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

CECW-PC

DEC 14 2006

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Approval of Model Project Cooperation Agreement and Delegation of Approval and Execution Authority for Project Cooperation Agreements Pursuant to the Section 205 Continuing Authority Program With Costs Allocable to Structural Flood Damage Reduction and Recreation

1. References: Assistant Secretary of the Army for Civil Works (ASA(CW)) memorandum to the Director of Civil Works, dated 23 October 2006, Subject: Model Project Cooperation Agreement for Continuing Authority Projects with Costs Allocable to Structural Flood Damage Reduction and Recreation (Section 205 of the 1948 Flood Control Act, as Amended) (enclosure 1).

2. Effective today, the enclosed model project cooperation agreement (PCA) (enclosure 2) shall be used for projects implemented pursuant to Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended, (Section 205) Continuing Authority Program (CAP) with costs allocable to structural flood damage reduction and recreation. The model agreement includes optional language to address several variations including performance of work by the non-Federal sponsor pursuant to Section 215 of the Flood Control Act of 1968, Public Law 90-483, as amended (Section 215). 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 prior draft model or a sample agreement please contact your HQUSACE Regional Integration Team (RIT) in Washington for guidance.

3. The Major Subordinate Command (MSC) Commander is delegated the authority to make the determination required by Section 215 that entering into a PCA which provides credit to the non-Federal sponsor for the costs of work to be performed by the non-Federal sponsor for a Section 205 project with costs allocable to structural flood damage reduction and recreation is in the public interest. This authority may not be further delegated. The public interest review should take place as part of the review of the project specific decision document, and the public interest determination may be made only after all outstanding policy issues have been resolved during the feasibility phase in accordance with the requirements of applicable regulations. Delegation of the public interest determination does not obviate the need for the Assistant Secretary of the Army (Civil Works) to sign notification letters to the appropriations subcommittees prior to executing PCAs in those cases where such notification is required by current policy.

4. The basis for delegating authority to execute PCAs, 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 PCAs 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 a PCA using the subject model without deviation or adapt it, as necessary, for the particular project. District offices are encouraged to coordinate early resolution of deviations from the subject model through the vertical team so that projects can be implemented on schedule.

5. The following procedures should be used for review and approval of PCAs and PCA amendments for projects implemented pursuant to Section 205. In those cases where there are no deviations from the 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, letter of intent from the non-Federal sponsor, Certificate of Legal Review, and CAP PCA Checklist, that is necessary for the 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 a PCA that does not deviate from the 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 PCA does not deviate from the 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 model. 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. Project Cooperation Agreements with substantive deviations or deviations involving policy issues, unique circumstances, or controversial 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 PCA with the deviations indicated, the rationale for the deviations, and the written concurrence of District and Division Counsel via e-mail. PCAs 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 PCA 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 PCA are policy related or substantive, HQUSACE is available for informal consultation.

e. If a PCA amendment incorporates substantive revisions to an existing PCA or any revisions to an existing PCA that involve policy issues, unique circumstances, or controversial 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 PCA 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 PCA and PCA amendment after its approval, including agreements that require MSC or HQUSACE approval. However, the ASA(CW) retains the authority to sign any agreement of his or her choosing.

6. The following procedures should be used for execution of PCAs and PCA amendments for projects implemented pursuant to Section 205. After approval of the PCA or PCA 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 PCA or PCA amendment, the Certificate of Authority, and the Certification Regarding Lobbying to ensure that the PCA or PCA 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 PCA or PCA amendment. The PCA or PCA amendment shall be dated with the date the District Commander executes the agreement. The district shall retain two copies of the executed PCA

or PCA amendment and the remaining copies should be provided to the non-Federal sponsor. An electronic copy of the executed PCA or PCA amendment, with all appropriate signatures, should be provided to the MSC and the appropriate HQUSACE RIT within 14 days after execution.

7. The other models for Section 205 flood damage reduction projects, other Continuing Authority Programs, and specifically authorized flood damage reduction projects and the accompanying implementation memos for each model shall be provided in separate correspondence as they are approved.

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

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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

OCT 23 2006

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Model Project Cooperation Agreement for Continuing Authority Projects with Costs Allocable to Structural Flood Damage Reduction and Recreation (Section 205 of the 1948 Flood Control Act, as Amended)

This responds to Mr. Waters' memorandum dated September 22, 2006, requesting approval of the subject model project cooperation agreement (PCA) and delegation of authority to approve and execute individual PCAs.

The model agreement is approved. Approval and execution of individual PCAs and amendments thereto (within the parameters specified below) are delegated to the Headquarters of the Army Corps of Engineers. Re-delegation of these authorities to the Major Subordinate Commanders or the District Commanders is approved, in accordance with the draft implementation memorandum enclosed with Mr. Waters' memorandum of September 22, 2006.

Proposed deviations involving policy issues, unique circumstances, or controversial matters should be forwarded to Corps Headquarters for resolution. You should consult with my office in those cases where a policy has not yet been established, or if existing policy is unclear, or if there is any uncertainty about unique or controversial issues. The Major Subordinate Command may approve non-policy and non-substantive deviations. Corps Headquarters is encouraged to pre-approve selected variations from the model that, based on experience gained in negotiating individual agreements, are deemed appropriate. This office remains available to sign agreements and participate in signing ceremonies, depending upon the wishes of the non-Federal sponsor, or in those cases where this office so desires.

Authority is also delegated to Corps Headquarters to make the public interest determination required by Section 215 of the 1968 Flood Control Act, as amended, in those cases where a credit is proposed toward the non-Federal share of costs for work performed by the sponsor. This authority may be re-delegated to the Major Subordinate Commanders, without further re-delegation. The public interest review should take place as part of the review of the project specific decision document, and the public interest determination may be made only after all outstanding policy issues have been resolved during the feasibility phase in accordance with the requirements of applicable regulations. Delegation of the public interest determination does not obviate the need for me to sign notification letters to the appropriations subcommittees prior to executing PCAs in those cases where such notification is required by current policy. Paragraph 4.I. of Engineer Regulation 1165-2-18 should be updated to allow for the crediting of approved non-Federal work under Section 215 for the Continuing Authorities Program.

John Paul Woodley, Jr.

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