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

SEP 2 2005

CECW-PC

MEMORANDUM FOR COMMANDER, GREAT LAKES AND OHIO RIVER DIVISION

SUBJECT: Approval of Model Agreements and Delegation of Approval and Execution Authority for Agreements for Non-Federal Sponsor Performance of Work for the Section 340 Environmental Assistance Program, Southern West Virginia

1. Reference: Assistant Secretary of the Army for Civil Works (ASA(CW)) memorandum to the Director of Civil Works (DCW), dated 11 July 2005, Subject: Approval of Model Agreements for Non-Federal Sponsor Performance of the Work for Environmental Assistance Programs and Delegation of Approval and Execution Authority for Agreements 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 340 of the Water Resources Development Act of 1992, Public Law 102-580, as amended (section 340) where the work is performed by the non-Federal sponsor. The model agreements include optional language to address several variations. 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 an interim section 340 model or a prior section 340 agreement please contact the Great Lakes And Ohio River Division Regional Integration Team (LRD RIT) for guidance.

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 models 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 340 program when the majority of the work is

performed by the non-Federal sponsor. 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, approval of the sponsor's financing plan, Federal – non-Federal funds allocation table, Certificate of Legal Review, and 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 is 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 controversial matters shall be forwarded for MSC review and then transmitted to the LRD RIT, with MSC recommendations, for review and approval by HQUSACE. The MSC should submit the proposed deviations, a rationale for the deviations, and the written concurrence of District and Division Counsel via e-mail. Early coordination of these proposed deviations with the LRD RIT is encouraged.

d. Review and approval of any amendment to an existing agreement to address non-policy and non-substantive changes, such as a revision to the scope of work in the project description, 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 controversial matters, the amendment shall be forwarded for MSC review and then transmitted to the LRD RIT, with MSC recommendations, for review and approval by HQUSACE. The MSC should submit the proposed amendment and the written concurrence of District and Division Counsel via e-mail. Early coordination of the proposed amendment with the LRD RIT is encouraged.

f. The District Commander is authorized to execute each agreement and agreement 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.

5. The following procedures should be used for execution of agreements and amendments to agreements for the section 340 program when the majority of the work is performed by the non-Federal sponsor. 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. 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 LRD RIT within 14 days after execution.

6. Models for Government performance of design, construction, or design and construction for projects implemented under section 340 and the accompanying implementation memo for such models shall be provided in separate correspondence as they are approved.

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.

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 models or providing pre-approved deviations.

FOR THE COMMANDER:

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for DON T. RILEY
Major General, U.S. Army
Director of Civil Works

CF:
CECW-LRD
CELRH-PM