Ownership. Assistance may be provided for projects that are publicly owned.

B. Lands, Easements, Rights-of-Way and Relocations (LERRs). The non-Federal sponsor is responsible for providing all lands, easements, rights-of-way, and relocations required for the project. It will receive credit for the value of such LERRs toward its share of project costs, but not to exceed twenty-five (25%) percent of the total costs of the project.

C. Joint Funding. Section 340 requires joint funding between the Federal Government and the non-Federal sponsor. The non-Federal sponsor will contribute 25 percent of total project cost in cash and/or, subject to the limitation discussed above, lands, easements, rights-of-way, and relocations. The non-Federal sponsor will be responsible for one hundred (100%) percent of all operation and maintenance costs.

D. Voluntary Contributions. Subject to applicable law, the non-Federal sponsor may make additional voluntary contributions to the project. The non-Federal sponsor will not receive any credit for such additional voluntary contributions.

E. Financial Analysis. The Federal discount rate will not be required for evaluating or comparing alternative solutions to address the community's environmental infrastructure needs. Market interest rates and inflation factors which are appropriate and relevant to the study area will be used.

F. Development of Scope. The scope of the investigations to be conducted will be determined jointly by the Corps and the non-Federal sponsor. Districts are encouraged to use private sources for any necessary design or engineering assistance or related services associated with this program.

G. Analyses and Reporting Requirements. While sound judgment and prudent analytical approaches should be employed, the specific requirements for conducting and reporting on economic and environmental procedures as outlined in Principles and Guidelines (P&G) and Corps regulations based on P&G will not be required. Because this is a service to non-Federal parties the character and form of the Assistance should be established in partnership with the non-Federal partner. The scope(s) of work should include all economic and environmental activities and actions necessary to provide the assistance requested by the non-Federal sponsor.

H. Engineering Criteria for Design and Cost Estimates. The specific requirements for conducting and reporting on design and cost engineering procedures established in existing ER, EM, ETL and CWGS will not be required. The methodology and format of the Engineering Assistance should be

established in partnership with the non-Federal partner recognizing that some structural, electrical and mechanical features of waste water treatment and water supply facilities are high risk, lifeline elements of our environmental infrastructure which are generally designed to meet higher engineering standards than used for residential or commercial buildings. Voluntary consensus standards, such as developed by the American Concrete Institute (ACI), are appropriate and relevant for these types of concrete facilities.

I. 1998 Program Report to Congress. The implementation monitoring reports (See Appendix C) along with your program recommendations will be the basis for the 1998 report.

8. REPORT COMPLETION AND APPROVAL. After completion, the District will furnish four copies to CECW-PE for information.

9. IMPLEMENTATION MONITORING. Annually, after execution of a Project Cooperation Agreement, and immediately after completion of the project, the District study manager shall submit a written report to HQUSACE, ATTN: CECW-PE. These reports should follow the format contained in Appendix C.

APPENDIX C
IMPLEMENTATION MONITORING REPORT

Name of Environmental Infrastructure Study: _____

STATE: _____ COUNTY: _____ SPONSOR: _____

District: _____/Division: _____ District POC: _____ Phone No: _____

Date Assistance Initiated: _____ Date Completed: _____ Cost: \$ _____

RESULTS:

What was the specific environmental infrastructure problem(s) investigated? _____

What alternatives were evaluated? _____

Briefly summarize the findings/conclusions: _____

IMPLEMENTATION ACTION(S):

Describe the assistance that was provided? _____

Explain any problems encountered. _____

Will the sponsor conduct any followon activities (If so, describe?) _____

What comments/views has the Sponsor made about the program? _____

Other Comments:

PREPARED BY: _____
OFFICE SYMBOL: _____ TELEPHONE NO: _____