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

REPLY TO
ATTENTION OF:
CECW-PC

MAR 18 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Approval of Model Project Cooperation Agreement and Delegation of Approval and Execution Authority for Project Cooperation Agreement for Specifically Authorized Commercial Navigation Harbor Projects and Separable Elements Requiring Construction of a Dredged or Excavated Material Disposal Facility

1. Reference:

a. EC 1165-2-206, subject: Delegation of Review, Approval, and Signature Authority for Project Cooperation Agreements for Specifically Authorized Projects.

b. Memorandum, Assistant Secretary of the Army for Civil Works (ASA(CW)), dated 11 February 2004, Subject as above (SAB) (enclosure 1).

2. Effective today, the enclosed model project cooperation agreement (PCA) (enclosure 2) shall be used for specifically authorized commercial navigation harbor projects or separable elements of specifically authorized commercial navigation harbor projects that require construction of a dredged or excavated material disposal facility. The model agreement includes 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 a prior draft agreement please contact your HQUSACE Regional Integration Team (RIT) for guidance.

3. 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 models may be appropriate in certain cases. The Project Manager should work collaboratively and expeditiously with the 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.

4. The following procedures should be used for review and approval of PCAs and PCA amendments for specifically authorized commercial navigation harbor projects or separable elements of specifically authorized commercial navigation harbor projects that require construction of a dredged or excavated material disposal facility. In those cases where there are no deviations from the subject model, implementation of these procedures eliminates preparation of a formal agreement package and submission of that package to Washington for review and approval. However, documentation necessary to support review and approval of the agreement by the Major Subordinate Command (MSC) including, but not necessarily limited to, documentation of approval of the sponsor's financing plan, Federal - non-Federal funds allocation table, completion of all necessary National Environmental Policy Act (NEPA) coordination, Certificate of Legal Review, and PCA Checklist, shall be prepared and placed in the project file prior to execution.

a. The responsibility for review and approval of each PCA that does not deviate from the subject model is delegated to the MSC and may not be further delegated. Division Counsel concurrence that the PCA does not deviate from the subject model is required prior to approval.

b. The MSC 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 is required prior to approval. Where there is a question whether the deviation is policy related or substantive, HQUSACE is available for informal consultation.

c. PCAs with substantive deviations or deviations involving policy issues, unique circumstances, or controversial matters shall be forwarded for MSC review and then transmitted to your HQUSACE RIT, with MSC recommendations, for review by HQUSACE and approval by ASA(CW). Early coordination of these proposed deviations with your HQUSACE RIT is encouraged.

d. Review and approval of any amendments 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 is required prior to approval. 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 forwarded for MSC review and then transmitted to your HQUSACE RIT, with MSC recommendations, for review by HQUSACE and approval by ASA(CW). Early coordination of these proposed revisions with your HQUSACE RIT is encouraged. In addition, any amendment that consists solely of changes to the description of the project, as defined in Article I of the existing PCA, and the resulting changes to the costs shown in Article VI of the existing PCA shall be approved by the organizational level that approved the decision document that supports the change, except that in no event shall the approval level be below the MSC.

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

5. The following procedures should be used for execution of PCAs and PCA amendments for specifically authorized commercial navigation harbor projects or separable elements of specifically authorized commercial navigation harbor projects that require construction of a dredged or excavated material disposal facility. After approval of the PCA or amendment, the district should prepare a minimum of four final originals for signature by the sponsor. The District Counsel shall review the non-Federal signatures on the PCA or amendment, the Certificate of Authority and the Certification Regarding Lobbying. After such review, the District Commander shall execute the PCA or amendment. The PCA or amendment shall be dated with the date the District Commander executes the agreement. The district shall retain two copies of the executed agreement and the remaining copies should be provided to the sponsor. A photocopy of the executed agreement should be provided to your HQUSACE RIT within 14 days after execution.

6. HQUSACE is presently working on additional models for both specifically authorized commercial navigation harbor projects and Section 107 Continuing Authority Program commercial navigation harbor projects. These models will be issued under separate cover as they are approved.

7. 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.

8. 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 model, 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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CARL A. STROCK
Major General, USA
Director of Civil Works

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