



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

CECW-PC

JUN 23 2008

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Memorandum of Understanding Models and Delegation of Approval and Execution Authority for Memorandum of Understanding for In-Kind Contributions Provided or Performed by a Non-Federal Interest Prior to Execution of the Applicable Cost Sharing Agreement

1. Reference:

a. Assistant Secretary of the Army for Civil Works (ASA(CW)) memorandum to the Director of Civil Works, dated 30 May 2008, subject: Memorandum of Understanding Models for In-Kind Contributions Provided or Performed by a Non-Federal Interest Prior to Execution of the Cost Sharing Agreements (enclosure 1).

b. EC 1165-2-208, In-Kind Contribution Provisions of Section 221, dated 6 June 2008.

2. Effective immediately, the enclosed models (enclosures 2 and 3) for a Memorandum of Understanding (In-Kind MOUs) shall be used if a non-Federal interest intends to provide or perform in-kind contributions prior to execution of the applicable cost sharing agreement (Design Agreement or Project Partnership Agreement). The first model addresses design related activities and the second addresses construction related activities.

3. Reference 1.b. provides detailed guidance on when an In-Kind MOU is required; the timing of execution of an In-Kind MOU; and the procedures to be used to determine the value of and afford credit for eligible in-kind contributions pursuant to the terms of a Design Agreement or Project Partnership Agreement.

4. The basis for delegating authority to execute In-Kind MOUs, as provided for in this memorandum, is the use of the models, whenever it is practical to do so. The use of the models in the development of individual In-Kind MOUs should help to streamline implementation in a way that also achieves national consistency, policy compliance, legal sufficiency, and equitable treatment of non-Federal interests. While these attributes favor the use of models, it is also recognized that deviations from the applicable model may be appropriate in certain cases. The Project Manager should work collaboratively and expeditiously with the non-Federal interest to develop an In-Kind MOU using the applicable model without deviation or adapt it, as necessary. 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.

5. The following procedures should be used for review and approval of In-Kind MOUs implemented pursuant to Section 221. In those cases where there are no deviations from the

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applicable model or only non-policy or non-substantive deviations, implementation of these procedures eliminates submission of a formal agreement package to Washington for review and approval. A copy of all of the necessary documentation shall be placed in the project file prior to approval by the appropriate authority.

a. The responsibility for review and approval of an In-Kind MOU that does not deviate from the applicable 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 In-Kind MOU does not deviate from the applicable 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 applicable 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. Where there is a question whether the deviation is policy related or substantive, HQUSACE is available for informal consultation.

c. In-Kind MOUs 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 In-Kind MOU with the deviations indicated, the rationale for the deviations, and the written concurrence of District and Division Counsel via e-mail. HQUSACE Office of Counsel review of any such deviations and a HQUSACE Office of Counsel recommendation to approve such deviations is required prior to approval. In-Kind MOUs with these types of deviations require approval by HQUSACE in Washington. Early coordination of these proposed deviations with the vertical team is encouraged.

d. The District Commander is authorized to execute each In-Kind MOU 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 In-Kind MOUs implemented pursuant to Section 221. After approval of the In-Kind MOU by the appropriate authority, the district should prepare a minimum of four final originals for signature by the non-Federal interest. After signature by the non-Federal interest, the District Counsel shall review the non-Federal signatures on the In-Kind MOU and the Certificate of Authority to ensure that the In-Kind MOU has been signed and dated by the non-Federal interest 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 In-Kind MOU. The In-Kind MOU shall be dated with the date the District Commander executes the agreement. The district shall retain two

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copies of the executed In-Kind MOU and the remaining copies should be provided to the non-Federal interest. An electronic copy of the executed In-Kind MOU, with all appropriate signatures, should be provided to the MSC and the appropriate HQUSACE RIT within 7 days after execution.

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

8. Although the new models have been designed to provide the districts and non-Federal interests maximum flexibility in negotiating these agreements, there may be additional opportunities to improve upon the models, in particular where a provision is repeatedly requested by non-Federal interests. 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:



STEVEN L STOCKTON, P.E.
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

MAY 30 2008

MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS

SUBJECT: Memorandum of Understanding Models for In-Kind Contributions Provided or Performed by a Non-Federal Interest Prior to Execution of Cost Sharing Agreements

This responds to Mr. Brown's memorandum dated May 12, 2008, requesting approval of the subject models and delegation of authority to approve and execute individual In-Kind Memoranda of Understanding. The two models are approved as modified in Ms. Smith's email dated May 27, 2008.

Approval and execution of individual In-Kind Memoranda of Understanding and amendments thereto are delegated to the Headquarters of the Army Corps of Engineers, within the parameters specified in the draft implementation memorandum enclosed with Mr. Brown's memorandum of May 12, 2008. Re-delegation of these authorities to the Major Subordinate Commands or the districts is approved, in accordance with the draft implementation memorandum.

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

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