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

CECW-PC

SEP 13 2007

MEMORANDUM FOR COMMANDER, NORTH ATLANTIC DIVISION

SUBJECT: Model Agreements and Delegation of Approval and Execution Authority for Agreements for Government Performance of the Work for the Section 566 Environmental Assistance Program, Southeastern Pennsylvania

1. Reference: Assistant Secretary of the Army for Civil Works (ASA(CW)) memorandum to the Director of Civil Works, dated 26 July 2007, Subject: Model Agreements for Government Performance of the Work for Environmental Assistance Programs (enclosure 1).

2. Effective today, the enclosed model agreements (enclosures 2 - 4) shall be used for design, construction, or design and construction, as appropriate, for projects implemented under Section 566 of the Water Resources Development Act of 1996, Public Law 104-303, as amended, (Section 566) when all or most of the work would be performed by the Government. The model agreements include optional language to address several variations of projects that can be implemented under this authority. Selection and use of the optional language is not considered a deviation from the model. If you have already substantially completed negotiations with a non-Federal sponsor using a previously approved Section 566 Government performance agreement as a guide, please contact the North Atlantic Division Regional Integration Team (NAD RIT) in Washington for guidance on how to proceed. The POC for the NAD RIT is Wes Coleman, 202-761-5782.

3. The basis for delegating authority to execute agreements, as provided for in this memorandum, is the use of models, whenever it is practical to do so. The use of models in the development of individual agreements should help to streamline project implementation in a way that also achieves national consistency, policy compliance, legal sufficiency, and equitable treatment of project sponsors. While these attributes favor the use of models, it is also recognized that deviations from the model may be appropriate in certain cases. The Project Manager should work collaboratively and expeditiously with the non-Federal sponsor to develop an agreement using the subject models without deviation or adapt it, as necessary, for the particular project. District offices are encouraged to coordinate early resolution of deviations from the subject models through the vertical team so that projects can be implemented on schedule.

4. The following procedures should be used for review and approval of agreements and amendments to agreements for the Section 566 program when all or most of the work would be performed by the

Government. In those cases where there are no deviations from the appropriate subject model, implementation of these procedures eliminates submission of a formal agreement package to Washington for review and approval. However in all cases, the documentation, including, but not necessarily limited to, the Non-Federal Sponsor's Self-Certification of Financial Capability For Agreements, the Certificate of Legal Review, and the PCA Checklist, that is necessary for the Major Subordinate Command (MSC) to review and approve the agreement in accordance with the following paragraphs, shall be prepared and forwarded for review to the MSC. A copy of all of the necessary documentation shall be placed in the project file prior to approval by the MSC or District Commander.

a. The responsibility for review and approval of an agreement that does not deviate from the appropriate subject model is delegated to the MSC Commander and may be further delegated to the District Commander. Division Counsel concurrence, or District Counsel concurrence if the approval authority is further delegated to the District Commander, that the agreement does not deviate from the appropriate subject model is required prior to approval.

b. The MSC Commander also is delegated the responsibility for review and approval of non-policy and non-substantive deviations from the subject models. This authority may not be further delegated. Division Counsel review of any such deviations and a Division Counsel recommendation to approve such deviations are required prior to approval by the MSC Commander. Where there is a question whether the deviation is policy related or substantive, HQUSACE is available for informal consultation.

c. Agreements with substantive deviations or deviations involving policy issues, unique circumstances, or highly complex matters shall be coordinated with the appropriate vertical team (District, MSC, HQUSACE, and, if necessary, the Office of the Assistant Secretary of the Army (Civil Works)). Each vertical team member shall be provided a copy of the proposed agreement with the deviations indicated, the rationale for the deviations, and the written concurrence of District and Division Counsel via e-mail. Agreements with these types of deviations require approval by HQUSACE in Washington. Early coordination of these proposed deviations with the vertical team is encouraged.

d. Review and approval of any amendment to an existing agreement to address non-policy and non-substantive changes, is delegated to the MSC Commander and may not be further delegated. Division Counsel review of any such amendment and a Division Counsel recommendation to approve such amendment is required prior to approval by the MSC Commander. Where there is a question whether the changes to the existing agreement are policy related or substantive, HQUSACE is available for informal consultation.

e. If an amendment incorporates substantive revisions to an existing agreement or any revisions to an existing agreement that involve policy issues, unique circumstances, or highly complex matters, the amendment shall be coordinated with the appropriate vertical team (District, MSC, HQUSACE, and, if necessary, the Office of the Assistant Secretary of the Army (Civil Works)). Each vertical team member shall be provided a copy of the proposed amendment, the rationale for the amendment, and the written concurrence of District and Division Counsel via e-mail. These amendments require approval by HQUSACE in Washington. Early coordination of the proposed amendment with the vertical team is encouraged.

f. The District Commander is authorized to execute each agreement and amendment after its approval, including any that require MSC or HQUSACE approval. However, the ASA(CW) retains the authority to sign any agreement of his or her choosing.

5. The following procedures should be used for execution of agreement and amendments to agreements for the Section 566 program when all or most of the work would be performed by the Government. After approval of the agreement or amendment by the appropriate authority, the district should prepare a minimum of four final originals for signature by the non-Federal sponsor. After signature by the non-Federal sponsor, the District Counsel shall review the non-Federal signatures on the agreement or amendment, the Certificate of Authority, and the Certification Regarding Lobbying to ensure that the agreement or amendment has been signed and dated by the non-Federal sponsor in all the appropriate locations. After completion of such review and a recommendation to proceed with signature by the District Counsel, the District Commander shall execute the agreement or amendment. The agreement or amendment shall be dated with the date the District Commander executes the agreement or amendment. The district shall retain two copies of the executed agreement or amendment and the remaining copies should be provided to the non-Federal sponsor. An electronic copy of the executed agreement or amendment, with all appropriate signatures, should be provided to the MSC and the NAD RIT within 14 days after execution.

6. Models for non-Federal sponsor performance of design, construction, or design and construction, as appropriate, for projects implemented under Section 566 and the accompanying implementation memo for such models were provided in separate correspondence.

7. Every six months CECW-IP shall provide information to the Office of the Assistant Secretary of the Army (Civil Works) on execution of the delegated program. HQUSACE shall request this data from the MSCs in separate correspondence.

8. The districts and the MSC shall advise HQUSACE of any signing ceremonies requested by the non-Federal sponsor, and in particular whether the presence of the ASA(CW) is requested. A signing ceremony should not be scheduled until the PCA has been approved.

9. Although the new model agreements have been designed to provide the districts and non-Federal sponsors maximum flexibility in negotiating these agreements, there may be additional opportunities to improve upon the models, in particular where a provision is repeatedly requested or needed by non-Federal sponsors. The districts and MSC shall provide this information to HQUSACE so that consideration can be given to revising the model or providing pre-approved deviations.

FOR THE COMMANDER:

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as

DON T. RILEY
Major General, USA
Director of Civil Works

CF:
CEMP-NAD
CECC-G
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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

JUL 2 6 2007

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Model Agreements for Government Performance of the Work for Environmental Assistance Programs

This responds to Mr. Waters' memorandum dated July 18, 2007, requesting approval of subject model agreements and delegation of authority to approve and execute individual agreements.

The model agreements for the Section 593 program are approved. Approval and execution of individual agreements under the Section 593 program are delegated to the Headquarters of the Army Corps of Engineers. Re-delegation of these authorities to the Major Subordinate Commands or the District Commanders is approved, in accordance with the Corps draft implementation memorandum.

Corps Headquarters is also delegated the authority to approve draft models for Government performance of work for all other geographically specific environmental assistance programs. These models will be developed by following the general language used in the Section 593 model agreements, with appropriate modifications to address the specifics of each environmental assistance program. Delegation is also provided to Corps Headquarters, with authority to re-delegate to Major Subordinate Commands or District Commanders, as appropriate, the authority to approve and execute individual agreements for Government performance of work for design, construction, or design and construction for these programs after the models have been approved. The implementation memorandum for each program should follow the implementation memorandum developed for the Section 593 program, with appropriate modifications to address the specifics of each environmental assistance program.

This office is available to address any policy issues or unique situations that may arise in developing these model agreements.

Claudia Tornlow
for John Paul Woodley, Jr.
Assistant Secretary of the Army
(Civil Works)

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